December 13, 2004
Deputy Under Secretary Gilbert Gonzalez, J.R.
Rural Development
U.S. Department of Agriculture

Re: Comments on Proposed Rule on Renewable Energy Systems and Energy Efficiency Improvements Grant, Guaranteed Loan, and Direct Loan Program, 69 *Fed. Reg.* 59650 (October 5, 2004) RIN No. 0570-0050

Dear Deputy Under Secretary Gonzalez:

We are pleased to have the opportunity to submit our comments on the proposed rule for Section 9006 of the Farm Security and Rural Investment Act of 2002. We see investment in rural development for the deployment of renewable energy and energy efficiency improvements as key to addressing our nation's growing energy demand in an environmentally and economically sustainable manner. This program is one of several essential steps to reduce U.S. dependence on foreign sources of energy, promote investment in the rural sector at the grassroots level, and help drive down the initial high capital investment of alternative energy technologies for the small agricultural producer and rural small business.

Having been heavily involved in support and active outreach for Section 9006 since its inception, we would like to commend USDA for the implementation of this highly successful grant program that has consistently elicited participation from rural areas in over 35 states for a wide variety of renewable energy and energy efficient technologies. The fact that this year 167 renewable energy and energy efficiency project applications were awarded grant funding is a huge accomplishment of which USDA should be very proud. The energy title in the 2002 farm bill has marked an incredible victory for renewable energy, energy efficiency, and the nation's rural communities.

We feel it is very important to maintain the integrity of the Renewable Energy and Energy Efficiency Grant and Loan Guarantee program of Section 9006, remembering always that the Congressional intent of this program is to benefit *agricultural producers and rural small businesses.* We are concerned by the gradually increasing complexity the NOFA's have developed over the past two years and urge USDA to thoroughly reassess many of the application requirements it wishes to implement in its proposed rule. We support a more straightforward, user-friendly application process that would be better suited for the small agricultural producer or rural small business who has limited time, resources, and manpower to dedicate to applying for a grant or loan guarantee. We have heard complaints from applicants regarding the redundancy, cumbersome length and complexity, unrealistic deadlines, discrepancy between state agency offices' expertise, and apparent inconsistencies in the application process, which combined may be a significant deterrent for applicants.

We whole-heartedly welcome this opportunity USDA has provided to submit comments for this program and look forward very much to working closely with agency staff to realize a rule with which stakeholders can be most comfortable and excited about. Following is a list of comments and suggestions EESI has collected from a variety of interested stakeholders to aid USDA in developing an effective implementation rule:

I. Commit to expanding participation of small scale renewable energy applicants by reducing the complexity of the current application process.

First, we would like to express our appreciation to USDA for following one of EESI's suggestions to reduce the minimum grant application requirement to $2,500. The intent of which was to increase the number of small-scale renewable energy and energy efficiency applications. Unfortunately, this did not accomplish the intended effect for **renewable** energy applications, considering the average grant award for renewable energy technologies in FY04 was approximately $140,000. A number of stakeholders have indicated the cumbersome application process is a significant barrier to small grant requests. Further evidence that this process needs improvement is that of the 247 project applications submitted to state offices, only **172** were deemed eligible for consideration; due to a significant number of **incomplete** applications. Of the 172 applications being considered, **167** were awarded full grant funding. Clearly, if over 27 percent of submitted applications are deemed incomplete, something must be done to either extend the time required to complete applications, reduce some of the application requirements (at least for smaller projects), or provide more technical assistance for applicants having to complete applications on their own.

We would suggest adoption of a more *stream-lined application process*. There are a number of strategies USDA could adopt to accomplish this, including the following:

1. Look to existing programs, such as in California, which has an applicable grant process for renewable energy under its highly successful Emerging Renewables Buydown Rebate Program (see section *VI*), directed by AB 1890 the state utility restructuring law, that provides 50 percent of the market price for a project as well as a 15 percent tax credit.[1] In two years this program successfully supported over 2,000 small wind, solar photovoltaic, solar thermal, and fuel cell projects.[2]
2. Adopt an application process similar to what has already been developed by USDA for other highly successful programs, such as the Conservation Reserve Program.
3. Offer the option, for agricultural producers or rural small businesses already receiving USDA funding for other programs, to submit a shorter, less detailed

[1] *State Programs to Support Small Wind Energy Systems: An Examination of Key Issues*, Clean Energy State Alliance [www.cleanenergystates.org]

[2] California Energy Commission Emerging Renewables Buydown Program: On-Site Verification Report, Phases I, II and III. Regional Economic Research, Inc. June 2002. pp. 47-48. www.energy.ca.gov/renewables/documents/2003-05-07_SYS_SITE_VER.PDF

application, minimizing the requirements for submitting redundant information to the agency.

4. Tailor the amount of application requirements to the size of the grant or loan request. Requiring a qualified, multi-person team, regardless of the scale of the project, as well as prohibiting the possibility of any self-construction, seems unrealistic; this is a requirement that should be re-examined. Also, for a small-scale wind or solar project (a distinction already existent in the proposed rule language), an exception should be made regarding the 'Business market information for renewable energy projects' (Sec. 4280.111 (v)). If the applicant is not planning to sell the excess energy generated, he/she should not be required to provide data identifying existing demand, supply (versus competitors), and the market niche for the energy produced.
5. Clearly define what level of financial need a project and/or applicant must exhibit to be eligible for this program. The proposed rule requires evidence of need, yet the overall application ranking process favors larger-scale projects that are highly cost-effective and generate electricity to be sold commercially. Therefore in order to improve administration of this program USDA needs to clearly state the criteria for financial need and effectively screen out those projects that do not comply.

II. Modify the application review process regarding ranking of projects and application deadlines.

Many questions have been raised addressing the apparent discrepancy in requirements, where an applicant must exhibit financial need while at the same time an applicant is awarded higher points if able to provide greater than 85 percent of a total project's cost. These requirements are inconsistent with each other and with the overall intent of the program.

Simplifying the application process will not be sufficient to encourage the participation of smaller agricultural producers if the review process clearly favors larger scale projects. There is also significant concern surrounding the amount of time an applicant has to complete their application. In FY04, grant awards were announced September 10 and completed environmental assessments were due September 30. Most likely this would be due to a delay in the release of the FY04 NOFA; nevertheless, applicants need to have a clear explanation of what is needed for a National Environmental Policy Act (NEPA) assessment. Previous applicants have been unsure how extensive the assessment was required to be. Below are a number of other issues within the proposed rule we would like addressed.

1. After technical review of applications, no overall merit points are awarded to more innovative project designs. Therefore all projects that are deemed technically feasible are considered to be on equal footing during the agency's ranking process regardless of whether some projects had barely passed the technical review process. We would suggest an awarding of overall merit points

by the technical reviewer that would be factored into the later ranking process of applications.

2. Highest ranking points (25) are awarded to projects that would be able to pay for themselves in less than five years. We feel these types of projects would be less in need of federal support and therefore the same amount of points should be awarded for projects with payback from 5-10 years (20 points).
3. Ten points are awarded for a project which meets state mandated environmental standards; we do not see a need to subsidize compliance to state environmental and public health standards. Preferably, points would be awarded to projects that *exceed* these standards.
4. Twenty points are awarded to projects that will be selling the energy they generate directly. This clearly favors the development of larger scale energy projects, as the same amount of points are only awarded to a project that replaces greater than 75 percent of its farm/ranch/small business's energy needs.[*]
5. Awarding 10 extra points for a third-party manager who will be monitoring a renewable energy project favors larger-scale projects as well. A small-scale wind or solar project designed to offset on-farm energy costs would not be large enough to warrant the need and cost for a third-party manager. We feel this award should be removed from the application process.
6. Only 10 points are awarded to an applicant who is a small agricultural producer, defined as a producer with less than $1 million in gross annual receipts. Whatever advantage in ranking this is meant to accomplish is largely overshadowed by the benefits large-scale energy producers receive for (i) being able to pay greater than 75 percent of the cost, (ii) generating electricity to be sold directly, and (iii) having a third-party manager. We suggest that at least 20 points be awarded for applicants eligible as small agricultural producers and the preference for a third-party manager be eliminated as well as the total points awarded for assessments *i* and *ii* be reduced.

III. Expand the eligibility requirements of applicants for the grant and loan awards.

The following suggestions are based on the assumption that the overall goal of this program, as stated in the proposed rule, is to "help agricultural producers and rural small businesses to reduce energy costs and consumption and help meet the nation's energy needs…Another of the agencies goals for this program is to help ensure additional income to small agricultural producers, thereby assisting in their economic sustainability." Therefore, we feel the priority of USDA should be to *consistently* encourage investment in renewable energy and energy efficiency technologies in rural communities in order to reduce dependence on outside sources of energy and encourage economic development. To accomplish this, we would like to see the exemption of some potential applicants from overly restrictive requirements. We would not want to lose sight of the aforementioned goal by not including key stakeholders willing to invest in these technologies that would benefit rural areas. We ask USDA to consider the following suggestions:

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[*] Further, by encouraging more investment in the generation of electricity USDA is supporting electricity being sold at wholesale rather than off-setting retail energy cost.

1. Modify the current proposed rule that requires the applicant's headquarters to be located in a rural area. An exception should be made for an applicant requesting funding for a project involving its relocation to a rural area. This would encourage the flow of investment into rural areas, one of the statutory intents of the 2002 farm bill. We recognize the importance of requiring this new business to fall within the size limits of the small business definition.
2. Projects, located in rural areas, should not be ineligible necessarily if they are located near a more populated area. These areas could offer larger markets for an applicant to reduce the project's operating cost and provide matching funds. Furthermore, such projects can diversify producer income which can help keep land in agricultural use and preserve open space. USDA could take this consideration into account within the business plan requirement (Sec. 4280.111 (v)) where a project must clearly define its market and market niche.
3. Do not prohibit an applicant whose project has been started already based on the assumption it would not comply with a National Environmental Project Assessment (NEPA). We ask that an exception be made if the project was already in compliance with NEPA because of *(i)* an environmentally-minded applicant with a innovative project design under construction; *(ii)* state regulatory requirements that were met which either equaled or exceeded NEPA; or *(iii)* complied with local zoning or other requirements that also met NEPA standards.

IV. Increase training of local federal USDA offices to familiarize them with the application requirement for the proposed grant and loan rule.

According to the proposed rule for Section 9006, an applicant is to submit their completed applications and/or vet any concerns or questions they have with their local USDA office. There are a number of local offices around the country that have done an exemplary job supplying much needed support and outreach within their area of jurisdiction, yet at the same time we have received complaints from previous applicants saying either:

1. They were misled by what their local office had told them and ultimately the advice they received was inconsistent with the ruling of the national office.
2. They were unable to reach their local office (as the application period takes place during the summer months) and most of the staff was on vacation.
3. Local offices that had questions were unable to reach appropriate national staff in a timely manner.

This is a problem that will no doubt improve as the program gains recognition and local offices become more familiar with its requirements. Nevertheless, we feel that limited time and resources to train so many local offices supports our assertion that a more stream-lined application process should be developed; there would be less reliance on the local office for technical support. Also, if an application process, similar to other USDA programs, is adopted local offices would be better equipped to answer questions regarding application requirements. We understand that the Office of Rural Development

has a limited staff that must administer an increasing number of programs; however we feel that this program has huge implications for future rural development and therefore deserves the added attention.

A number of local rural development offices have developed a real expertise with this grant program and as a result we have seen specific states receive a disproportionate number of grants. While we do not wish to discourage any enthusiasm for this program we would like to see USDA encourage participation from states that have not received grants previously. We would suggest an award of five points for an application that has already completed initial screening including the technical review, which is from an underrepresented region or state.

V. Address some reservations concerning adoption of a loan guarantee program.

While the 2002 farm bill clearly calls for the implementation of a grant, loan guarantee, and direct loan program, we have a number of concerns needing to be addressed *a priori*. There is certainly a great value for a loan program dedicated entirely for renewable energy and energy efficiency projects. The concerns a number of stakeholders have regarding implementation of this loan guarantee program in conjunction with the grant program result from the limited amount of resources available to the program as a whole. Without previous experience with this program it will be difficult to predict its success and/or shortcomings. With barely $23 million being appropriated each year we feel that a limited amount of funding should be allocated to the program. The last three years have shown that a continued battle for funding of this program could continue indefinitely, making the careful administering of these funds essential.

1. Adding the administrative responsibilities of the loan guarantee program to the already demanding grant program may prove to be too much for the overstretched staff at USDA. The most likely outcome would be that more resources will need to be diverted from project funds to cover burgeoning administrative costs.
2. The intent of the program was to offset some of the high initial capital cost of renewable energy and energy efficiency technologies for rural communities. A grant is an effective means of paying for the more expensive cost at present, which will be reduced eventually with commercial acceptance and technical innovation. A loan or loan guarantee will not accomplish this goal as effectively now.
3. Questions are arising as to how the loan guarantee program will be administered. Unlike the grant program, will it be an available resource year-round? Will there be a specific percentage of program funding committed for loan guarantees? Will it be greater or less than the money allocated for grants?
4. We recommend that USDA move forward with the development of a loan program as well as the loan guarantee program as required by statute. However, we suggest that these components be funded only if funding is raised substantially above the current $23 million/year. Concerning the loan program specifically, USDA should waive the annual renewal fee to make loans in this program more attractive than the B&I Loan Program. Even with guaranteeing the interest rate at

1 percent instead of 2 percent, we see the avoided cost return with the renewal fee.

We would like to see the above issues clarified in the final published rule. We do not want to appear overly negative toward the adoption of a loan guarantee program, as it is expected to leverage funds at a 20 to 1 ratio. We are concerned with how USDA is planning to administer the program and would appreciate another comment period after the program has been implemented to assess its efficacy. Some stakeholders have suggested that the loan guarantee program be delayed until a minimum funding level of $25 million is realized.

V. Adopt a Small Renewable Rebate Program

Adopting a year round rebate program modeled after already existing programs in Delaware, New York, Rhode Island, California, Michigan, and Pennsylvania would more effectively target small-scale renewable energy programs. We suggest 10 percent of total funds (approximately $2.3 million) be directed toward a rebate program that would have funds available throughout the year. We suggest that grants would be limited to small systems, with the 25% grants capped at $15,000. Co-funding from state rebate programs, as mentioned above, should be fully allowed. USDA should create a shorter application form for these small project funds.

VI. Expand Eligibility of In-kind Contributions

The current level of ten percent allowed for in-kind contributions is far too low and puts unnecessary pressure on the applicant to raise the remaining 65 percent of the project cost. We suggest allowing up to 25 percent of the total project cost (roughly 33 percent of the applicant's responsibility) to be covered by in-kind contributions. This would allow labor costs to be included as well.

In a related point, it seems unrealistic to prohibit the applicant to be part of the construction of their project. If the project passes any and all necessary installation and performance inspections after completion we can see no reason why the applicant cannot include their own labor as part of the project cost. In fact, this could leverage the development of more projects.

VII. Extend the Application Period

The previous two years applicants have been provided minimal time to complete their applications before the July deadline. Many stakeholders have voiced concern with both the timing and length of the application period. Currently the application period is during the summer and therefore during growing season. A longer and earlier application period would be preferable.

In a related issue, we would ask USDA to explain clearly what costs an applicant incurs in preparing their application will be counted with the overall project cost. If an applicant

is well aware of all of the application requirements and begins the process far before the application period begins, can those costs still be counted in the overall grant or loan guarantee request?

In conclusion, we hope USDA finds our comments and suggestions useful. In final drafting of this rule, there cannot be enough emphasis on the need to encourage more small-scale renewable energy and energy efficiency projects to be implemented. We feel the best way to accomplish that is by making the application process as stream lined and user-friendly as possible, ranking projects based on their merit and financial need in addition to their cost-effectiveness, and providing sufficient time and technical support to complete their applications.

Thank you for your consideration,

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