November 2, 2026

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U.S. Department of Agriculture
Rural Business-Cooperative Service
1400 Independence Ave. NW, Rm 5803-S
Washington, D.C. 20250

Re: Comments of Earthjustice; Environmental Law & Policy Center; Iowa Farmers Union; David Book and James Book, in their representative capacities as co-trustees of the Donald M. Book GST Exempt Residuary Trust; SVF, LLC; Iowa Solar Energy Trade Association; New York Solar Energy Industries Association; RENEW Wisconsin; Solar United Neighbors; LTL LED, LLC d/b/a Wolf River Electric; the Distributed Wind Energy Association; Clean Power Consultants; David A. Loney Consulting; Lawyers for Good Government

Docket No. RBS–26-Business-0529

Introduction and Factual Background

The undersigned organizations submit these comments in opposition to the United States Department of Agriculture's ("USDA" or "the Department") rule, Unleashing American Energy and Economic Prosperity; Rural Energy for America Program (REAP), 91 Fed. Reg. 62600 (Oct. 1, 2026) ("the Anti-Renewables Rule").

Congress enacted the first iteration of the REAP grantmaking program in 2002 to financially assist farmers and small businesses with the purchase of renewable energy systems, like wind systems and solar arrays. Under the grant program, USDA would select eligible applicants for funding before a project was constructed, and the applicant would be reimbursed after construction was underway. This system allowed applicants to factor REAP funding into their investment decisions. In other words, being selected for a REAP grant allowed farmers and rural small businesses to make the upfront investment required to construct energy-producing facilities that would over the long term generate enormous benefits to applicants and communities alike. This was as Congress intended. Lawmakers hoped REAP would provide affordable energy and cleaner air to rural communities. And Senate sponsors of the program argued that "farm-based renewable energy generation can become one of the major cash crops of the United States, improving the livelihoods of hundreds of thousands of family farmers, ranchers, and others and revitalizing rural communities."[1]

For decades, REAP had been a remarkable success story. Congress enacted additional legislation appropriating REAP funds for two decades, evincing bipartisan lawmakers' continued support for the program. Since 2014, 19,000 farms and rural small businesses across all 50 states received REAP awards. According to USDA, in 2024 alone, the program awarded over $1

[1] *See* 148 Cong. Rec. S1108 (daily ed. Feb. 25, 2002).

billion in REAP awards nationwide,[2] and generated or saved enough energy to power more than 300,000 homes.[3]

Then, suddenly, during a press conference in Tennessee in August 2025, Brooke Rollins, Secretary of the USDA, announced that the Department would begin taking steps to gut the REAP program to ensure that federal funding would no longer be spent on many renewable energy systems previously eligible for the program.[4] As a first step in implementing this anti-renewables REAP policy, USDA stopped issuing loan guarantees for virtually all solar projects.[5] Then, in March 2026, USDA stopped processing all pending REAP grant applications in anticipation of the promulgation of the Anti-Renewables Rule,[6] and thereafter rescinded a Notice of Funding Opportunity that was supposed to remain in effect until 2027.[7] The Department also signaled that the Anti-Renewables Rule would apply retroactively to farmers and rural small business owners who had *already* applied or been selected for REAP funding.[8]

On September 30, USDA promulgated the Anti-Renewables Rule, which fulfils Secretary Rollins' objective of suppressing REAP funding for renewable energy systems. The Anti-Renewables Rule not only expressly prohibits the disbursement of REAP funds for most solar and wind systems, it also chokes off REAP funding for the purchase of all other renewable energy systems through a myriad of other provisions. For example, the new regulations require applicants to build their projects at least one year before applying for a grant. Many farmers and rural small businesses lack access to the capital necessary to fully finance a project before knowing whether they will receive a REAP grant. Under the prior program structure, REAP grants frequently served as essential gap financing that enabled projects to proceed. Requiring applicants build and carry the full costs of their projects for a year as well as the risk that they will not be refunded under REAP will exclude many otherwise qualified participants and prevent cost-saving energy investments from being deployed in rural communities.

USDA must rescind the Anti-Renewables Rule, which is unlawful for several independent reasons. First, the Anti-Renewables Rule is expressly designed to undermine the core purpose of REAP, which requires the Department to provide grants to farmers and rural small businesses to "*promote*" the development of renewable energy in rural America.[9] Second, and similarly, the Anti-Renewables Rule's new eligibility criteria are not authorized by the REAP statute as they seek to advance non-statutory goals at the expense of REAP's core purpose. Third, the Department's Anti-Renewables Rule unlawfully stifles funding for all

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[2] USDA Rural Development, *Rural Investments in Program Areas*, Grants and Loans by Program, https://www.rd.usda.gov/rural-data-gateway/rural-investments/program-areas.
[3] USDA, *2026 USDA Explanatory Notes - Rural Business-Cooperative Service* 32-67 (2025), https://www.usda.gov/sites/default/files/documents/32-2026-CJ-RBCS.pdf.
[4] *See* Ex. A, Compl. for Declaratory and Injunctive Relief ¶¶ 100–103, *Iowa Farmers Union v. USDA*, No. 1:26-cv-03384 (CJN) (D.D.C. filed Oct. 16, 2026).
[5] *See id.* ¶¶ 104–106.
[6] *See id.* ¶¶ 128–130.
[7] *See id.* ¶ 134.
[8] *See id.* ¶¶ 131–133.
[9] *See* 7 U.S.C. § 8107 (emphasis added).

renewable energy systems by transforming the REAP grant scheme that Congress mandated into a burdensome, build-first rebate program that Congress never authorized nor intended. Fourth, the Anti-Renewables Rule is unlawfully retroactive. And finally, the Anti-Renewables Rule is arbitrary and capricious for a wide array of reasons, including that it plainly lacks any reasonable justification or explanation.

In addition to being unlawful, the Anti-Renewables Rule is destructive to the lives and livelihoods of countless Americans. The Anti-Renewables Rule dismantles a highly popular, bipartisan program that has successfully operated for over 24 years. Under both Republican and Democratic administrations, REAP has delivered billions of dollars of investments and economic growth to rural America, lowered energy costs, provided many recipients with a badly needed source of revenue, and improved public health by, for example, assisting rural communities in their transition from sources of energy that pollute the air to emissions-free renewable energy systems. At a time when rural America is struggling as energy and other input costs surge, the Anti-Renewables Rule makes REAP inaccessible to all but the wealthiest applicants, makes it more-or-less impossible for applicants to use REAP to help build the most popular and successful renewable energy technologies of the program, and saddles applicants with a dizzying array of difficult, unclear, unreasonable, irrational, and at times impossible requirements.

The Anti-Renewables Rule is the continuation of a remarkably haphazard and cruel policy that has caused significant, unnecessary uncertainty and hardship to farmers, rural small businesses, and other key REAP stakeholders. The Department's retroactive, capricious, and chaotic implementation of the Anti-Renewables Rule's burdensome restrictions and requirements has imposed financial stress on the very people USDA has been directed by Congress to serve. Thousands of farmers and rural small businesses invested significant time and effort preparing REAP applications under one set of rules, only to now be told that the Department will not bother to review their applications and that they will have to start over under a dramatically different set of rules. Many of these applicants have, as was permissible under the then-existent rules, already built their renewable energy systems and now find that they no longer qualify for tens of thousands of dollars in expected reimbursement. That is real money being denied to real people simply because the Department evidently disagrees with Congress's determination that taxpayer-subsidized renewable energy is a good fit for rural America.

The Department should rescind this needlessly destructive rule and get back to fulfilling its congressional mandate to award grants to "promote" renewable energy and energy efficiency for hard working farmers and rural small businesses.

Legal Background

The REAP statute mandates that the Secretary of USDA ("the Secretary") "shall establish" a program "to promote energy efficiency and renewable energy development for agricultural producers and rural small businesses."[10] Congress further required that USDA "shall provide" both "loan guarantees and grants" to "agricultural producers and rural small businesses . . . to purchase renewable energy systems, including systems that may be used to produce and sell electricity."[11] The REAP statute defines "renewable energy system" to mean any "system

[10] 7 U.S.C. § 8107(a).
[11] *Id.* § 8107(c)(1)(A)(i)(I).

that produces usable energy from a renewable energy source."[12] Congress expressly defined "renewable energy" to include both wind and solar energy.[13]

The Administrative Procedure Act ("APA") requires that a court "hold unlawful and set aside agency actions, findings, and conclusions found to be" either "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."[14]

Argument

I. The Anti-Renewables Rule Aims to Undermine the Express Goals of the REAP Statute

Agencies, including USDA, must act to advance rather than undermine Congress's intent, and may not "ignore statutory mandates . . . merely because of policy disagreements with Congress."[15] The Anti-Renewables Rule runs counter to Congress's intent and violates REAP's statutory mandates. By enacting the REAP statute, Congress aimed to promote environmentally beneficial renewable energy production in agricultural and rural communities, including through subsidies to solar and wind energy systems; to diversify the income streams of farmers by allowing them to sell renewable energy; and to reduce the use of fossil fuels.[16]

There can be no question that in issuing the Anti-Renewables Rule, USDA flouts Congress's purposes and the plain text of the REAP statute. Indeed, USDA has admitted on multiple occasions that, in fact, the Department intended to do so. For example, in the Anti-Renewables Rule's preamble, the Department states that it is issuing the rule to implement several executive orders that aim to cut federal funding for renewable energy systems and promote the use of fossil fuels.[17] USDA also has promulgated numerous policies, announcements, and other documents related to REAP's implementation in the lead up to issuing this Anti-Renewables Rule that evince the Department's unlawful intent to withhold REAP funds in general, with a particular emphasis on eliminating financial support for solar and wind energy systems.[18]

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[12] 7 U.S.C. § 8101(16).
[13] *Id.* § 8101(15)(A).
[14] *See* 5 U.S.C. § 706(2)(A), (C).
[15] *In re Aiken Cnty*, 725 F.3d 255, 260 (D.C. Cir. 2013).
[16] *See, e.g.,* 7 U.S.C. § 8107(a), (c)(1); see also 148 Cong. Rec. S1108 (daily ed. Feb. 25, 2002); 148 Cong. Rec. S3909 (daily ed. Feb. 11, 2002).
[17] *See* 91 Fed. Reg. at 62604, 62608; *see also* Exec. Order No. 14315, Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources, 90 Fed. Reg. 30821 (July 10, 2025); *Fact Sheet: President Donald J. Trump Ends Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources*, The White House (July 7, 2025), https://www.whitehouse.gov/fact-sheets/2025/07/fact-sheet-president-donald-j-trump-ends-market-distorting-subsidies-for-unreliable-foreign-controlled-energy-sources/; Exec. Order No. 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 29, 2025); Exec. Order No. 14156, Declaring a National Energy Emergency, 90 Fed. Reg. 8433 (Jan. 29, 2025).
[18] *See*, *e.g.,* USDA, *Farmers First: Small Family Farms Policy Agenda* (May 19, 2025), https://www.usda.gov/sites/default/files/documents/farmers-first-small-family-farms-policy-agenda.pdf (evincing the Department's intent to defund solar energy systems); USDA, *Secretary*

The Anti-Renewables Rule violates the APA and it thus is unlawful. The rule is motivated top to bottom by a desire to frustrate the core purposes of REAP, namely: to promote environmentally beneficial renewable energy production (including wind and solar) in agricultural and rural communities; to diversify the income streams of farmers by allowing them to sell renewable energy; and to reduce the use of fossil fuels. The Department has repeatedly made it clear that the Anti-Renewables Rule was promulgated out of a desire to "end taxpayer support" for solar and wind energy, to instead promote fossil fuels, and to *restrict* rather than *promote* the construction of renewable energy systems in rural America. The provisions of the Anti-Renewables Rule, individually and cumulatively, will achieve their intended effect by, for example:

- Burdening applicants with a requirement to build their renewable energy systems at least a year *before* they apply for REAP benefits.[19]

- Restricting the ability of farmers and rural small businesses to build renewable energy systems capable of generating electricity for sale.[20]

- Severely restricting the ability of farmers and rural small businesses to build solar and wind energy systems.[21]

- Prohibiting renewable energy system developers from installing renewable energy systems on behalf of farmers or rural small businesses, and prohibiting farmers and rural small businesses from using energy generated by their renewable energy system.[22]

- Eliminating funding opportunities for farmers and rural small businesses if they make minor technical mistakes on applications by "no longer permit[ting]" application

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Rollins Blocks Taxpayer Dollars for Solar Panels on Prime Farmland (Aug. 19, 2025), https://www.usda.gov/about-usda/news/press-releases/2025/08/19/secretary-rollins-blocks-taxpayer-dollars-solar-panels-prime-farmland (evincing the Secretary of Agriculture's intent to modify REAP to "rapidly eliminate" federal funding for renewable energy); Rural Business-Cooperative Service, *Ensuring Strong Stewardship and Customer Service in RBCS Guaranteed Lending & Other Programs*, https://www.rd.usda.gov/media/file/download/rbcs-ul-strong-stewardship-08222025.pdf (eliminating REAP loan guarantees for most solar projects, and echoing the Secretary's goal to eliminate federal funding for renewable energy) [hereinafter Unnumbered Letter]; USDA, *Rural Business Cooperative Service Update on the Status of the Rural Energy for American Program*, Stakeholder Announcement (Mar. 31, 2026), https://www.rd.usda.gov/media/file/download/usda-rd-reap-sa-03312026.pdf (indicating that the Anti-Renewables Rule would aim to "end[]… taxpayer handouts" associated with REAP) [hereinafter Stakeholder Announcement].

[19] *See* 91 Fed. Reg. at 62600–01.

[20] *See* 7 C.F.R. § 4280.122(b)(13) (2026).

[21] *See, e.g.*, *id.* § 4280.122(b)(11), (13), (19).

[22] *See* 91 Fed. Reg. at 62603, 62613, 62616, 62621; 7 C.F.R. §§ 4280.104, 4280.106, 4280.122(b)(22).

modifications, while limiting applicants to submitting only one application for funding per federal fiscal year.[23]

- Making grant funds generally more difficult to access by, for example, requiring applicants to satisfy onerous "risk evaluation" criteria and comply with burdensome federal procurement rules.[24]

Regulatory provisions that plainly thwart Congress's intent, such as these, are woven throughout the Anti-Renewables Rule. Such provisions individually and collectively block REAP funding for renewables and promote the use of fossil fuels. The Department is not permitted to promulgate an Anti-Renewables Rule based on a policy that is so clearly and openly premised on a political disagreement with Congress over the value of taxpayer financed subsidies for renewable energy systems in rural America. Yet the Anti-Renewables Rule is the embodiment of such action, rendering it an unlawful violation of the APA. The unlawful provisions are so numerous that little of the regulation would be left standing if USDA tried to remove them one-by-one to bring the Anti-Renewables into compliance with Congress's mandates. Therefore, USDA must rescind the Anti-Renewables Rule *in toto*, reinstate its prior grantmaking rules, and resume processing new and pending grant applications under those rules.

II. The Anti-Renewables Eligibility Restrictions Are Inconsistent with the REAP Statute

The REAP statute contemplates both eligibility criteria (i.e., what kinds of projects and applicants can possibly receive REAP funds) and evaluation criteria (i.e., among eligible projects, which projects will be prioritized to actually receive limited REAP funds). The Anti-Renewables Rule establishes a wide range of project and applicant eligibility criteria that individually and collectively eviscerate funding for renewable energy systems without advancing any of Congress's statutory purposes, including, for example:

- Criteria prohibiting funding for the vast majority of wind and solar energy systems.[25]

- Criteria prohibiting many previously eligible applicants, like non-profit farmers, farmers in non-rural areas, or farmers experiencing financial distress, from accessing REAP.[26]

- Criteria designed to raise the costs of eligible projects, the burdens of the application process, or prevent farmers and rural small businesses from accessing the benefits of their renewable energy systems.[27]

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[23] 91 Fed. Reg. at 62604, 62624 (7 C.F.R. §§ 4280.133, 4280.140).
[24] 7 C.F.R. §§ 4280.122(a)(10), 4280.240(c).
[25] *See* 91 Fed. Reg. at 62620–21; Ex. A, Compl. ¶¶ 104–108 (explaining why most solar energy systems would be prohibited under the criteria adopted under the Anti-Renewables Rule); U.S. Department of Energy, *Rare Earth Permanent Magnets Supply Chain Deep Dive Assessment* ix (Feb. 24, 2022), https://www.osti.gov/servlets/purl/1871577 (indicating that most wind projects would be prohibited under the Anti-Renewables Rule's foreign components restrictions).
[26] 7 C.F.R. §§ 4280.104, 4280.120(a)(7), 4280.122(a)(4).
[27] *See* 91 Fed. Reg. at 62603, 62613, 62616–21; 7 C.F.R.§§ 4280.104, 4280.106, 4280.122(a)(8), (a)(10), (b)(21)–(22), 4280.125(b).

These criteria individually and collectively are neither valid eligibility criteria nor valid evaluation criteria under the Act.

A. The Anti-Renewables Criteria Are Not Valid Eligibility Criteria

It is well established that an agency "literally has no power to act—including under its regulations—unless and until Congress authorizes it to do so by statute."[28] In REAP, Congress explicitly created only two simple eligibility criteria for renewable energy projects. First, the applicant for REAP renewable energy awards must be an agricultural producer or rural small business.[29] Second, REAP awards must be used to assist with the purchase of "renewable energy systems, including systems that may be used to produce and sell electricity."[30] The statute expressly defines renewable energy to include both solar and wind energy.[31] No other eligibility requirements are included in the statute. USDA can only promulgate eligibility criteria that are consistent with REAP's primary purpose to "promote" renewable energy and energy efficiency in rural America.[32]

The Anti-Renewables Rule's eligibility criteria fail this test. The Anti-Renewables Rule and its new criteria conflict with Congress's purposes. The new eligibility restrictions of USDA's rule directly contravene congressional intent because they stifle rather than promote renewable energy on farms and for rural small businesses and communities. For example, although REAP requires USDA to "provide" grants to help farmers and rural small businesses to purchase renewable energy systems to "produce and sell" excess renewable energy capacity back to the grid,[33] the Anti-Renewables Rule's prohibition of wind and solar projects that generate more energy than is "commensurate" to an applicant's historical energy usage will severely limit applicants' ability to sell excess energy.[34] Rather than promoting renewable energy systems, USDA's criteria stifle them and instead aim to promote goals unauthorized by Congress under REAP like promoting domestic manufacturing,[35] promoting fossil fuels, [36] and reducing federal subsidies to renewable energy.[37]

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[28] *FEC v. Cruz*, 596 U.S. 289, 301 (2022) (citation modified).
[29] *See* 7 U.S.C. § 8107(c)(1)(A)(i).
[30] *Id.* § 8107(c)(1)(A)(i)(I)
[31] *See id.* § 8101(15)–(16).
[32] *See In re Aiken Cnty*, 725 F.3d 255, 260 (D.C. Cir. 2013) (noting agencies may not ignore a statutory requirement based on "policy disagreements with Congress."); *Planned Parenthood Fed'n of Am., Inc. v. Heckler*, 712 F.2d 650, 655 (D.C. Cir. 1983) ("Agency action must be found to be consistent with the congressional purposes underlying the authorizing statute.").
[33] *See* 7 U.S.C. § 8107(c)(1)(A), (A)(i).
[34] *See* 7 C.F.R. § 4280.122(b)(13).
[35] *See* 91 Fed. Reg. at 62601.
[36] *See id.* at 62605 (justifying the Anti-Renewables Rule in part on a desire to align with pro-fossil fuel and anti-renewables Executive Order 14315, "Ending Market Distorting Subsidies for Unreliable, Foreign Controlled Energy Sources")
[37] *Id.* at 62601 (explaining the Department's desire to "prevent[] market distortions" through the rule)'; *id.* at 62605 (explaining the Department's desire to limit "the financial incentive of receiving a grant" for renewable energy systems through the Anti-Renewables Rule). *See also*, Unnumbered Letter at 2 (announcing that the Department would amend its REAP grant rules to

B. The Anti-Renewables Criteria Impermissibly Displace the Mandatory Evaluation Factors

The REAP statute also requires the Department to "take into consideration" certain express factors when evaluating grant applications for REAP renewable energy systems.[38] These factors relate directly to REAP's core purposes like quantity of energy produced, energy efficiency, and environmental benefits,[39] and also allows USDA to consider "other appropriate factors" when evaluating such applications.[40]

Rather than follow these criteria, the Anti-Renewables Rule instead enumerates several anti-renewables eligibility criteria including, for example, criteria related to land use policy, aesthetics, domestic manufacturing, or other non-REAP-related policy goals. These criteria impermissibly displace the express evaluation factors of Section 8107(c)(2), and are not otherwise "appropriate" factors under the Act. For this reason too, the Anti-Renewables Rule is unlawful.

The new criteria in the Anti-Renewables Rule are *per se* not "appropriate" because they were expressly motivated by the Department's desire to undermine the clear congressional purpose of REAP to "promote" renewable energy–and in fact do so. Whatever "appropriate" means, it cannot include factors meant to undermine the purpose of REAP.[41]

Even if the new criteria were not designed to frustrate express congressional intent, they are otherwise not "appropriate factors" for purposes of § 8107(c)(2). The statutory phrase "and other appropriate factors" following a list of enumerated factors does not provide an agency with unfettered discretion as to factors that may be considered.[42] Instead, an unenumerated factor will only be considered "appropriate" if it shares a key characteristic with the enumerated factors.[43] Here, the enumerated factors all deal with the nature of the proposed energy system (i.e., efficiency), expected environmental benefits, and cost savings and say nothing about land use policy, aesthetics, domestic manufacturing, or other non-REAP-related policy goals promoted by the Anti-Renewables eligibility criteria.[44]

III. The Build-First Requirement Is Inconsistent with REAP

The Anti-Renewables Rule's burdensome requirement that applicants build their renewable energy systems at least a year *before* they apply for REAP benefits[45] is also contrary

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advance its new policy to "[e]nd taxpayer support for unaffordable and unreliable 'green' energy sources."); *see also* Stakeholder Announcement (stating the Department's plans to update its REAP grant regulations "to comply with Executive Order 14315" and to "end[] the massive cost of providing taxpayer handouts for unreliable energy sources").

[38] *See* 7 U.S.C. § 8107(c)(2).

[39] *Id.*

[40] *Id.*

[41] *See Mead Corp. v. Browner*, 100 F.3d 152, 156 (D.C. Cir. 1996) (explaining that a factor is only "appropriate" under identical statutory language if it furthers congressional intent).

[42] *See Mead*, 100 F.3d at 156.

[43] *Id.; see also United States v. Philip Morris USA, Inc.*, 396 F.3d 1190, 1200 (D.C. Cir. 2005) (similarly explaining that a statute's use of "including, but not limited to" is meant to introduce "specific examples of a general principle").

[44] *See* 7 U.S.C. § 8107(c)(2).

[45] *See* 91 Fed. Reg. at 62600–01.

to the text of REAP. USDA is not permitted under the statute to convert REAP from a grant program that helps applicants purchase renewable energy systems into a rebate program in which applicants must build their systems first and apply at least one year later.

Through REAP, Congress clearly directs USDA to provide "[a]ssistance . . . to purchase renewable energy systems" through "loan guarantees and grants," not rebates on systems built at least a year before an application is submitted.[46] The Department states that the build-first requirement is justified because "the financial incentive of receiving a grant" has, in the Department's view, caused applicants to propose projects that the Department now believes are "oversized."[47] But the Department is *required* under REAP to provide such grant incentives,[48] and has no authority to replace the mandatory REAP grant incentive program with a REAP rebate program.

The forward-looking nature of REAP, furthermore, is confirmed by the award consideration language of the statute, which states that, when evaluating REAP applications, the Department "shall take into consideration" "expected" and "estimated" characteristics of the "renewable energy system *to be purchased*."[49]

IV. The Anti-Renewables Rule Is Unlawfully Retroactive

Most of the burdensome restrictions of the Anti-Renewables Rule—including the prohibition on ground mount solar or wind energy systems on cropland—apply retroactively to the majority of applications received prior to the recission of the previously operative Notice of Funding Opportunity.

The retroactive application of the Anti-Renewables Rule needlessly causes acute financial distress among farmers, rural small business owners, and other key REAP stakeholders. Applicants invested significant time and resources to prepare applications under one set of rules only to be told they need to reapply under a far different set of rules, with no guarantee that they will receive reimbursement for the substantial costs they have already incurred. As permitted under the prior rules, many applicants and developers built the renewable energy systems proposed in their applications with the reasonable expectation that they would be legally eligible for reimbursement for tens of thousands of dollars of REAP expenses. Other applicants with pending applications for reimbursements were forced to delay or abandon construction altogether at great cost because of USDA's refusal to follow through with application processing. And many REAP consultants prepared applications under the old set of rules. Now, under the Anti-Renewables Rule, most of these applicants and prepared applications are eligible for *nothing*.

This retroactive policy is not only deeply unfair and immoral, it is also unlawful. Agencies may only retroactively apply rules if they have express statutory authorization to do

[46] *See* 7 U.S.C. § 8107(c)(1)(A)(i)(I)
[47] *See* 91 Fed. Reg. at 62605
[48] *See*, *e.g.*, 7 U.S.C. § 8107(a)
[49] *See id.* § 8107(c)(2) (emphasis added).

so.[50] Neither REAP, nor any other statute, provides the Department with express authorization to retroactively apply new rules.[51] For this reason too, the Anti-Renewables Rule cannot stand.

V. The Anti-Renewables Rule Is Arbitrary and Capricious and Therefore Unlawful

An agency action, such as the promulgation of a rule, violates the APA if the action is "arbitrary, capricious, [or] an abuse of discretion."[52] An agency action may be arbitrary and capricious for a myriad of multiple independent reasons. To provide just a few examples, an agency action can be arbitrary and capricious if the agency has "relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[53]

The Anti-Renewables Rule is arbitrary and capricious for many independent reasons. In promulgating the rule, the Department, for example:

A. Failed to consider how the Anti-Renewables Rule would impact the primary purpose of REAP;

B. Considered factors that Congress did not intend for the Department to consider when advancing REAP policy;

C. Failed to provide a reasonable explanation for the Anti-Renewables Rule;

D. Adopted unclear regulatory provisions;

E. Failed to consider how the Anti-Renewables Rule would disrupt obvious reliance interests; and

F. Failed to consider reasonable alternatives to accomplish its purported goals.

For any or all of these reasons, the Anti-Renewables Rule cannot stand.

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[50] *See*, *e.g.*, *Board of Cnty. Comm'rs of Weld Cnty. v. EPA*, 72 F.4th 284, 292 (D.C. Cir. 2023).
[51] *See* 7 U.S.C. § 8107 (absence). A rule is retroactive if it "attaches new legal consequences to events completed before its enactment," or "secondarily retroactive" if it obviously "upsets expectations based in prior law." *Weld*, 72 F.4th at 295 (citation modified). The secondarily retroactive application of an agency rule is lawful only if such application advances a "sufficiently significant statutory interests" that outweighs "the inequity of retroactive application" of the rule. *Retail, Wholesale & Dep't Store Union v. NLRB*, 466 F.2d 380, 390 (D.C. Cir. 1972); *see also Weld*, 72 F.4th at 295. Here the Anti-Renewables Rule is unlawful even if it is merely secondarily retroactive because it does not advance a statutory interest under REAP, and even if it did the inequity to applicants would be unlawfully immense.
[52] 5 U.S.C. § 706(2)(A).
[53] *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

A. The Department Failed to Consider the Anti-Renewables Rule's Impact on REAP's Primary Purposes

As described above, in promulgating the Anti-Renewables Rule, the Department failed to consider how its provisions would impact the "primary purpose" of REAP or whether the changes made are compatible with that purpose.[54] Indeed, the Department appears to have entirely ignored Congress's purposes for REAP. This is the epitome of arbitrary and capricious decision making.

B. The Department Considered Factors that Congress Did Not Intend to Be Considered

The Anti-Renewables Rule is also arbitrary and capricious because, as discussed above,[55] USDA relied on factors Congress did not intend for it to consider when promulgating rules under REAP, including but not limited to: aesthetic considerations, concerns over domestic manufacturing, and a desire to *undermine* renewable energy to instead promote fossil fuels.[56]

C. USDA's Explanations for the Anti-Renewables Rule and its Individual Provisions Are Arbitrary and Capricious

USDA also failed to provide a reasoned explanation for the Anti-Renewables Rule. That is, its various explanations for the Anti-Renewables Rule lack a "rational connection" to the operative provisions of the Final Rule, "run[] counter to the evidence before the agency," are "implausible," or are based on "sheer speculation."[57] In some cases the Department provided no explanation for a proposed provision at all, or failed even to acknowledge that the "new policy rests upon factual findings that contradict those which underlay its prior policy."[58]

i. The Department Failed to Address Its Departures from Its Own Findings and Policies

As explained above, the Anti-Renewables Rule makes dramatic changes to REAP, blocking many farmers' and rural small businesses' access to grant funding for solar, wind, and other renewable energy systems in a complete about-face from its prior practices. Many of these changes are based on explanations that run directly counter to USDA's own findings.[59]

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[54] *See Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102, 1111 (D.C. Cir. 2019).
[55] *See supra* Sections I, II.
[56] *See State Farm*, 463 U.S. at 43; *see also* 7 U.S.C. § 8107(c)(2).
[57] *State Farm*, 463 U.S. at 43 (citation modified); *Dep't of Com. v. New York*, 588 U.S. 752, 785 (2019); *Sinclair Wyo. Refin. Co. v. EPA*, 114 F.4th 693, 713–14 (D.C. Cir. 2024) (finding EPA action arbitrary when the Agency provided "no studies or data" but rested on "sheer speculation" (citation modified)). *See also Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657, 708 (2020) (Kagan, J., concurring).
[58] *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009); *Smith v. Garland*, 103 F.4th 1244, 1252 (7th Cir. 2024) (noting that an agency must "do its homework" when taking action).
[59] *See State Farm*, 463 U.S. at 54–56 (finding agency action arbitrary and capricious in part because it failed to consider relevant evidence in its own studies).

For example, the Department claims that "[f]or too long many applicants have prioritized unreliable energy sources and have not fully delivered on their stated goal."[60] However, the Department has long viewed REAP as a highly successful program. Indeed, as recently as May of 2025, USDA's own materials extolled the virtues of REAP in general and solar energy projects, in particular.[61] The Department does not acknowledge that the anti-renewable energy policy that forms the basis for the Anti-Renewables Rule is entirely inconsistent with its touting of REAP's successes in the past, and it fails to explain why it so suddenly has changed its mind about the efficacy of the program.

In addition, the Department implies that it is adopting draconian restrictions on funding for solar and wind projects to "safeguard Cropland."[62] But this contradicts its own findings that wind turbines and solar farms combined used *less than 0.05%* of the nearly 900 million acres of farmland in 2020,[63] that "[a]gricultural land surrounding wind turbines typically maintained agricultural land cover after development," and that the same is true for land surrounding solar farms in most instances.[64]

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[60] *See USDA Issues Final Rule with Comment Period Ahead of Opening the Application Window for Rural Energy for America Program*, USDA (Oct. 2, 2026), https://www.usda.gov/about-usda/news/press-releases/2026/10/02/usda-issues-final-rule-comment-period-ahead-opening-application-window-rural-energy-america-program.

[61] *See* USDA, *2026 USDA Explanatory Notes – Rural Business-Cooperative Service*, at 32-4, 32-67 to 32-68 (2025), https://www.usda.gov/sites/default/files/documents/32-2026-CJ-RBCS.pdf; *see also* Ex. A, Compl. ¶ ¶ 85–87; *see also Department of Agriculture, Department of Energy Launch Initiative to Help Farmers Reduce Costs with Underutilized Renewable Technologies as Part of President Biden's Investing in America Agenda*, USDA (Feb. 26, 2024), https://www.usda.gov/about-usda/news/press-releases/2024/02/26/department-agriculture-department-energy-launch-initiative-help-farmers-reduce-costs-underutilized (noting that "[d]istributed clean energy projects [like wind energy systems] can create cost savings and income for farmers and rural small businesses. They also support energy independence, local electric grid reliability, and enhance resilience by providing back up power, especially when it is paired with energy storage.")

[62] *See* 91 Fed. Reg. at 62600–01.

[63] *See* Ryan Hanrahan, *USDA Ending Loan Support for Solar Projects on Farmland*, Farm Pol'y News, Univ. Ill. Urbana-Champaign (Aug. 19, 2025), https://farmpolicynews.illinois.edu/2025/08/usda-ending-loan-support-for-solar-projects-on-farmland/.

[64] *See* Karen Maguire et al., USDA, *Utility-Scale Solar and Wind Development in Rural Areas: Land Cover Change (2009–20)* (2024), https://www.ers.usda.gov/publications/109208; *see also* Ex. A, Compl. ¶¶ 114–119. A mountain of additional evidence attributable to other agencies, like DOE, and researchers also supports the notion that wind and solar use up negligible amounts of cropland. This explanation for the rule is also impossible to reconcile with the Department's support expanding the Renewable Fuel Standard, even though doing so uses up far more cropland for energy production than alternatives, like solar, as explained further below.

These are just two of the many examples of USDA findings undermining the purported bases for the Anti-Renewables Rule.[65] For these reasons, the Final Rule is arbitrary and capricious for failing to address these past findings.

ii. The Department's Explanations for the Anti-Renewables Rule Contradict Reliable Research

USDA's past findings that solar and wind systems do not displace farmland and, in fact, typically help farmers, are also supported by other authorities.[66] It is arbitrary and capricious for USDA to "fail[] to consider" the relevant literature on solar and wind systems.[67] For example, the Department of Energy estimates that solar energy development will require *only 0.3 percent* of U.S. farmland by 2035 to help meet the nation's growing need for renewable energy.[68] Research also suggests that solar and wind energy systems sited on farmland help *protect* agricultural land from conversion.[69] For example, by reducing costs and increasing revenues these renewable energy systems provide a degree of financial stability to farms that helps prevent the conversion of agricultural land to other uses.[70]

iii. The Department's Explanations for the Anti-Renewables Rule Are Unsubstantiated or Based on Sheer Speculation

In addition to failing to address its own countervailing findings, in many instances USDA simply provides *no* support at all for its justifications for the Anti-Renewables Rule. This too renders it unlawful.

For example, USDA provides no evidence[71] or explanation whatsoever for its findings that:

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[65] *See generally* Ex. A, Compl. .
[66] *See e.g., id.* at ¶¶ 114–118.
[67] *See State Farm,* 463 U.S. at 43; *see also Ctr. for Biological Diversity v. Zinke*, 900 F.3d 1053, 1067–69 (9th Cir. 2018).
[68] *See* Ex. A, Compl. ¶ 116.
[69] *See id.* ¶ 118; *see also* Sarah Mills, *Farming the Wind: The Impact of Wind Energy on Farming* 1 (2015), https://closup.umich.edu/sites/closup/files/uploads/wind/farming-the-wind-012115.pdf (finding that "[l]andowners with wind turbines on their property: invested twice as much money in their farms—in home improvements, outbuildings, farm equipment, and drainage/irrigation—in the last 5 years than their neighbors and landowners in townships without windfarms" and "are more likely to believe that their land will be farmed in the future and less likely to believe their land will go idle than other landowners").
[70] Ex. A, Compl. ¶ 118; *see also* Pac. Nw. Nat'l Lab'y & Nat'l Renewable Energy Lab'y, *Is Distributed Wind Right for My Farm or Rural Business?*, at 4 (noting that distributed wind can "[o]ffset retail electricity costs . . . Support local loads and grid operations . . . Provide energy security and resilience . . . [and] Electrify remote properties not connected to distribution networks" for agriculturalists); Pac. Nw. Nat'l Lab'y, *Distributed Wind Guidebook: Agricultural Producers and Rural Small Business Owners* 16 (2024) (noting that distributed wind can "provide substantial economic benefits for rural communities and agricultural producers").
[71] In lieu of evidence or analysis, the Department claims it is responding to concerns raised during conversations with an unknown number of anonymous "stakeholders." *See* 91 Fed. Reg. at 62600–01. The Department provided no record of these stakeholder conversations or

- Solar energy projects have inflated farmland prices;
- REAP has detracted from American manufacturing;
- Energy sources promoted by REAP to date are unreliable;
- REAP has distorted markets; and
- REAP has to date lacked fairness or integrity.

These kinds of general, unsubstantiated claims of programmatic failures "can provide no justification" for changes in REAP policy "absent evidence that a substantial portion" of REAP awards were in fact wasteful, unreliable, unaffordable, or misaligned with REAP goals.[72] The Anti-Renewables Rule provides no such evidence.

iv. The Department's Justifications and Explanations for Various Provisions of the Anti-Renewables Rule Are Not Reasonably Related to the Operative Text of the Anti-Renewables Rule

An agency action is arbitrary and capricious if there is a mismatch between the explanation provided by the agency for an action and the action taken by the agency. Here, there are many such mismatches:

- USDA claims that requiring applicants to build their projects before applying for a REAP grant benefits applicants by helping them figure out "what [Project] charges [are] allowable" under REAP and by allowing applicants to "complete their Projects at a time that is best for their business."[73] These explanations bear no rational relationship to the new requirement that applicants build their systems before applying for a grant. This stringent requirement does nothing to provide clarity as to what system-related expenses are reimbursable under REAP. In fact, the prospective applicant will no longer receive extensive personalized guidance from USDA before building out a REAP project under this provision, meaning that he or she will have even less clarity as to what project expenses are reimbursable. The requirement also does not provide applicants with greater flexibility to build their projects at a time that is more suitable to their business needs. Rather, it will discourage many of them from building renewables altogether because they will be forced to bear the upfront costs without any clarity on whether they are likely to receive a grant.

- The Department claims that the Anti-Renewables Rule "streamlines, simplifies, and reduces burden for the application process," yet this statement can hardly be reconciled with the rule's addition of a dizzying array of new application requirements, which, as explained above, only serve to make the program less accessible to farmers and rural

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comments, such as meeting minutes or notes. Notably, these anonymous stakeholders do not mention ground mount wind as a problem. *See id.*

[72] *See Nat'l Lifeline Assoc.* 921 F.3d at 1112 (finding changes to agency policy were arbitrary and capricious when based on unsubstantiated and vague claims of program fraud).

[73] *See* 91 Fed. Reg. at 62605.

small businesses.[74] For example, when selecting contractors to work on a REAP project, an applicant must now comply with complex and expensive federal procurement requirements.[75] To provide another example, solar and wind applicants must now "identify the country of origin for all system components."[76] The Department has also made it more difficult for applicants to navigate these complex rules by hindering their ability to pay or work with grant writers,[77] or to work with renewable energy developers to implement their grants.[78]

- The Department's regulatory impact analysis appears to analyze a different rule, and not the Anti-Renewables Rule. For example, the cost-benefit analysis is clearly based on a rule that included a prohibition on solar and wind renewable energy systems "that exceed a rated system size of 50 kilowatts."[79] This specific prohibition is not included in the Anti-Renewables Rule.

- The Department claims that the Anti-Renewables Rule is implementing several executive orders, none of which address REAP, and which either do not address solar or wind energy at all or do not direct USDA to do anything.[80]

- The Department claims it is interested in helping small family farms,[81] but the rule's stringent applicant eligibility criteria preclude financially distressed farmers from

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[74] *See id.* at 62601.
[75] *See* 7 C.F.R. § 4280.122(a)(10).
[76] *See id.* § 4280.131(b)(5) (2026).
[77] *See* 91 Fed. Reg. at 62603 ("The following transactions can involve a [conflict of interest]: . . . Grant writing."); 7 C.F.R. §§ 4280.122(b)(21), 4280.125(b)(17).
[78] *See* 91 Fed. Reg. at 62603. In addition, at 4:37 pm on October 15, 2026, during a USDA webinar regarding REAP USDA official Deb Yocum wrote, "We do not anticipate having a new competition for the TAG program" in response to a question about whether REAP Technical Assistance Grants would continue to be funded, moving forward. The end of Technical Assistance Grants will further add to applicants' challenges finding help navigating the new byzantine REAP process.
[79] *See* USDA, *Regulatory Impact Analysis: Renewable Energy for America (REAP) Renewable Energy System and Energy Efficiency Improvements (RES EEI) Grant Program and Energy Audit and Renewable Energy Development Assistance (EA REDA) Grant Program* 45 (2026).
[80] *See* 91 Fed. Reg. at 62600, 62604, 62608; *see also* Exec. Order No. 14315, Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources, 90 Fed. Reg. 30821 (July 7, 2025); Exec. Order No. 14154, Unleashing American Energy, 90 Fed. Reg. 8353 (Jan. 29, 2025); Exec. Order No. 14156, Declaring a National Energy Emergency, 90 Fed. Reg. 8433 (Jan. 29, 2025).
[81] *See* 91 Fed. Reg. at 62605 (stating that the Anti-Renewables Rule carries "out the Secretary's Small Family Farms Agenda"); USDA, *Farmers First: Small Family Farms Policy Agenda* 3 (2025), https://www.usda.gov/sites/default/files/documents/farmers-first-small-family-farms-policy-agenda.pdf (stating that USDA is acting to "[t]o ensure small family farmers can start and stay in business for generations to come").

applying[82] as well as many small farmers with mixed sources of income.[83] These exclusions would make a massive share of small farmers no longer eligible for REAP grants. About "86% of US farms have household incomes of less than $250,000 and, on average, nearly 90% of that income comes from off-farm sources."[84]

- The Department claims to be concerned with diversifying the Nation's energy supplies and bringing down energy costs,[85] but does not consider the fact that reducing funding for the build out of renewable energy systems—like wind and solar systems—will make the energy supplies less diverse and raise energy costs.

- The Department claims that the Anti-Renewables Rule supports American manufacturers,[86] but it has not considered that its draconian restrictions on grant eligibility will dampen domestic demand for renewable energy systems and thereby make domestic investments in the production of those systems less attractive.

- The Department does not provide a reasonable explanation as to why *only* wind and solar energy systems are subject to the cropland, foreign component, or commensurate historical usage requirements. If the goal of these requirements is to protect cropland from renewable energy usage, to promote domestic manufacturing by blocking energy projects that contain any foreign component from receiving public funding, and to ensure that applicants do not build more energy capacity than they have historically needed for their operations then there is no reason that such restrictions should apply only to wind and solar energy.

v. The Anti-Renewables Rule Is Also Arbitrary and Capricious Because Several of Its Provisions Are Entirely Unexplained by USDA

The APA requires agencies to provide a reasoned explanation for new rules. Here, the Department completely fails to explain several of the new provisions of the Anti-Renewables Rule. For example:

- The Department does not provide *any* explanation as to why it is suddenly requiring applicants to adhere to federal procurement standards when selecting service professionals to implement their REAP projects.

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[82] 7 C.F.R. § 4280.120(a)(7).
[83] *See* 91 Fed. Reg. at 62613 (stating that "[t]he majority-owner of [a farm] must derive at least 50 percent of their income from the agricultural operations").
[84] *USDA's New REAP Rule Puts Program out of Reach for Most Farmers, Ranchers, and Rural Small Businesses*, Nat'l Sustainable Agric. Coal. (Oct. 27, 2026), https://sustainableagriculture.net/blog/usdas-new-reap-rule-puts-program-out-of-reach-for-most-farmers-ranchers-and-rural-small-businesses/.
[85] *See* 91 Fed. Reg. at 62600.
[86] *See id.* at 62601.

- The Department does not explain why it is making non-profit farms, non-rural farms, and farms co-owned by two or more individuals who are not direct relatives ineligible for REAP grants when previously, they were all eligible.[87]

- The Department does not explain why it has changed the grantmaking rules so that application modifications after the submission of an application are no longer permitted.[88]

- The Department does not explain why it has capped unallowable costs at 25 percent of project expenditures when REAP grantmaking rules previously lacked such a stringent cap.[89]

- The Department prohibits applicants from retrofitting existing wind and solar projects on cropland without any explanation as to what purpose this restriction serves or why such a restriction only applies to wind and solar energy systems.

This list is non-exhaustive. The Department has failed to explain its decisions to add or remove many provisions from the REAP grantmaking rules. The APA requires it to provide an explanation for each and every change, and thus, by failing to do so, the Anti-Renewables Rule is unlawful.

D. Several Restrictions of the New Rule Are Arbitrarily Unclear

The Anti-Renewables Rule is also arbitrary and capricious because many of its provisions are unclear or downright unintelligible.[90] For example:

- The Anti-Renewables Rule's new conflicts of interest provisions are so poorly written that they lead to absurd results, prohibiting applicants from using their own renewable energy systems. Specifically, the Anti-Renewables Rule forbids circumstances where the "ownership of [the] Applicant and the End User include one or more of the same individuals."[91] The term "End User" is defined as "a consumer that uses or purchases the proposed energy to be generated or saved."[92] These provisions make no sense because the entire point of REAP is for applicants to produce renewable energy for both the grid and their own operations.

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[87] 7 C.F.R. §§ 4280.104, 4280.122(a)(4).
[88] *See* 91 Fed. Reg. at 62604.
[89] 7 C.F.R.§ 4280.122(b)(21).
[90] *ACA Int'l v. FCC*, 885 F.3d 687, 700 (D.C. Cir. 2018) (noting that agency actions are arbitrary and capricious if they "fail[] to articulate a comprehensible standard" and that standards adopted must offer "meaningful guidance to affected parties" (citation modified)).
[91] *See* 91 Fed. Reg. at 62603.
[92] *See id.* (stating that conflicts of interests to include "[t]he ownership of Applicant and the End User include one or more of the same individuals"),7 C.F.R.§ 4280.106 (prohibiting *all* conflicts of interest), § 4280.104 (defining "end user" as "consumer that uses or purchases the proposed energy to be generated or saved.").

- The Anti-Renewables Rule's new conflicts of interest policy does not define the term "developer" even though it strictly prohibits renewable energy system "developers" from conducting feasibility studies, writing REAP applications, providing financing for REAP projects, installing REAP projects, purchasing the tax credits associated with a REAP project, or being an end user or owner of power generated by REAP projects.[93]

- Under the Anti-Renewables Rule, wind and solar energy projects that "cannot document commensurate historical energy usage" are ineligible for grants, but the Anti-Renewables Rule gives no guidance on the meaning of "commensurate."[94] The Department only suggests that whatever "commensurate" is will allow for "some growth." [95] Applicants are therefore left in the impossible position of having to guess what "commensurate historical usage" means, with severe consequences if they misjudge.

- The provision of the Anti-Renewables Rule making solar and wind projects ineligible for funding if the systems produce too much energy is doubly confusing when read alongside the evaluation provisions of the Anti-Renewables Rule. The evaluation provisions make REAP applications more likely to be selected for a grant award if a project produces a large "quantity of energy . . . per award dollar requested."[96] In other words, the Anti-Renewables Rule incentivizes applicants to produce as much energy as possible, but not too much energy—without defining the upper and lower bounds.

- Similarly, the Anti-Renewables Rule states that "[c]ropland has the meaning located at 7 C.F.R. 718.2."[97] This standard contrasts with the Department's standard for REAP loan guarantee applications, which applies to "certified cropland as defined by the Farm Service Agency in Handbook 10-CM (rev. 2)."[98] This discrepancy between the cropland policy applied to loan guarantees and grants will contribute to confusion for REAP applicants attempting to navigate the new rules, especially if a single project is seeking both a loan guarantee and a grant.

This list is non-exhaustive. In sum, the Department promulgated an Anti-Renewables Rule that contains many incomprehensible provisions. In doing so, it issued an unreasonable and absurd Anti-Renewables Rule with that does not provide meaningful guidance for affected parties.

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[93] *See* 91 Fed. Reg. at 62603.
[94] 7 C.F.R. § 4280.122(b)(13).
[95] *See* 91 Fed. Reg. at 62605.
[96] *See* 91 Fed. Reg. at 62625.
[97] *See id.* at 62613.
[98] *See* Ex. A, Compl. ¶ 105.

E. The Department Failed to Consider Reliance Interests

The Department also has failed to consider the ways in which the Anti-Renewables Rule has upended serious reliance interests.[99] REAP applicants invested time, money, and other resources into REAP grant applications and the installation of renewable energy systems with the reasonable expectation that their applications would be evaluated under the then-existing rules. REAP consultants prepared REAP applications for clients under the reasonable assumption that USDA would not refuse to process their applications or retroactively apply radically different rules. REAP renewable energy system developers and installers have had to indefinitely pause, pare back, or cancel projects included in pending applications that were eligible under the old rules but are ineligible under the Anti-Renewables Rule. The Department did not consider the disruption of these obvious reliance interests when issuing the Anti-Renewables Rule, rendering it arbitrary and capricious.

F. The Department Failed to Consider Alternatives

The Anti-Renewables Rule is arbitrary and capricious because the Department failed to consider "alternatives to its chosen policy" and to "give a reasoned explanation for its rejection of such alternatives."[100] For example:

- The Department claims to be aiming to "reduc[e] high energy costs and provid[e] a diversified and affordable supply of energy," while avoiding upward pressure on the price of farmland and reducing taxpayer burdens.[101] However, the Department did not consider reducing its spending of taxpayer dollars on the corn ethanol industry,[102] which uses more than 65 times the amount of land as solar, while solar energy produces about 30 times the energy per acre as corn ethanol.[103] Although reducing these subsidies would be a far more effective way to achieve USDA's purported goals, the Anti-Renewables Rule does the opposite, making the disbursement of REAP grants more likely for projects "that comply with EPA's renewable fuel standards."[104]

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[99] *See FCC*, 556 U.S. at 515 (finding change in policy is arbitrary and capricious if agency fails to consider "serious reliance interests" engendered by the prior policy).
[100] *Sinclair Wyo. Refin. Co.*, 114 F.4th at 713–14; *City of Brookings Mun. Tel. Co. v. FCC*, 822 F.2d 1153, 1169 (D.C. Cir. 1987).
[101] *See* 91 Fed. Reg. at 62000.
[102] *See*, *e.g.*, *USDA Invests in Additional Domestic Biofuels and Clean Energy Projects to Lower Costs and Increase American Energy Security Across the Nation*, USDA (Jan. 10, 2025), https://www.usda.gov/about-usda/news/press-releases/2025/01/10/usda-invests-additional- domestic-biofuels-and-clean-energy-projects-lower-costs-and-increase; *Secretary Rollins Announces Availability of $7 Million for Advanced Biofuel Production*, USDA (Nov. 21, 2025), https://www.rd.usda.gov/newsroom/news-release/secretary-rollins-announces-availability-7- million-advanced-biofuel-production; Samantha Ayoub & Faith Parum, *Ag-Powered Fuels:45Z Clean Fuel Production Credit*, Farm Bureau (July 24, 2025), https://www.fb.org/intel/markets/45z-clean-fuel-production-credit.
[103] Matthew A. Sturchio, Adam Gallaher & Steven M. Grodsky, *Ecologically Informed Solar Enables a Sustainable Energy Transition in US Croplands*, 122 PNAS (2025).
[104] 7 C.F.R.§ 4280.140(d)(4)(ii)(C) (2026).

- USDA did not consider alternatives to its $500,000 cap on REAP grant awards.[105] It did not explain how it arrived at that figure, or why it would be more optimal than $700,000 or $400,000. Indeed, the Anti-Renewables Rule contains many numeric thresholds with no explanation of the alternatives considered before arriving at the threshold.[106]

- USDA did not consider whether dedicating increased funding to agrivoltaics would better achieve its goals than a blanket prohibition on funding for solar on cropland.

- USDA did not consider whether policies designed to facilitate rather than impede farmers and rural small businesses collaboration with REAP consultants and renewable energy would do more to reduce applicant burdens than the rule's complex conflicts of interest rules.

- The Department claims that the Anti-Renewables Rule's requirement to build a renewable energy system before applying for a grant will help resolve applicants' "confusion" over covered costs.[107] Yet, the Department failed to consider the far less disruptive alternative of simply editing its award notices to make their language clearer.

Indeed, the administrative record available to the public demonstrates that USDA failed to consider any alternatives to the rule and its individual provisions at all. This makes the rule arbitrary and capricious.

Conclusion

For decades, REAP investments have provided farmers and rural small businesses with a practical tool to lower operating costs through investments in distributed energy technologies. Energy expenses are a significant and often unpredictable cost for farms and rural businesses. By reducing electricity purchases from the grid, renewable energy systems supported through REAP have helped applicants improve cash flow, increase financial certainty, and reinvest savings into their operations. The Anti-Renewables Rule unlawfully significantly reduces access to these investments, depriving rural businesses of one of the few federal programs specifically designed to help them manage long-term energy costs**.** For the reasons stated above, the Department should rescind the Anti-Renewables Rule, resume the administration of REAP to promote renewable energy as Congress has mandated, and process all REAP applications previously received under the rules that existed at the time such applications were submitted.

Respectfully submitted,

[105] *Id.* § 4280.122(a)(2)(ii).
[106] *See*, *e.g., id.* §§ 4280.120(a)(6), 4280.122(b)(21).
[107] 91 Fed. Reg. at 62605.

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