

by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501, Chapter 35.

D. Executive Order 13175

This final rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments. Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on: (1) Policies that have tribal implication, including regulation, legislative comments, or proposed legislation; and (2) other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes.

AMS has assessed the impact of this final rule on Indian tribes and determined that this rule would not have tribal implications that require consultation under Executive Order 13175. AMS hosts a quarterly teleconference with tribal leaders where matters of mutual interest regarding the marketing of agricultural products are discussed. Information about the proposed changes to the regulations are shared during quarterly calls with Tribal leaders, who have the opportunity to submit comments. AMS works with the USDA Office of Tribal Relations to ensure meaningful consultation is provided as needed with regards to the NOP regulations.

E. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

F. General Notice of Public Rulemaking

This final rule reflects recommendations submitted by the NOSB to the Secretary to remove fourteen nonorganic ingredients and two substances from the National List. This final rule retains (or “renews”) two substances on the National List.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agricultural commodities, Agriculture, Animals, Archives and records, Fees, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205 is amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6524.

■ 2. Amend § 205.601 by revising paragraph (j)(9) to read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(j) * * *

(9) Vitamins, C and E.

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§ 205.603 [Amended]

■ 3. Amend § 205.603 by removing paragraph (b)(9) and redesignating paragraphs (b)(10) through 12 as paragraphs (b)(9) through (11).

§ 205.605 [Amended]

■ 4. Amend § 205.605(b) by removing the words “Alginic acid (CAS #9005–32–7)”.

■ 5. Amend § 205.606 by revising paragraphs (d) through (t) and removing paragraphs (u) through (w).

The revisions read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as “organic.”

* * * * *

(d) Colors derived from agricultural products—Must not be produced using synthetic solvents and carrier systems or any artificial preservative.

(1) Beet juice extract color—derived from *Beta vulgaris* L., except must not be produced from sugarbeets.

(2) Beta-carotene extract color—derived from carrots (*Daucus carota* L.) or algae (*Dunaliella salina*).

(3) Black/purple carrot juice color—derived from *Daucus carota* L.

(4) Chokeberry, aronia juice color—derived from *Aronia arbutifolia* (L.) Pers. or *Aronia melanocarpa* (Michx.) Elliott.

(5) Elderberry juice color—derived from *Sambucus nigra* L.

(6) Grape skin extract color—derived from *Vitis vinifera* L.

(7) Purple sweet potato juice color—derived from *Ipomoea batatas* L. or *Solanum tuberosum* L.

(8) Red cabbage extract color—derived from *Brassica oleracea* L.

(9) Red radish extract color—derived from *Raphanus sativus* L.

(10) Saffron extract color—derived from *Crocus sativus* L.

(e) Cornstarch (native).

(f) Fish oil (Fatty acid CAS #'s: 10417–94–4, and 25167–62–8)—stabilized with organic ingredients or

only with ingredients on the National List, §§ 205.605 and 205.606.

(g) Fructooligosaccharides (CAS # 308066–66–2).

(h) Gelatin (CAS # 9000–70–8).

(i) Glycerin (CAS # 56–81–5)—produced from agricultural source materials and processed using biological or mechanical/physical methods as described under § 205.270(a).

(j) Gums—water extracted only (Arabic; Guar; Locust bean; and Carob bean).

(k) Inulin—oligofructose enriched (CAS # 9005–80–5).

(l) Lecithin—de-oiled.

(m) Orange pulp, dried.

(n) Orange shellac—unbleached (CAS # 9000–59–3).

(o) Pectin (non-amidated forms only).

(p) Potassium acid tartrate.

(q) Seaweed, Pacific kombu.

(r) Tamarind seed gum.

(s) Tragacanth gum (CAS # 9000–65–1).

(t) Wakame seaweed (*Undaria pinnatifida*).

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Erin Morris,

Associate Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Part 4280

[Docket No. RBS–20–BUSINESS–0027]

RIN 0570–AA98

Rural Energy for America Program

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule; confirmation and response to comments.

SUMMARY: The Rural Business-Cooperative Service (RBCS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is confirming the final rule published in the **Federal Register** on April 27, 2021, to remove the provisions relating to guaranteed loans and to make other revisions to enhance program delivery and customer service for the Rural Energy for America Program (REAP). This notice presents the opportunity for the Agency to provide its responses to the public comments received on the final rule and to confirm the final rule as published.

DATES: As of February 28, 2022, the effective date of the final rule published

April 27, 2021, at 86 FR 22304, is confirmed as July 26, 2021.

FOR FURTHER INFORMATION CONTACT:

Sami Zarour, Program Management Division, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250–3201; telephone (202) 720–9549; email: sami.zarour@usda.gov.

SUPPLEMENTARY INFORMATION: Rural Development administers a multitude of programs, ranging from housing and community facilities to infrastructure and business development. Its mission is to increase economic opportunity and improve the quality of life in rural communities by providing leadership, infrastructure, capital, and technical support that can support rural communities, helping them to prosper.

To achieve its mission, Rural Development provides financial support (including direct loans, grants, loan guarantees, and direct payments) and technical assistance to help enhance the quality of life and provide support for economic development in rural areas.

On July 14, 2020, at 85 FR 42494, the Agency promulgated 7 CFR part 5001, the OneRD guaranteed loan regulation, which combined four Agency guaranteed loan program regulations, including REAP, into one comprehensive guaranteed loan processing and servicing regulation. The final rule being confirmed amends 7 CFR part 4280, subpart B accordingly to remove references to the guaranteed loan provisions of REAP as these references have become superfluous in light of the promulgation of 7 CFR part 5001. Furthermore, program modifications required by the Agriculture Improvement Act of 2018 (2018 Farm Bill), as well as provisions that have been previously published via funding opportunities in **Federal Register** publications, have been incorporated into this final rule to eliminate the need for annual notification and to enhance program delivery.

Summary of Comments and Responses

RBCS invited comments on the final rule published on April 27, 2021, in the **Federal Register** (86 FR 22304). RBCS received twenty-eight (28) comments from five commenters. The commenters were: The American Biogas Council (ABC), Agriculture Energy Coalition (AgEC), Ebenezer MGMT, LLC, Environmental Law & Policy Center (ELPC) and CROPP Cooperative (CROPP). The Agency's responses to the 28 comments, of which six (6) were duplicative, are as follows:

Comment 1: Both the ABC and the AgEC believe the March 31 grant

application deadline creates a barrier to a timely transition between the grant process and project initiation for companies who want to partner with farms to produce biogas. As grant application reviews typically last a few months, and applications are not guaranteed to be successful, small businesses are often forced to delay capital outlays for construction until a grant is awarded. By the time the grant is awarded, it is usually summer, and the awardee has missed out on a significant portion of construction season and faces unnecessary challenges securing labor and equipment that is already obligated to projects that began in the spring. Thus, these projects are often delayed until the following year. For companies who want to partner with farms to convert manure or other organic materials into biogas, this nine-month delay is too frequently an impediment initiating a reciprocal business relationship between small farms and small biogas companies. Additionally, the ABC and the AgEC feel the current practice requires that projects seeking a REAP grant as well as participation in the loan guarantee program complete a combination application. Coupling these separate paths together creates a significant obstacle to small and mid-size applicants because lenders often do not count potential REAP grant funding among a borrower's assets. Specifically, in the loan application process, some companies rely on REAP grant funding to demonstrate the viability of the projects for which they are seeking loans. Lenders are typically less likely to approve loans when the applicant is relying on uncertain federal grant funding to demonstrate the viability of the project. The result is an increased rate of loan denials for small businesses. If, however, loan guarantee applicants were allowed to begin that process with grant funding already in-hand, their proposed projects would present as more stable to lenders.

Agency response: Applications for REAP assistance can be filed any time during the year and once a complete application is filed it can be processed and readied for competition. The receipt of program funds to make awards are contingent upon the federal budget process. Historically, the Agency has received REAP funds in January. REAP grants are typically very competitive given the limited amount of grant funds available. The Agency must meet the statutory provision of obligating no less than 20 percent of REAP funds for grants applications requesting \$20,000 and less by June 30. Therefore, the

Agency utilizes an October 31 deadline for these grants so that the statutory provision can be met each year. The Agency has also adopted a single deadline (March 31) for grant applications requesting more than \$20,000 to ensure that there is a fair and transparent process for competition across the nation.

Furthermore, the Agency desires to fund applications that are shovel ready and can be completed when REAP funding is awarded. As such, part of the application requirements is to demonstrate how the project will be financed and that those funds, both grant, loan and other are available. The Agency acknowledges that grant funds are much more competitive than guaranteed loan funds and it can take longer to process the volume of grant applications received compared to guaranteed loan applications.

Comment 2: Ebenezer MGMT, LLC stated that the final rule “was published April 27th with an effective date of July 26th. USDA released a NOSA published 11/25/2020 that substantially changed how applications are reviewed and scored, with no comment period. The final program due date each year is currently March 31st. All proposed changes to procedure or scoring should occur or become effective on the day following the final due date for applications.

Applicants submit applications throughout the year, after reading current rules and with guidance from USDA staff. All applicants have an expectation of consistency. To make changes mid-year puts some applicants at a disadvantage to others. It requires enormous amounts additional staff time to rescore or gather additional information when changes are made mid-year. By announcing ahead of time that the changes would occur each April 1st. Applicants would be better served; and state staff could manage their workload more efficiently.”

Agency response: REAP applications can be filed at any time during the year which makes it difficult to find an ideal time to initiate program changes. The Agency ensures that all applicants are afforded the same opportunity to supplement application materials as necessary when program changes are initiated after complete applications have been filed.

Comment 3: ABC and AgEC both raised the same concerns that the scoring criteria do not properly support project diversity and commercial yet underserved renewable technologies. ABC and AgEC are both very supportive of REAP and its broad reach. However, they are concerned that several elements

of the scoring criteria outlined in § 4280.121 “Scoring RES and EEI grant applications” risk continued limits on the diversity of applicants and technologies supported by the program.

ABC and AgEC are concerned that “the following scoring criteria risk further inhibiting underserved renewable technologies for REAP grants, such as biogas systems and distributed wind:

(1) “The quantity of energy generated or replaced per grant dollar requested” is a key scoring criterion outlined in the final rule. While efficient use of program funds is a worthwhile objective, this criterion favors the most established renewable energy technologies over underserved technologies.

(2) The emphasis on “energy replaced” also favors technologies with the best economics based on energy alone, pushing toward technology that has penetrated the market more successfully to date, rather than underserved technologies that may support additional environmental and economic benefits and also might accommodate the specific needs of the applicant. For example, a significant component of the economic value of biodigesters comes from reduced manure disposal costs. This underserved technology would be at a disadvantage relative to an energy-only project.

(3) The criteria for “energy saved” also favors technologies with the highest economic efficiency in today’s market, limiting diversity.

(4) Awarding points for firm letters of credit for cost share favors those with access to capital, rather than marginalized communities or borrowers. Because one of the objectives of REAP is to support economic development and to strengthen rural communities, ensuring access to all eligible members of the rural community should be reflected in the final rule.

(5) Awarding points for firms already in the market poses a potential barrier against new entrants and marginalized communities. Strengthening rural communities should include efforts to support fledgling businesses rather than place them at a disadvantage to their peers.

(6) REAP is solely concentrated on energy production and does consider any of the environmental aspects of digesters. The qualities include preventing the emissions of methane, recycling of nutrients, cleaning and recycling of water or protecting water quality, requesting carbon by reusing nutrients. All of these elements are part of the reasons that farmers want to use

digesters but none of them are taken into consideration by the current REAP scoring system. Given the USDA’s renewed focus on fighting climate change, we, again, urge USDA to update its scoring criteria to include not only aspects of energy generation but also aspects of GHG emission reduction and environmental savings.”

Agency response: The Agency acknowledges that technology diversity is important. In fact, the Administrator has added discretionary points for underserved technology for the past several years in an effort to diversify the REAP portfolio. In response to the six individual issues raised, the Agency submits the following:

ISSUE 1: This criterion is evaluating the energy savings/generation impact of the dollars being invested in the project. The installation cost is one variable, but the amount of the request is a second variable. Some technologies may have lower installation costs, but the amount of the request is defined by the applicant.

ISSUES 2 and 3: RBCS acknowledges the concerns raised. REAP has always looked at only direct project benefits such as kWh/BTU’s saved/generated or by-products. The Agency is open to further discussion on additional project benefits; however, the Agency is concerned about how alternatives could be quantified and valued in a fair manner to ensure consistent program delivery.

ISSUE 4: The Agency removed financial need from the program in 2014. The Agency’s goal is to participate in projects that are shovel ready to ensure timely and prudent investment of REAP program dollars. Commitment of funds demonstrates project support, backing, and a higher probability of project completion.

ISSUE 5: The Agency is assuming this concern is related to the five (5) points for existing businesses. The points for an existing business were added to strengthen opportunity for main street businesses as opposed to creating a barrier for new entities. REAP has a primary focus on energy generation and savings.

ISSUE 6: The current scoring criteria does award up to five (5) points for environmental benefits. The concern is being raised that more emphasis should be placed on GHG emission reduction and environmental savings, including water, etc. The Agency acknowledges the importance of environmental benefits and will consider how the priority system could place more value on such benefits.

Comment 4: ABC expressed concerns the provisions outlined in § 4280.121(h)

“State Director and Administrator priority points” providing discretionary points to underrepresented technologies, geographic diversity, and underserved populations are a great step in the right direction, and ABC strongly supports this, but they are concerned that the points are insufficient to offset the criteria favoring lowest cost technologies and certain applications outlined above.

Agency response: While the Agency appreciates the comment, the Agency will continue to apply State Director and/or Administrator points in order to meet the objectives of the program. The Agency is open to further discussion on additional project benefits, however, the Agency is concerned about how alternatives could be quantified and valued in a fair manner to ensure consistent program delivery.

Comment 5: Ebenezer MGMT, LLC states that “Administrator points should not be available in the pooling rounds of competition. The State Directors have an intimate knowledge of their states and the needs of residents. The Administrator does not have this knowledge and should not have the ability to add 10 points to an application score. All funding determinations at the National Office should be by initial score alone. If Administrator points are used, the Administrator should state what conditions will receive additional points at the beginning of each fiscal year. Historically it appears the National Office has skewed results to penalize states proficient in utilizing the program; eliminating the Administrator points would alleviate this problem.”

Agency response: The concern regarding awarding Administrator points for national office competition is acknowledged. However, the competition is a national competition and the Administrator has discretion to apply additional points to support administration goals and objectives from a national perspective. Recent application of Administrator points has focused on underserved technology to diversify the national portfolio and assisting projects located in distressed communities.

Comment 6: CROPP requested an adjustment to the scoring criteria to accommodate local utility net-metering restrictions, specifically in scoring criteria #2 (quantity of energy replaced), sub-criteria 2a (energy replacement) and #6 (simple payback). CROPP believes this decreases the competitiveness of their producer applications and put producers at a disadvantage. Producers are disadvantaged by these criteria due to the net-metering limitations imposed

by utilities. Those net-metering limits restrict the size of a RES an agriculture producer can install and thereby preclude producers from gaining the maximum scorable points.

“Net metering restrictions that limit the size of a RES that a farmer can install are pervasive from coast-to-coast across nearly all electric utility providers. Farmers should not be at a REAP disadvantage simply because their utility restricts the size of a RES; it is largely out of their hands and represents a scoring-criteria that should be rectified.”

Agency response: The Agency acknowledges the concern that net-metering can lead potential REAP applicants to design smaller systems; however, the Agency has no control over state or utility net-metering limitations.

Comment 7: “AgEC and ABC as a member of AgEC has received considerable support from the agriculture community and representatives in Congress for bolstering underserved and nascent renewable technologies to help ensure continued development and penetration into the marketplace, especially through a reserve of funds for these technologies. To that end AgEC would propose an addition to “§ 4280.121 Scoring RES and EEI grant applications.”

Specifically, AgEC and ABC would propose adding section (i) at the end: “(i) Notwithstanding the scoring rules above, no less than 15% of funding for a competition shall be awarded to nascent and/or underserved renewable [commercial] technologies separately from the remainder of the competition(s), on an annualized basis.”

A complimentary definition in “§ 4280.103 Definitions” would include “Nascent and underserved (or underused) renewable technologies. Nascent and underserved/underused technologies are those renewable energy technologies that have received less than 10 percent of program funding support in the last three years.”

AgEC and ABC also continue to advocate for a grants reserve fund for underserved renewable technologies, to support these technologies in achieving cost and scale.”

Agency response: The Agency continues to support the requirement for technology to be commercially available to be eligible for REAP assistance. The Agency has and continues to apply State Director and Administrator points to underserved technology in efforts to diversify the REAP portfolio. The commenters propose reserving a set amount of funds to facilitate the selection of underrepresented

technologies. The REAP statute does not provide the flexibility to establish reserve funding. If such a provision came to fruition, careful planning must occur to ensure that REAP projects continue to realize benefit. The current program contains state allocated and national competitions for funding and also includes a set-aside of funds (reserve of funds) for \$20,000 or less applications for renewable energy systems and energy efficiency. If funds are subdivided further to represent each under-represented technology for state allocations, grant requests would need to be smaller. It is likely that a state would not be able to fully utilize its allocation as any remaining funds after the subdivision would be below the minimum required grant amount. Additionally, any administrative burden costs to implement another reserve must be included in the planning.

Comment 8: “AgEC and ABC believe a robust loan guarantee component of REAP remains important as well.

AgEC and ABC greatly appreciates USDA’s efforts under the OneRD program to remove regulatory barriers to make it easier for private lenders to use USDA programs and invest in rural America.

Yet it is vital that energy efficiency and renewable energy systems find full support under the consolidated program.

We urge USDA to ensure that the availability of OneRD funding is clearly communicated under all REAP funding opportunities, and urge REAP program officers to support grant applicants in obtaining complimentary loan funding where appropriate.

In addition, we would urge a new category of loan guarantee of 90% for distributed generation projects of less than \$1,000,000. This would serve to support smaller-scale, and smaller businesses and/or individual applicants in the market.

Distributed generation is an important public policy area that the Administration wants to help for all of the myriad benefits it provides, including local economic development, localized energy production and ownership, grid and community resilience, and energy security (ex., much harder to succeed in cyber-attacks against millions of small solar and distributed wind installations).”).

Agency response: The Agency appreciates the comment and will continue to amplify the availability of REAP guarantee funding in our external communication strategies. We understand the importance of distributed generation projects and will continue to finance them under the

REAP guaranteed loan and grant programs. The 2018 Farm Bill specifically outlines how REAP funds should be used (*i.e.*, technical assistance, small grants, energy efficient equipment and systems, etc.). Changes to the 2018 Farm Bill would be needed to create a new category of loan guarantees for distributed generation projects.

Comment 9: AgEC and ABC believe it is “incumbent upon USDA to properly staff the Rural Development mission area for better implementation of REAP and related energy or bioeconomy programs such as 9003. We would urge USDA to look at this further, hire and train as needed, and continue to communicate to Congress the importance of a robust staffing budget to efficiently support the administration of important programs.”

Agency response: Thank you for the comment, the Agency recognizes the importance of proper staffing and training.

Comment 10: AgEC and ABC “urge USDA again to further streamline, and simplify the REAP applications process across the board, but with a particular emphasis on lower cost grant applications for individual farmers and others. This is an issue we’ve raised for years.

We recognize the vital importance of due diligence, and agency fiduciary responsibilities, but the arduous applications process is inhibiting equity and opportunity in ag based energy. For example, some prospective applicants have to hire consultants, paying over \$1,000 for an under \$20,000 grant application for the hope of an award. The time that it takes, the cost, can have a “chilling effect” on program participation.

As Congress increasingly looks at REAP as a climate change and rural economic development program worthy of greater funding, the stakes grow as to program application simplification. More REAP funding in conjunction with a more streamlined approach will equal greater success, in terms of lowered costs to constituents, greater energy production, deployment of renewables and energy efficiency investments.”

Agency response: The Agency continues to look for additional efficiencies while remaining compliant with federal grant requirements. The updated rule adopts certifications related to applicant eligibility, modifies the feasibility study requirement, lessens the technical report requirements, and streamlines the annual reporting process.

Comment 11: The ELPC believes “REAP’s complex application burden

has been often discussed and is a drag on program success. It's important to note that the application burden has the effect of skewing the program towards those with the financial wherewithal to hire application writers and consultants and away from those with the most need.

Over the years, the USDA has taken steps to simplify the REAP application process. Most recently, the USDA expended great effort to simplify the application process for guaranteed loans and adopted innovative solutions for the OneRD Guarantee Loan Initiative. ELPC supports REAP simplification efforts and encourages USDA to expend a similar level of effort to simplify the application process for grants as the agency applied to OneRD. The USDA has demonstrated an ability to substantially revise and simplify the loan guarantee portion of REAP and should now apply as much effort to simplifying the majority of the program.

With new attention focused on REAP as a key USDA climate program it is more important and pressing than ever that the agency take strong action to simplify the REAP grant application process."

Agency response: The updated rule adopts certifications related to applicant eligibility, modifies the feasibility study requirement, lessens the technical report requirements, and streamlines the annual reporting process. The Agency continues to look for additional efficiencies while remaining compliant with federal grant requirements and the REAP statute which mandates three tiers of applications.

Comment 12: Ebenezer MGMT, LLC commented that in "4280.103 Definitions, Small business means (A) Number of employees If Number of Employees is the SBA criteria to determine eligibility. Tax returns or annual receipt information should not be required as part of the submission. Tax returns are not needed for any other portion of applications that are under \$200,000 in size. Tax returns should not be required if not needed for eligibility or scoring."

"4280.103 Definitions, Small business means (B) Calculation of annual receipts Requiring 5 years of annual receipts information is excessive. Current rule utilizes three years. The extra paperwork and time spent accumulating and reviewing will not add substantially to any changes in eligibility. Rule does not state what types of records are required to document; it is hoped tax returns would not be the only source of documentation that could be used."

Agency response: The Agency agrees that employee numbers can be verified

using means other than tax returns and this is consistent with existing Agency policy. The Agency is bound to use the SBA definitions which have moved to a 5-year average. The alternative size standard may also be used. Please note that the new rule allows for certification of eligibility without providing all documentation to streamline the application process. If the Agency determines that the application needs additional documentation to support the applicant's eligibility, the Agency will accept tax return information, financial statements or other means that support the income or employee numbers.

Comment 13: Ebenezer MGMT, LLC commented that "the current DUNS (UEI) and System for Awards Management process continues to be slow and onerous on applicants. Applicants need to register in *SAM.gov* which most recently revised the website making the site less user friendly than the past, if there are problems the applicant must contact the Federal Service Desk or the Defense Logistics Agency depending on what stage the registration is in, making the process for the applicant difficult and cumbersome. These agencies have little knowledge of agriculture and the types of businesses and structures they use. Obtaining the SAM registration is the biggest roadblock to applicant participation in the program. Simply put, the process is not set up for grant purposes. Since USDA Rural Development NRCS does not require DUNS/SAM registration for their grant programs; REAP should also be exempt for any requirement."

Agency response: The Agency acknowledges the concerns with the SAM registration process but must require SAM registration in accordance with 2 CFR part 25. The 2 CFR part 25.110(c)(2)(iii) allows recipients a 30-day window after award to complete their registration in exigent circumstances.

Comment 14: Since the guarantee program components have been removed from the regulation; Ebenezer MGMT, LLC questions "why such excessive financial information is required. This is a grant program; other than to prove eligibility and ability to operate; additional information should not be required. For a simple solar installation or energy efficiency installation when a feasibility study is not required; the financial information adds nothing to the grant review process. The financial information would be important for a guarantee review; however, for a grant program it is unnecessary and a waste of staff time to review. Nothing is gained by having the additional information."

Agency response: The statute requires more documentation for applications with larger project costs. Financial statements are used by staff to review the financial stability of the applicant entity and to ensure the viability of the proposed project. A risk evaluation is required for grants as noted in 2 CFR 200.206(b).

Comment 15: ELPC commented that "REAP benefits should be available to all in agriculture, including historically underserved and disadvantaged farmers. We welcome Secretary Vilsack's commitment to addressing historical discrimination against Black Farmers by USDA. This commitment should include REAP."

ELPC supports awarding State Director and Administrator priority points for applications from unserved or under-served socially-disadvantaged groups. These points should be required across the country, so the USDA ensures equity in the program, with increased attention, outreach and education. USDA should engage in specific outreach to these communities to help them learn of program availability and benefits and to assist in the application process."

Agency response: The Agency agrees with the commentor and continues to look for ways to diversify program participation. REAP is a pilot program for the Justice40 Initiative where at least 40 percent of overall benefits from Federal investments in climate and clean energy go to disadvantaged communities.

Comment 16: ELPC states that "to substantially simplify the REAP program, the USDA should adopt a rebate program to broadly deliver energy savings and clean energy savings. A REAP rebate would cover pre-approved technologies that cut energy costs and carbon pollution. This could be applied to grants under \$20,000 to ease access to the program and facilitate more rapid deployment of energy efficiency and renewable energy systems in rural communities."

Such approaches are used in some state energy programs and they provide funding on a first-come, first-served basis. Adopting a rebate program would help the USDA address several program priorities, including simplification, improving equity and providing broader geographic coverage."

Agency response: The REAP statute does not provide flexibility to administer a rebate or other payment program. As such, the Agency can only administer grant and guaranteed loan program funding.

Comment 17: "ELPC encourages the USDA to enable dual or combined

applications and awards under the Energy Audits and Renewable Energy Development Assistance (EA/REDA) subprogram as much as possible in program application and administration. This change would allow grant recipients to apply for and receive grants for providing both energy audits and renewable energy development assistance. Importantly, the enabling legislation does not call for separation.

This change will improve EA/REDA continuity from learning with energy audits to acting with investments for energy savings and renewable energy production. Energy audits, in themselves, do not result in energy changes but with follow through in development advice more action is likely. Facilitating dual EA and REDA awards will help move projects forward in the development pipeline from problem identification to understanding options and implementing solutions.

As regards a specific program change mentioned in the draft rule, we encourage the USDA to allow for “funding to train individuals to become qualified to perform EA or REDA assistance” in those cases where the applicant has already demonstrated they have “experienced resource providers at time of application.” Especially in this economy, organizations need to address inevitable turnover in staff over time. This change also helps states to build REAP capacity by growing the ranks of energy experts.

ELPC supports the “minimum score of 40 points to compete for EA/REDA funding” for the purpose of maintaining program quality.”

Agency response: The Agency allows an applicant to apply for one EA and one REDA in a fiscal year so that both tasks may be undertaken by the same entity; however, separation allows for an easier way to track project impacts. For example, the Agency could verify if EEI applications for a particular state increased in future years as a result of having EA audit services. Furthermore, the EA component requires that 25 percent of the cost of the energy audit be paid by the ag producer or rural small business where the REDA component does not have a similar requirement. Separation allows the Agency to easily track that this requirement is met for EA projects. The Agency has limited funding for EA/REDA and wants to ensure that funds are used for services that directly support rural small businesses and ag producers rather than professional development for the recipient organization to train auditors.

Comment 18: “ELPC supports State Director and Administrator priority

points for applications including under-represented technologies. But the USDA needs to take steps beyond point scoring to diversify technology support.

The USDA has taken steps in the past to increase technology diversity in determining REAP awards. The USDA employed a “normalization” process developed by the National Renewable Energy Laboratory (NREL). The normalization process took place after proposals were all scored and sought to preserve some degree of balance among the technologies supported in the program. The normalization process, however, was abandoned after it became burdensome.

The USDA should implement a simpler approach with a grants reserve fund as described by the Ag Energy Coalition to maintain technology diversity among major energy types such as solar, wind, biomass, energy efficiency, hydropower, etc. In implementing the grants reserve fund and to the extent adequate applications are available, the agency should apply a minimum score of 40 points or more, as used elsewhere in program administration.”

Agency response: The Agency acknowledges that there are other ways beyond scoring to maintain technology diversity. However, with limited staffing resources, it would be difficult for the Agency to complete the normalization process and still meet statutory obligation deadlines. Limited staff resources and the program’s continued growth challenges the Agency’s ability to add another layer of complexity in processing applications.

Comment 19: ELPC states that “in the 2016 the USDA released a report, USDA Building Blocks for Climate Smart Agriculture and Forestry. The Building Blocks report identified REAP as a key USDA program for addressing climate change. In Congress, REAP is often regarded as a key program for reducing carbon pollution from the agricultural sector and is included in legislation to scale up the program.

The USDA needs to act now to increase the emphasis on environmental benefits of the REAP program, beginning with increasing the share of program points attributed to environmental benefits. For example, scoring should increase for projects that provide non-energy environmental benefits such as water conservation and protection.

With the growing climate crisis, the agency also needs to act now to develop practice and standards for carbon pollution reduction by technology that reflect modern science on life cycle impacts of each technology. This is

urgent and requires USDA action as soon as possible.”

Agency response: The Agency acknowledges this concern and is exploring environmental project benefits via the Justice40 Initiative.

Comment 20: CROPP commented that “the revised RES residential language will significantly limit program access and increase the application burden experienced by small and mid-size family farms; farms owned and operated by a single-family unit that resides on the farm. The majority of CROPP Cooperative’s nearly 1,800 farmer-members live and work on the same property that comprises the family farm. The final rule’s revised RES residential language does not specify what “greater degree of documentation” will be required for a RES project where a residence is closely associated with an agriculture operation to ensure that 50 percent or greater of energy generated by the RES will benefit the farm.

Providing no explanation of the “greater degree of documentation” required could prove costly and time consuming, especially for small to mid-size farms, and may require professional services above and beyond that which is typically provided by a RES installer/vendor.

CROPP Cooperative uses a residential audit to verify if 50 percent or greater of energy generated by the RES, will benefit the farm. It is not clear if a residential audit satisfies the intent of the rule change.

More generally, this continually elevated residential-use prohibition seems a distraction and does not seem to recognize the dynamic of many family-run businesses which may have home offices or connected facilities.”

Agency response: The updated rule removes the “certification only” option for projects. All other processes remain the same with the goal of ensuring sufficient documentation that 50 percent or more of the proposed energy to be generated will benefit the agricultural producer or rural small business. The Agency has been requiring clarifying documentation on this provision for some time. The Agency did not intend to add burden by removing the “certification only” option. Instead, it was intended to facilitate consistency in processing applications while ensuring there is adequate file documentation that 50 percent or more of the projected renewable energy will benefit the agricultural producer or rural small business. The residential audit should be acceptable to meet the requirement provided it clearly establishes the amount of historical energy consumed

by the residence to allow for the calculation of historical business energy use from total energy consumption.

Comment 21: CROPP would like an adjustment to \$20,000 or Less Funding Pool.

“With nearly 15 years’ experience with REAP applications, we believe that increasing the maximum award request in the smaller project funding pool is long overdue and will significantly increase program access and accelerate renewable energy projects in rural areas.

Currently, the average small to mid-size Organic Valley dairy requires a 40kW–50kW RES to offset 100% of the farm’s non-renewable energy consumption. Our estimation is a solar array to service this energy need is in the range of \$130,000–\$150,000, which would exceed the threshold of maximum allowed cost-share in the \$20,000 funding pool. We recommend increasing the maximum award request to \$40,000 in the smaller project funding pool. A simple adjustment for inflation since the program’s start would validate an increase and be more reflective of the overall needs of farmers and rural businesses in this category of need. It is our experience that RES in the 40kW–50kW range do not receive support in the larger, unrestricted funding pool. This pool is typically obligated to a very small number of large RES projects.”

Agency response: The Agency has concern that fewer projects would be funded by the suggested change. The \$20,000 or less maximum award request limitation would require a statutory change.

Comment 22: CROPP says it has been their experience that “significant delays (12+ months) in the obligation of funds at the state level is impacting project success and farmer interest in the program. Historically, the obligation of funds has been within a timeframe of three to six months. Within the previous two years, we have seen the obligation timeframe extend to 12+ months.

Administrative delays need to be addressed to ensure that project bids and farmer costs remain timely and relevant to avoid significant unexpected cost and installation burdens. It is unacceptable to expect an applicant to maintain contractual obligations that extend out as far as a year, as material and labor costs, as well as service availability, fluctuate sometimes monthly.”

Agency response: Obligation of funds is tied to annual application and statutory obligation deadlines. October 31 is the application deadline for grant requests of \$20,000 or less that wish to compete for the first half of the state

allocation of set-aside funds. March 31 is the application deadline for grants requests of \$20,000 or less that wish to compete for the second half of the state allocation of set-aside funds. March 31 is also the deadline for all other REAP applications regardless of the size of the grant request. Complete and eligible projects with completed environmental reviews are able to compete for funding. Applicants should contact Agency staff early in the process to discuss application requirements including the environmental review process.

The Agency appreciates the interest of the American Biogas Council, Agriculture Energy Coalition, Ebenezer MGMT, LLC, Environmental Law & Policy Center and CROPP Cooperative with regard to the Rural Energy for America Program final rule and thanks them for their submissions. The Agency confirms the rule without change.

Karama Neal,

Administrator, Rural Business and Cooperative Service.

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BILLING CODE 3410–XY–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 702

[NCUA–2022–0005]

RIN 3133–AF19

Prompt Corrective Action: Earnings Retention Waivers and Net Worth Restoration Plans

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule.

SUMMARY: The NCUA Board (Board) is extending two temporary changes to its prompt corrective action (PCA) regulations to help ensure that federally insured credit unions (FICUs) remain operational and liquid during the COVID–19 crisis. The first amends these regulations to temporarily extend the Board’s ability to issue an order applicable to all FICUs to waive the earnings retention requirement for any FICU that is classified as adequately capitalized. The second extends a provision that modifies the specific documentation required for net worth restoration plans (NWRPs) for FICUs that become undercapitalized. These temporary modifications will remain in place until March 31, 2023. This rule is substantially similar to an interim final rule that the Board published on April 19, 2021 (“2021 PCA interim final”).

DATES: This rule is effective on February 28, 2022. Comments must be received on or before April 29, 2022.

ADDRESSES: You may submit written comments, identified by RIN 3133–AF19, by any of the following methods. Please send comments by one method only.

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments for Docket # NCUA–2022–0055.

- *Fax:* (703) 518–6319. Include “[Your Name]—Comments on ‘Prompt Corrective Action: Earnings Retention Waivers and Net Worth Restoration Plans’” in the transmittal.

- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

- *Hand Delivery/Courier:* Same as mail address.

Public Inspection: You may view all public comments on the Federal eRulemaking Portal at <https://www.regulations.gov> as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is currently unavailable. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT:

Policy and Analysis: Kathryn Metzker, Risk Officer, or Victoria Nahrwold, Associate Director, Office of Examination and Insurance, at (703) 518–6360; *Legal:* Marvin Shaw, Senior Staff Attorney and Thomas Zells, Senior Staff Attorney, Office of General Counsel, at (703) 518–6540; or by mail at: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The Board is issuing this interim final rule pursuant to its authority under the Federal Credit Union Act.¹ The Act grants the Board a broad mandate to issue regulations that govern both federal credit unions and, more generally, all FICUs. For example, Section 120 of the Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and

¹ 12 U.S.C. 1751 *et seq.*