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CODE OF FEDERAL REGULATIONS

Title 7
Agriculture

Parts 1 to 26

Revised as of January 1, 2026

Containing a codification of documents
of general applicability and future effect

As of January 1, 2026

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Table of Contents

	Page
Explanation	v
Title 7:	
SUBTITLE A—Office of the Secretary of Agriculture	3
Finding Aids:	
List of CFR Sections Affected	669

Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 7 CFR 1.1 *refers to title 7, part 1, section 1.*

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Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

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A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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OLIVER A. POTTS,
Director,
Office of the Federal Register
January 1, 2026

THIS TITLE

Title 7—AGRICULTURE is composed of fifteen volumes. The parts in these volumes are arranged in the following order: Parts 1–26, 27–52, 53–209, 210–299, 300–399, 400–699, 700–899, 900–999, 1000–1199, 1200–1599, 1600–1759, 1760–1939, 1940–1949, 1950–1999, and part 2000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 2026.

The Food and Nutrition Service current regulations in the volume containing parts 210–299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing parts 400–699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing parts 900–999. All marketing agreements and orders for milk appear in the volume containing parts 1000–1199.

For this volume, Michele Bugenhagen was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.

Title 7—Agriculture

(This book contains parts 1 to 26)

Part

SUBTITLE A—Office of the Secretary of Agriculture .. 1

Subtitle A—Office of the Secretary of Agriculture

Part		*Page*
1	Administrative regulations	5
1a	Law enforcement authorities	134
1b	National Environment Policy Act	135
1c	Protection of human subjects	184
2	Delegations of authority by the Secretary of Agriculture and general officers of the Department	202
3	Debt management	374
4	[Reserved]	
5	Determination of parity prices	406
6	Import quotas and fees	411
7	Selection and functions of Farm Service Agency State and county committees	425
8	4-H Club name and emblem	434
9	Pandemic Assistance Programs	437
10	[Reserved]	
11	National Appeals Division	462
12	Highly erodible land conservation and wetland conservation	473
13	[Reserved]	
14	Determining the primary purpose of certain payments for Federal tax purposes	504
15	Nondiscrimination	507
15a	Education programs or activities receiving or benefitting from Federal financial assistance	533
15b	Nondiscrimination on the basis of handicap in programs or activities receiving Federal financial assistance	550
15c	Nondiscrimination on the basis of age in programs or activities receiving Federal financial assistance from the United States Department of Agriculture	573

Part		*Page*
15d	Nondiscrimination in programs or activities conducted by the United States Department of Agriculture	586
15e	Enforcement of nondiscrimination on the basis of handicap in programs or activities conducted by the United States Department of Agriculture	589
15f	Adjudications under section 741	595
16	Equal opportunity for religious organizations	604
17	Sales of agricultural commodities made available under Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended	610
18	Equal employment opportunity in the State Cooperative Extension Services	626
19	[Reserved]	
20	Export sales reporting requirements	629
21	Uniform relocation assistance and real property acquisition for Federal and federally assisted programs	637
22	Rural development coordination	637
23	State and regional annual plans of work	643
24	[Reserved]	
25	Rural empowerment zones and enterprise communities	647
26	[Reserved]	

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Sec.
1.1 General provisions.
1.2 Public reading rooms.
1.3 Requirements for making a records request.
1.4 Requirements for responding to records requests.
1.5 Responses to records requests.
1.6 Timing of responses to perfected records requests.
1.7 Records responsive to records requests.
1.8 Requirements for processing records requests seeking business information.
1.9 Administrative appeals.
1.10 Authentication under Departmental Seal and certification of records.
1.11 Preservation of records.
1.12 Fees and fee schedule.
APPENDIX A TO SUBPART A OF PART 1—FEE SCHEDULE.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 61, 87e, 228, 268, 499o, 608c(14), 1592, 1624(b), 1636b, 1638b, 2151, 2279e, 2621, 2714, 2908, 3812, 4610, 4815, 4910, 6009, 6107, 6207, 6307, 6411, 6519, 6520, 6808, 7107, 7734, 8313; 15 U.S.C. 1828; 16 U.S.C. 534, 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 30 U.S.C. 185(o)(1); 43 U.S.C. 1740; 7 CFR 2.27, 2.35.

SOURCE: 52 FR 49386, Dec. 31, 1987, unless otherwise noted.

Subpart B—Departmental Proceedings

1.26 Representation before the Department of Agriculture.
1.27 Rulemaking and other notice procedures.
1.28 Petitions.
1.29 Subpoenas relating to investigations under statutes administered by the Secretary of Agriculture.

Subpart C—Judicial Proceedings

1.41 Service of process.

Subpart D—Claims

1.51 Claims based on negligence, wrongful act or omission.

Subpart E—Cooperative Production of Television Films

1.71 Purpose.
1.72 Policy.
1.73 Responsibility.
1.74 Basis for special working relationships.
1.75 General stipulations.
1.76 Department cooperation.
1.77 Assignment of priorities.
1.78 Development of special working relationships.
1.79 Credits.

Subpart G—Privacy Act Regulations

1.110 Purpose and scope.
1.111 Definitions.
1.112 Procedures for requests pertaining to individual records in a record system.
1.113 Times, places, and requirements for identification of individuals making requests.
1.114 Disclosure of requested information to individuals.
1.115 Special procedures: Medical records.
1.116 Request for correction or amendment to record.
1.117 Agency review of request for correction or amendment of record.
1.118 Appeal of initial adverse agency determination on correction or amendment.
1.119 Disclosure of record to person other than the individual to whom it pertains.
1.120 Fees.
1.121 Penalties.
1.122 General exemptions.
1.123 Specific exemptions.
APPENDIX A TO SUBPART G OF PART 1—INTERNAL DIRECTIVES

Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

1.130 Meaning of words.
1.131 Scope and applicability of this subpart.
1.132 Definitions.
1.133 Institution of proceedings.
1.134 Docket number.
1.135 Contents of complaint or petition for review.
1.136 Answer.
1.137 Amendment of complaint, petition for review, or answer; joinder of related matters.
1.138 Consent decision.
1.139 Procedure upon failure to file an answer or admission of facts.
1.140 Conferences and procedure.
1.141 Procedure for hearing.
1.142 Post-hearing procedure.
1.143 Motions and requests.
1.144 Judges.
1.145 Appeal to Judicial Officer.
1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of the decision of the Judicial Officer.
1.147 Filing; service; extensions of time; and computation of time.
1.148 Depositions.
1.149 Subpoenas.
1.150 Fees of witnesses.

1.151 *Ex parte* communications.

Subpart I—Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act

1.160 Scope and applicability of rules in this part.
1.161 Definitions.
1.162 Institution of proceedings.
1.163 The complaint.
1.164 Answer.
1.165 Amendments.
1.166 Consent order.
1.167 Conference.
1.168 Procedure for hearing.
1.169 Post-hearing procedure and decision.
1.170 Appeal to the Judicial Officer.
1.171 Intervention.
1.172 Motions and requests.
1.173 Judges.
1.174 Filing; service; extensions of time; and computation of time.
1.175 Procedure following entry of cease and desist order.

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

GENERAL PROVISIONS

1.180 Definitions.
1.181 Purpose of these rules.
1.182 When EAJA applies.
1.183 Proceedings covered.
1.184 Eligibility of applicants.
1.185 Standards for awards.
1.186 Allowable fees and expenses.
1.187 Rulemaking on maximum rates for attorney fees.
1.188 Awards against other agencies.
1.189 Delegations of authority.

INFORMATION REQUIRED FROM APPLICANTS

1.190 Contents of application.
1.191 Net worth exhibit.
1.192 Documentation of fees and expenses.
1.193 Time for filing application.

PROCEDURES FOR CONSIDERING APPLICATIONS

1.194 Filing and service of documents.
1.195 Answer to application.
1.196 Reply.
1.197 Comments by other parties.
1.198 Settlement.
1.199 Further proceedings.
1.200 Decision.
1.201 Department review.
1.202 Judicial review.
1.203 Payment of award.

Subpart K—Production or Disclosure of Official Information in Legal Proceedings

GENERAL INFORMATION

1.210 What does this subpart cover?
1.211 Definitions that apply to this subpart.
1.212 What is the Department's policy on providing official information or testimony relating to official information in response to a demand?

RESPONSIBILITIES IF MAKING A DEMAND

1.213 How can I obtain official information or testimony relating to official information in response to my demand?
1.214 What information must I include with my demand?
1.215 How soon before I need the official information or testimony relating to official information should I submit my demand?
1.216 If I serve a subpoena, must I also submit information in accordance with §1.214?
1.217 Where must I send my demand?
1.218 How much will I be charged?

RESPONSIBILITIES OF THE DEPARTMENT

1.219 How will the Department process my demand?
1.220 The Department's considerations in deciding whether to grant or deny a demand.
1.221 In responding to my demand, what conditions or restrictions may the Department impose on the production of official information or testimony relating to official information?
1.222 Delegation authority for deciding whether to grant or deny a demand.

RESPONSIBILITIES OF DEPARTMENT EMPLOYEES

1.223 What must I, as an employee, do upon receiving a demand?
1.224 What must I, as an employee, do upon becoming aware that a court or other authority has ordered compliance with a demand?

Subpart L—Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986

1.301 Basis, purpose and scope.
1.302 Definitions.
1.303 Basis for civil penalties and assessments.
1.304 Investigation.
1.305 Review by the reviewing official.
1.306 Prerequisites for issuing a complaint.
1.307 Complaint.
1.308 Service of complaint and notice of hearing.
1.309 Answer and request for hearing.
1.310 Default upon failure to file an answer.
1.311 Referral of complaint and answer to the ALJ.
1.312 Procedure where respondent does not request a hearing.

1.313 Procedure where respondent requests a hearing; notice of hearing.
1.314 Parties to the hearing.
1.315 Separation of functions.
1.316 *Ex parte* contacts.
1.317 Disqualification of reviewing official or ALJ.
1.318 Rights of parties.
1.319 Authority of the ALJ.
1.320 Prehearing conferences.
1.321 Disclosure of documents.
1.322 Discovery.
1.323 Subpoenas for attendance at hearing.
1.324 Fees.
1.325 Form, filing and service of papers.
1.326 Computation of time.
1.327 Motions.
1.328 Sanctions.
1.329 The hearing and burden of proof.
1.330 Location of hearing.
1.331 Witnesses.
1.332 Evidence.
1.333 The record.
1.334 Post-hearing briefs.
1.335 Determining the amount of penalties and assessments.
1.336 Initial decision of the ALJ.
1.337 Reconsideration of initial decision.
1.338 Appeal to the judicial officer.
1.339 Stays ordered by the Department of Justice.
1.340 Stay pending appeal.
1.341 Judicial review.
1.342 Collection of civil penalties and assessments.
1.343 Right to administrative offset.
1.344 Deposit to Treasury of the United States.
1.345 Settlement.
1.346 Limitation.

Subpart M—Rules of Practice Governing Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*)

1.410 Meaning of words.
1.411 Definitions.
1.412 Institution of proceedings.
1.413 Submission of a sourcing area application.
1.414 Docket number.
1.415 Notification of proceedings.
1.416 Comment period.
1.417 Review period.
1.418 Procedure upon no request for hearing.
1.419 Amendment of a sourcing area application.
1.420 Consent recommendation.
1.421 Prehearing conferences and procedures.
1.422 Conduct of the hearing.
1.423 Post-hearing procedure.
1.424 Motions and requests.
1.425 Judges.
1.426 Appeal to Judicial Officer.
1.427 Filing; identification of parties of record; service; and computation of time.
1.428 Depositions.
1.429 *Ex parte* communications.

Subpart N—Policy With Regard to Indemnification of Department of Agriculture Employees

1.501 Policy on employee indemnification.

Subpart O—Conditions in FERC Hydropower Licenses

GENERAL PROVISIONS

1.601 What is the purpose of this subpart, and to what license proceedings does it apply?
1.602 What terms are used in this subpart?
1.603 How are time periods computed?
1.604 What deadlines apply to the trial-type hearing and alternatives processes?

HEARING PROCESS

REPRESENTATIVES

1.610 Who may represent a party, and what requirements apply to a representative?

DOCUMENT FILING AND SERVICE

1.611 What are the form and content requirements for documents under this subpart?
1.612 Where and how must documents be filed?
1.613 What are the requirements for service of documents?

INITIATION OF HEARING PROCESS

1.620 What supporting information must the Forest Service provide with its preliminary conditions?
1.621 How do I request a hearing?
1.622 How do I file a notice of intervention and response?
1.623 Will hearing requests be consolidated?
1.624 Can a hearing process be stayed to allow for settlement discussions?
1.625 How will the Forest Service respond to any hearing requests?
1.626 What will the Forest Service do with any hearing requests?
1.627 What regulations apply to a case referred for a hearing?

GENERAL PROVISIONS RELATED TO HEARINGS

1.630 What will OALJ do with a case referral?
1.631 What are the powers of the ALJ?
1.632 What happens if the ALJ becomes unavailable?
1.633 Under what circumstances may the ALJ be disqualified?

1.634 What is the law governing ex parte communications?
1.635 What are the requirements for motions?

PREHEARING CONFERENCES AND DISCOVERY

1.640 What are the requirements for prehearing conferences?
1.641 How may parties obtain discovery of information needed for the case?
1.642 When must a party supplement or amend information it has previously provided?
1.643 What are the requirements for written interrogatories?
1.644 What are the requirements for depositions?
1.645 What are the requirements for requests for documents or tangible things or entry on land?
1.646 What sanctions may the ALJ impose for failure to comply with discovery?
1.647 What are the requirements for subpoenas and witness fees?

HEARING, BRIEFING, AND DECISION

1.650 When and where will the hearing be held?
1.651 What are the parties' rights during the hearing?
1.652 What are the requirements for presenting testimony?
1.653 How may a party use a deposition in the hearing?
1.654 What are the requirements for exhibits, official notice, and stipulations?
1.655 What evidence is admissible at the hearing?
1.656 What are the requirements for transcription of the hearing?
1.657 Who has the burden of persuasion, and what standard of proof applies?
1.658 When will the hearing record close?
1.659 What are the requirements for posthearing briefs?
1.660 What are the requirements for the ALJ's decision?

ALTERNATIVES PROCESS

1.670 How must documents be filed and served under this subpart?
1.671 How do I propose an alternative?
1.672 May I file a revised proposed alternative?
1.673 When will the Forest Service file its modified condition?
1.674 How will the Forest Service analyze a proposed alternative and formulate its modified condition?
1.675 Has OMB approved the information collection provisions of this subpart?

Subpart P—Rules of Practice and Procedure Governing Formal Rulemaking Proceedings Instituted by the Secretary

1.800 Words in the singular form.
1.801 Scope and applicability of this subpart.
1.802 Definitions.
1.803 Institution of proceedings.
1.804 Notification by interested persons.
1.805 Docket number.
1.806 Judge.
1.807 Direct testimony submitted as written documents.
1.808 Motions and requests.
1.809 Conduct of the hearing.
1.810 Oral and written arguments.
1.811 Certification of the transcript.
1.812 Copies of the transcript.
1.813 Administrator's recommended decision.
1.814 Submission to Secretary.
1.815 Decision by the Secretary.
1.816 Filing, extension of time, effective date of filing, and computation of time.
1.817 Ex parte communications.
1.818 Additional documents to be filed with hearing clerk.
1.819 Hearing before Secretary.

Subpart Q—Implementation of the HAVANA Act of 2021

1.900 Authority.
1.901 Definitions.
1.902 Eligibility for payments by the Department of Agriculture.
1.903 Consultation with other agencies.

AUTHORITY: 5 U.S.C. 301, unless otherwise noted.

Subpart A—Official Records

SOURCE: 84 FR 56100, Oct. 21, 2019, unless otherwise noted.

§ 1.1 General provisions.

(a) This subpart contains the rules that the United States Department of Agriculture (USDA) and its components follow in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These rules should be read together with the FOIA, which provides additional information about access to records maintained by the USDA. Requests made by individuals for records about themselves under the Privacy Act of 1974, 5

U.S.C. 552a, and 7 CFR Subpart G are also processed under this subpart.

(b) The terms ''component'' or ''components'' are used throughout this subpart and in appendix A of this subpart to include both USDA program agencies and staff offices.

(c) Unless otherwise stated, references to number of days indicates business days, excluding Saturdays, Sundays, and legal holidays.

(d) Supplemental regulations for FOIA requests and appeals relating to records of USDA's Office of Inspector General are set forth in 7 CFR part 2620.

§ 1.2 Public reading rooms.

(a) Components within the USDA maintain public reading rooms containing the records that the FOIA requires to be made regularly available for public inspection in an electronic format. Each component is responsible for determining which of its records are required to be made publicly available, as well as identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. Each component shall ensure that its reading room and indices are reviewed and updated on an ongoing basis.

(b) A link to USDA Electronic Reading Rooms can be found on the USDA public FOIA website.

(c) In accordance with 5 U.S.C. 552(a)(2), each component within the Department shall make the following materials available for public inspection and copying (unless they are promptly published and copies offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to a person pursuant to a FOIA request under 5 U.S.C. 552(a)(3), and have been requested three or more times; and

(5) Copies of all records, regardless of form or format, which have been released to a person pursuant to a FOIA request under 5 U.S.C. 552(a)(3), and which because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. Components shall decide on a case by case basis whether records meet these requirements, based on the following factors:

(i) Previous experience with similar records;

(ii) The particular characteristics of the records involved, including their nature and the type of information contained in them; and

(iii) The identity and number of requesters and whether there is widespread media, historical, academic, or commercial interest in the records.

§ 1.3 Requirements for making a records request.

(a) *Where and how to submit a request.* (1) A requester may submit a request in writing and address the request to the designated component within the USDA that maintains the records requested. The Departmental FOIA Officer will maintain a list of contact information for component FOIA offices and make this list available on the USDA public FOIA website. Filing a FOIA request directly with the component that maintains the records will facilitate the processing of the request. If responsive records are likely to reside within more than one USDA component, the requester should submit the request to the USDA Departmental FOIA office.

(2) Alternatively, a requester may submit a request electronically via USDA's online web portal or via the National FOIA portal. USDA components also accept requests submitted to the email addresses of component FOIA offices as listed on the USDA public FOIA website.

(3) If a requester cannot determine where within the USDA to send a request, he or she should consult the USDA public FOIA website to determine where the records might be maintained. Alternatively, he or she may

send the request to the Departmental FOIA Officer, who will route the request to the component(s) believed most likely to maintain the records requested.

(4) To facilitate the processing of a request, a requester should place the phrase ''FOIA REQUEST'' in capital letters on the front of their envelope, the cover sheet of their facsimile transmittal, or the subject line of their email.

(b) *What to include in a request.* (1) A requester seeking access to USDA records should provide sufficient information about himself or herself to enable components to resolve, in a timely manner, any issues that might arise as to the subject and scope of the request, and to deliver the response and, if appropriate, any records released in response to the request. Generally, this includes the name of the requester, name of the institution on whose behalf the request is being made, a phone number at which the requester might be contacted, an email address and/or postal mailing address, and a statement indicating willingness to pay any applicable processing fees.

(2) A requester seeking access to USDA records must also provide a reasonable description of the records requested, as discussed in paragraph (c)(1) of this section.

(3) A requester who is making a request for records about himself or herself may receive greater access if the request is accompanied by a signed declaration of identity that is either notarized or includes a penalty of perjury statement pursuant to 28 U.S.C. 1746.

(4) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased. As an exercise of administrative discretion, the component can require a requester to supply additional information if necessary, in order to verify that a particular individual has consented to disclosure.

(c) *How to describe the requested records.* (1) A FOIA request must reasonably describe the requested records. This means a request must be described in such a way as to enable component personnel familiar with the subject of the request to locate them with reasonable effort. In general, requesters should include as much detail as possible about the specific records or types of records that they are seeking. To the extent possible, supply specific information regarding dates, titles, names of individuals, names of offices, locations, names of agencies or other organizations, and contract or grant numbers that may help in identifying the records requested. If the request relates to pending litigation, the requester should identify the court and its location in addition to a case number.

(2) If a component determines that a request is incomplete, or that it does not reasonably describe the records sought, the component will inform the requester of this fact and advise as to what additional information is needed or why the request is otherwise insufficient.

§ 1.4 Requirements for responding to records requests.

(a) *In general.* Except for the instances described in paragraphs (c) and (d) of this section, the component that first receives a request for a record is responsible for responding to or referring the request.

(b) *Authority to grant or deny requests.* The head of a component or his or her designee is authorized to grant or to deny any requests for records originating with or maintained by that component.

(c) *Handling of misdirected requests.* When a component's FOIA office receives and determines that a request was misdirected within the Department's components or should be directed to additional Department component(s), the receiving component's FOIA office will route the request to the FOIA office of the proper component(s).

(d) *Coordination of requests involving multiple components.* When a component becomes aware that a requester has sent a request for records to multiple

USDA components, the component will notify the Departmental FOIA Officer to determine if some form of coordination is warranted.

(e) *Consultations and referrals in the process of records review.* (1) *Consultation.* When records originated with the component processing the request but contain within them information of interest to another USDA component or other Federal Government office, the component processing the request should consult with that other entity prior to making a release determination.

(2) *Referral.* When the component processing the request believes that another USDA component or Federal Government office is best able to determine whether to disclose the record, the component typically should refer the responsibility for responding to the request regarding that record to that USDA component or Federal Government office. Ordinarily, the component or agency that originated the record is presumed to be the best able to make the disclosure determination. However, if the component processing the request and the originating component or agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the component or agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement component or agency responding to a request for records on a living third party locates within its files records originating with a law enforcement component or agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if a component or agency locates within its file's material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the component that received the request should coordinate with the originating component or agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the component that originally received the request.

§ 1.5 Responses to records requests.

(a) *In general.* Components should, to the extent practicable, communicate with requesters having access to the internet by electronic means, such as email, in lieu of first-class U.S. mail.

(b) *Acknowledgements of requests.* On receipt of a request, the processing component will send an acknowledgement to the requester and provide an assigned request tracking number for further reference. Components should include in the acknowledgement a brief description of the records sought, or attach a copy of the request, to allow requesters to more easily keep track of their requests.

(c) *Grants of requests.* When a component makes a determination to grant a request in whole or in part, it will notify the requester in writing. The component will also inform the requester of any fees charged, pursuant to §1.12, in the processing of the request. Except in instances where advance payment of fees is required, components may issue bills for fees charged at the same time that they issue a determination. The component will include a statement advising the requester that he or she has the right to seek dispute resolution services from the component's FOIA Public Liaison.

(d) *Specifying the format of records.* Generally, requesters may specify the preferred form or format (including electronic formats) for the records sought. Components will accommodate the request if the records are readily reproducible in that form or format.

(e) *Exemptions and discretionary release.* All component records, except

those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(a) and (b), will be made available to any person submitting a records request under this subpart. Components are authorized, in their sole discretion, to make discretionary releases of their records when such releases are not otherwise specifically prohibited by Executive Order, statute, or regulation.

(f) *Reasonable segregation of records.* If a requested record contains portions that are exempt from mandatory disclosure and other portions that are not exempt, the processing component will ensure that all reasonably segregable nonexempt portions are disclosed, and that all exempt portions are identified according to the specific exemption(s) that are applicable.

(g) *Adverse determinations of requests.* A component making an adverse determination denying a request in any respect will notify the requester of that determination in writing. The written communication to the requester will include the name and title of the person responsible for the adverse determination, if other than the official signing the letter; a brief statement of the reason(s) for the determination, including any exemption(s) applied in denying the request; an estimate of the volume of records or information withheld, such as the number of pages or some other reasonable form of estimation; a statement that the determination may be appealed, followed by a description of the requirements to file an appeal; and a statement advising the requester that he or she has the right to seek dispute resolution services from the component's FOIA Public Liaison or the Office of Government Information Services (''OGIS''). An adverse determination includes:

(1) A determination to withhold any requested record in whole or in part;

(2) A determination that a requested record does not exist or cannot be found, when no responsive records are located and released;

(3) A determination that a record is not readily reproducible in the format sought by the requester;

(4) A determination on any disputed fee matter; or

(5) A denial of a request for expedited treatment.

(h) Upon request, the component will provide an estimated date by which the agency expects to provide a response to the requester. If a request involves a voluminous amount of material, or searches in multiple locations, the component may provide interim responses, releasing the records on a rolling basis.

§ 1.6 Timing of responses to perfected records requests.

(a) *In general.* Components ordinarily will respond to requests according to their order of receipt. In instances involving misdirected requests that are re-routed pursuant to §1.4(c), the response time will commence on the date that the request is received by the proper component's office that is designated to receive requests, but in any event not later than 10-working days after the request is first received by any component's office that is designated to receive requests.

(b) *Response time for responding to requests.* Components ordinarily will inform requesters of their determination concerning requests within 20 working days of the date of receipt of the requests, plus any extension authorized by paragraph (d) of this section.

(c) *Multitrack processing and how it affects requests.* All components must designate a specific track for requests that are granted expedited processing in accordance with the standards set forth in paragraph (f) of this section. A component also may designate additional processing tracks that distinguish between simple and more complex requests based on the estimated amount of work or time needed to process the request. Among the factors a component may consider are the number of pages involved in processing the request and the need for consultations or referrals. Upon request, components will advise requesters of the track into which their request falls and, when appropriate, will offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track in order to decrease the processing time.

(d) *Circumstances for extending the response time.* Whenever the component

cannot meet the statutory time limit for processing a request because of ''unusual circumstances,'' as defined in the FOIA, and the component extends the time limit on that basis, the component must, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which the component estimates processing of the request will be completed. Where the extension exceeds 10 working days, the component must, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The component must make available its designated FOIA contact or its FOIA Public Liaison for this purpose. The component also must alert requesters to the availability of the OGIS to provide dispute resolution services.

(e) *Procedures for requesting expedited processing.* A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing.

(1) Requests and appeals will be processed on an expedited basis whenever it is determined by the component that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged federal government activity, if made by a person who is primarily engaged in disseminating information.

(2) Requests for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i) or (ii) of this section must be submitted to the component that maintains the records requested. Components receiving requests for expedited processing will decide whether to grant them within 10 calendar days of their receipt of these requests and will notify the requesters accordingly. If a request for expedited treatment is granted, the request or appeal will be given priority, placed in the processing track for expedited requests or appeals, and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1.7 Records responsive to records requests.

(a) In determining which records are responsive to a request, a component ordinarily will include only records in its possession as of the date that the component begins its search.

(b) A component is not required to create a new record in order to fulfill a request for records. The FOIA does not require agencies to do research, to analyze data, or to answer written questions in response to a request.

(c) Creation of records may be undertaken voluntarily.

(d) A component will provide a record in the format specified by a requester, if the record is readily reproducible by the component in the format requested.

§ 1.8 Requirements for processing records requests seeking business information.

(a) *In general.* Each component is responsible for making the final determination with regard to the disclosure or nondisclosure of business information in records submitted by an outside entity.

(b) *Definitions.* For purposes of this section:

(1) *Confidential commercial information* means commercial or financial information obtained by the USDA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, or Tribe, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly, to the Federal Government.

(c) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good-faith efforts to designate by appropriate markings, at the time of submission, any portion of its submission that it considers to be protected

from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(d) *When notice to the submitter is required.* (1) The component must promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if the component determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The component has a reason to believe that the requested information may be protected from disclosure under Exemption 4 but has not yet determined whether the information is protected from disclosure.

(2) The notice must either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, the component may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(e) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) The component determines that the information is exempt under the FOIA and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12,600.

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous. In such case, the component must give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date.

(f) *Submitter's opportunity to object to disclosure.* (1) The component must specify a reasonable time period within which the submitter must respond to the notice referenced in paragraph (d) of this section.

(2) If a submitter objects to disclosure of any portion of the records, the submitter must provide the component with a detailed written statement that specifies all grounds for withholding the particular information. The submitter must show why the information is a trade secret or commercial or financial information that is privileged or confidential.

(3) A submitter who fails to respond within the time period specified in the notice will be considered to have no objection to disclosure of the information. The component is not required to consider any information received after the date of any disclosure decision. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(g) *Notice of intent to disclose over submitter's objection.* If a component decides to disclose confidential commercial information over the objection of a submitter, the component will give the submitter written notice, which will include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the information to be disclosed or copies of the records as the component intends to release them; and

(3) A disclosure date subsequent to the notice.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component will promptly notify the submitter.

(i) *Corresponding notice to requester.* The component must notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and

whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 1.9 Administrative appeals.

(a) *Appeals of adverse determinations.* If a requester is dissatisfied with a component's response to his or her request, the requester may submit a written appeal of that component's adverse determination denying the request in any respect.

(b) *Deadline for submitting an appeal.* Requesters must make the appeal in writing. To be considered timely, the appeal must be postmarked, or in the case of electronic submissions transmitted, within 90 calendar days of the date of the adverse determination. Components adjudicating appeals will issue a decision on an appeal, within 20-working days of its date of receipt, plus any extension authorized by §1.6(d).

(c) *Appeals officials.* Each component will provide for review of appeals by an official different from the official who made the initial determination(s).

(d) *Components' responses to appeals.* The decision on an appeal will be made in writing.

(1) If the component grants the appeal in part or in whole, it will inform the requester of any conditions surrounding the granting of the request *(e.g.,* payment of fees). If the component grants only a portion of the appeal, it will treat the portion not granted as a denial.

(2) If the component denies the appeal, either in part or in whole, it will inform the requester of that decision and of the following:

(i) The reasons for denial, including any FOIA exemptions asserted;

(ii) The name and title or position of each official responsible for denial of the appeal;

(iii) The availability of mediation services offered by the OGIS of the National Archives and Records Administration as a non-exclusive alternative to litigation; and

(iv) The right to judicial review of the denial in accordance with 5 U.S.C. 552(a)(4)(B).

(e) *Legal sufficiency review of an appeal.* If a component makes the determination to deny an appeal in part or whole, that component will send a copy of all records to the Assistant General Counsel, General Law and Research Division, that the Office of the General Counsel (''OGC'') would need to examine to provide a legal sufficiency review of the component's decision.

(1) Frequently, these records will include a copy of the unredacted records requested, a copy of the records marked to indicate information the component proposes to withhold, all correspondence relating to the request, and a proposed determination letter. When the volume of records is so large as to make sending a copy impracticable, the component will enclose an informative summary and representative sample of those records. The component will not deny an appeal until it receives concurrence from the Assistant General Counsel.

(2) With regard to appeals involving records of OIG, the records in question will be referred to the OIG Office of Counsel, which will coordinate all necessary reviews.

(f) *Submission of an appeal before judicial review.* Before seeking review by a court of a component's adverse determination, a requester generally must first submit a timely administrative appeal.

§ 1.10 Authentication under Departmental Seal and certification of records.

(a) *In general.* Requests seeking either authenticated or certified copies of records will generally be processed under the FOIA. FOIA search, review, and duplication fees, where applicable, may also apply. However, because the costs for authenticated and certified copies are outside of the FOIA, the provisions of §1.12 that call for the automatic waiver of FOIA fees under $25.00 do not apply.

(b) *Authentication of records.* (1) Authentication provides confirmation by a USDA officer that a certified copy of a record is what it purports to be, an accurate duplicate of the original record.

(2) When a request is received for an authenticated copy of a record that the component determines may be made

available, under the FOIA, each component will send an authentic (*i.e.,* correct) copy of the record to the Assistant General Counsel in the OGC Division responsible for the applicable component program or other designee of the Secretary of Agriculture. The Assistant General Counsel for the applicable component program or other designee of the Secretary of Agriculture will confirm the authenticity of the record and affix the seal of the USDA to it.

(3) The Hearing Clerk in the Office of Administrative Law Judges may authenticate copies of records for the Hearing Clerk. The Director of the National Appeals Division may authenticate copies of records for the National Appeals Division. The Inspector General is the official who authenticates copies of records for OIG.

(4) When any component determines that a record for which authentication is requested may be made available only in part, because certain portions of it are exempt from release under the FOIA, the component will process the record under the FOIA and make any needed redactions, including notations on the record as to the FOIA exemption(s) which require(s) the removal of the information redacted. In such an instance, the component will supply a copy of the record both in its unredacted state and in its redacted state to the party authorized to perform authentication, along with a copy of the proposed determination letter regarding the withholding of the information redacted.

(5) The cost for authentication of records is $10.00 each.

(c) *Certification of records.* (1) Certification is the procedure by which a USDA official confirms that a copy of a record is a true reproduction of the original.

(2) When a request is received for a certified copy of a record that the component determines may be made available under the FOIA, each component will prepare a correct copy and a statement attesting that the copy is a true and correct copy.

(3) When any component determines that a record for which a certified copy is requested may be made available only in part, because certain portions of it are exempt from release under the FOIA, the component will process the record under the FOIA and make any needed redactions, including notations on the record as to the FOIA exemption(s) which require(s) the removal of the information redacted.

(4) The cost for certification of records is $5.00 each.

§ 1.11 Preservation of records.

Components will preserve all correspondence and records relating to requests and appeals received under this subpart, as well as copies of all requested records, until disposition or destruction of such correspondence and records is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the NARA. Agency records will not be disposed of, or destroyed, while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 1.12 Fees and fee schedule.

(a) *Authorization to set FOIA fees.* The Chief Financial Officer is delegated authority to promulgate regulations providing for a uniform fee schedule applicable to all components of the USDA regarding requests for records under this subpart. The regulations providing for a uniform fee schedule are found in appendix A of this subpart.

(b) *In general.* Components will charge for processing requests under the FOIA in accordance with the provisions of appendix A of this subpart and the Uniform Freedom of Information Act Fee Schedule and Guidelines published by the Office of Management and Budget (''OMB Fee Guidelines'').

(c) *Guidance for lowering FOIA fees.* Components will ensure that searches, review, and duplication are conducted in the most efficient and least expensive manner practicable.

(d) *Communicating with requesters on fee issues.* In order to resolve any fee issues that arise under this subpart, a component may contact a requester for additional information.

(e) *Notifying requesters of estimated fees.* When a component determines or estimates that the processing of a FOIA request will incur chargeable FOIA fees, in accordance with appendix A of this subpart and the OMB Fee

Guidelines, the component will notify the requester in writing of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated.

(f) *Requester commitment to pay estimated fees.* In cases in which a requester has been notified that the processing of his or her request will incur chargeable FOIA fees, the component providing such notification will not begin processing the request until the requester commits in writing to pay the actual or estimated total fee, or designates the amount of fees that he or she is willing to pay, or in the case of a requester who has not yet been provided with his or her statutory entitlements, designates that he or she seeks only that which can be provided by these statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount he or she is willing to pay.

(g) *Tolling of request for fee issues.* If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester is willing to pay. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(h) *Assisting requesters wishing to lower fees.* Components will make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(i) *Timing of Bills for Collection.* Except in instances where advance payment is required, or where requesters have previously failed to pay a properly charged FOIA fee within 30 calendar days of the billing date, components may issue Bills for Collection for FOIA fees owed at the same time that they issue their responses to FOIA requests.

(j) *Advance payment of FOIA fees when estimated fees exceed $250.00.* When a component determines or estimates that a total fee to be charged for the processing of a FOIA request is likely to exceed $250.00, it may require the requester to make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. However, a component may elect to process a request prior to collecting fees exceeding $250.00 when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(k) *Special services.* For services not covered by the FOIA or by appendix A of this subpart, as described in §1.10, components may set their own fees in accordance with applicable law. Although components are not required to provide special services, such as providing multiple copies of the same record, or sending records by means other than first class mail, if a component chooses to do so as a matter of administrative discretion, the direct costs of these services will be charged.

(l) *Aggregating requests.* When a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the component may aggregate those requests and charge accordingly. Components may presume that multiple requests of this type made within a 30 calendar day period have been made in order to avoid fees. For requests separated by a longer period, components will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involves. Multiple requests involving unrelated matters will not be aggregated for fee purposes.

(m) *Payment of FOIA fees.* Requesters must pay FOIA fees by check or money order made payable to the Treasury of the United States. Components are not required to accept payments in installments.

(n) *Failure to pay properly charged fees.* When a requester has previously failed to pay a properly charged FOIA

fee to any component within 30 calendar days of the billing date, a component may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the component may require that the requester make an advance payment of the full amount of any anticipated fee before the component begins to process a new request or continues to process a pending request or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(o) *Restrictions on charging fees.* (1) If a component fails to comply with the statutory time limits in which to respond to a request, as provided in §1.6(b), and if unusual circumstances, as that term is defined by the FOIA, apply to the processing of the request, as discussed in §1.6(d), it may not charge search fees for the processing of the request, or duplication fees for the processing of the request if the requester is classified as an educational institution requester, a noncommercial scientific institution requester, or a representative of the news media, as defined in appendix A of this subpart, unless:

(i) The component notifies the requester, in writing, within the statutory 20-working day time period, that unusual circumstances, as that term is defined by the FOIA, apply to the processing of the request;

(ii) More than 5,000 pages are necessary to respond to the request; and

(iii) The component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request.

(2) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(p) *Waivers of chargeable fees.* (1) *In general.* Records responsive to a request will be furnished without charge or at a reduced rate below that established in Table 1 of appendix A of this subpart, where a component determines, based on available evidence, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest as defined in paragraph (p)(3) of this section, because it is likely to contribute significantly to public understanding of the operations or activities of the government, and;

(ii) Disclosure of the information is not primarily in the commercial interest of the requester as defined in paragraph (p)(4) of this section.

(2) *Adjudication of fee waivers.* Each fee waiver request is judged on its own merit.

(3) *Factors for consideration of public interest.* In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, components will consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the requester's individual understanding. A requester's expertise in the subject area as well as his or her ability and intention to effectively convey information to the public will be considered. It will be presumed that a representative of the news media, as defined in appendix A of this subpart, will satisfy this consideration.

(iv) The public's understanding of the subject in question must be enhanced by the disclosure to a significant degree. However, components will not make value judgments about whether the information at issue is ''important'' enough to be made public.

(4) *Factors for consideration of commercial interest.* In deciding whether disclosure of the requested information is in the requester's commercial interest, components will consider the following two factors:

(i) Components will identify any commercial interest of the requester, as defined in appendix A of this subpart. Requesters may be given an opportunity to provide explanatory information regarding this consideration.

(ii) A waiver or reduction of fees is justified where the public interest is greater than any identified commercial interest in disclosure. Components ordinarily will presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(5) *Partial fee waivers.* Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver will be granted for those records only.

(6) *Timing of requests for fee waivers.* Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced in paragraph (p)(3) of this section. A requester may submit a fee waiver request later so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester will be required to pay any costs incurred up to the date the fee waiver request was received.

APPENDIX A TO SUBPART A OF PART 1—FEE SCHEDULE

Section 1. In General. This schedule sets forth fees to be charged for providing copies of records—including photographic reproductions, microfilm, maps and mosaics, and related services—requested under the Freedom of Information Act (''FOIA''). The fees set forth in this schedule are applicable to all components of the USDA. Further information about fees and fee waivers is provided in 7 CFR 1.12 Fees and Fee Waivers.

Section 2. Definitions.

(a) *Types of FOIA fees.* The FOIA defines the following types of FOIA fees that may be charged for responding to FOIA requests.

(1) *Search fees.*

(i) *Searching* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(ii) Search time is charged in quarter-hour increments within the USDA, and includes the *direct costs* incurred by a component in searching for records responsive to a request. It does not include overhead expenses such as the costs of space and heating or lighting of the facility in which the records are maintained.

(iii) Components may charge for time spent searching for requested records even if they do not locate any responsive records or if they determine that the records that they locate are entirely exempt from disclosure.

(iv) USDA components will charge for search time at the actual salary rate of the individual who conducts the search, plus 16 percent of the salary rate (to cover benefits). This rate was adopted for consistency with the Uniform Freedom of Information Act Fee Schedule and Guidelines (''OMB Fee Guidelines'') that state that agencies should charge fees that recoup the full allowable direct costs that they incur in searching for responsive records.

(v) Search time also includes the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. Components will notify requesters of the costs of creating such a program, and requesters must agree to pay the associated costs before these costs may be incurred.

(2) *Review fees.*

(i) *Reviewing* is the process of examining records located in response to a request in order to determine whether any portion of the records is exempt from disclosure. The process of review also includes the process of preparing records for disclosure, for example, doing all that is necessary to redact them and prepare them for release. Review time also includes time spent considering any formal objection to disclosure of responsive records made by a business submitter as discussed in 7 CFR 1.8 Requirements for processing requests seeking business information. However, it does not include time spent

resolving general legal or policy issues regarding the application of the nine FOIA exemptions.

(ii) Review time is charged in quarter-hour increments within the USDA, and includes the *direct costs* incurred by a component in preparing records responsive to a request for disclosure. It does not include overhead expenses such as the costs of space and heating or lighting of the facility in which the records are maintained.

(iii) USDA components may charge for time spent reviewing requested records even if they determine that the records reviewed are entirely exempt from disclosure.

(iv) USDA components will charge for review time at the actual salary rate of the individual who conducts the review, plus 16 percent of the salary rate (to cover benefits). This rate was adopted for consistency with the OMB Fee Guidelines that state that agencies should charge fees that recoup the full allowable direct costs that they incur in reviewing records for disclosure.

(v) Review time also includes the direct costs associated with the cost of computer programming designed to facilitate a manual review of the records, or to perform electronic redaction of responsive records, particularly when records are maintained in electronic form. Components will notify requesters of the costs performing such programming, and requesters must agree to pay the associated costs before these costs may be incurred.

(3) *Duplication fees.*

(i) *Duplicating* is the process of producing copies of records or information contained in records requested under the FOIA. Copies can take the form of paper, audiovisual materials, or electronic records, among other forms.

(ii) Duplication is generally charged on a per-unit basis. The duplication of paper records will be charged at a rate of $.05 per page within the USDA. The duplication of records maintained in other formats will include all *direct costs* incurred by a component in performing the duplication, including any costs associated in acquiring special media, such as CDs, disk drives, special mailers, and so forth, for transmitting the requested records or information. It does not include overhead expenses such as the costs of space and heating or lighting of the facility in which the records are maintained.

(iii) Duplication generally does not include the cost of the time of the individual making the copy. This time is generally factored into the per page cost of duplication. However, when duplication requires the handling of fragile records, or paper records that cannot be safely duplicated in high-speed copiers, components may also charge for the time spent duplicating these records. In such an instance, the cost of this time will be added to the per-page charge, and an explanation provided to the requester in the component's itemization of FOIA fees charges. Components may describe this time as time spent in duplicating fragile records.

(iv) USDA components will charge for time spent in duplicating fragile records at the actual salary rate of the individual who performs the duplication, plus 16 percent of the salary rate (to cover benefits). This rate was adopted for consistency with the OMB Fee Guidelines that state that agencies should charge fees that recoup the full allowable direct costs that they incur in duplicating requested records.

(v) Where paper records must be scanned in order to comply with a requester's preference to receive the records in an electronic format, duplication costs will also include the direct costs associated with scanning those materials, including the time spent by the individual performing the scanning. Components may describe this time as time spent in scanning paper records.

(vi) However, when components ordinarily scan paper records in order to review and/or redact them, the time required for scanning records will not be included in duplication fees, but in review fees, when these are applicable. When components that ordinarily scan paper records in order to review and/or redact them release records in an electronic format to requesters who are not to be charged review fees, duplication fees will not include the time spent in scanning paper records. In such instances, duplication fees may only include the direct costs of reproducing the scanned records. In such instances, components may not charge duplication fees on a per-page basis.

(b) *Categories of FOIA requesters for fee purposes.* The FOIA defines the following types of requests and requesters for the charging of FOIA fees.

(1) *Commercial use requests.*

(i) *Commercial use requests* are requests for information for a use or a purpose that furthers commercial, trade or profit interests, which can include furthering those interests through litigation. Components will determine, whenever reasonably possible, the use to which a requester will put the requested records. When it appears that the requester will put the records to a commercial use, either because of the nature of the request itself or because a component has reasonable cause to doubt a requester's stated use, the component may provide the requester a reasonable opportunity to submit further clarification. A component's decision to place a request in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(ii) Commercial requests will be charged applicable search fees, review, and duplication fees.

(iii) If a component fails to comply with the statutory time limits in which to respond to a commercial request, as provided in 7 CFR 1.6(b), and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), it may not charge search fees for the processing of the request. It may, however, still charge applicable review and duplication fees.

(iv) If a component fails to comply with the statutory time limits in which to respond to a commercial request, as provided in 7 CFR 1.6(b), when unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), and the component notifies the requester, in writing, within the statutory 20-working day time period, that unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, and the component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good faith attempts to do so) how the requester could effectively limit the scope of the request, the component may charge any search fees for the processing of the request, as well as any applicable review and duplication fees. Otherwise, it may only charge applicable review and duplication fees.

(2) *Educational institution requesters.*

(i) *Educational institution requesters* are requesters who are affiliated with a school that operates a program of scholarly research, such as a preschool, a public or private elementary or secondary school, an institution of undergraduate education, an institution of graduate higher education, an institution of professional education, or an institution of vocational education. To be in this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research. Records sought by students at an educational institution for use in fulfilling their degree requirements may qualify if the requester articulates a clear relationship to his or her coursework. Students must document how the records they are requesting will further the scholarly research aims of the institution in question.

(ii) Educational institution requesters are entitled to receive 100 pages of duplication without charge. Following the exhaustion of this entitlement, they will be charged fees for the duplicating of any additional pages of responsive records released. They may not be charged search or review fees.

(iii) If a component fails to comply with the statutory time limits in which to respond to an educational use request, as provided in 7 CFR 1.6(b), and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), it may not charge duplication fees for the processing of the request.

(iv) If a component fails to comply with the statutory time limits in which to respond to an educational use request, as provided in 7 CFR 1.6(b), when unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), and the component notifies the requester, in writing, within the statutory 20-working day time period, that unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, and the component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request, the component may charge duplication for the processing of the request. Otherwise, it may not charge duplication fees.

(3) *Noncommercial scientific institution requesters.*

(i) *Noncommercial scientific institution requesters* are requesters who are affiliated with an institution that is not operated on a ''commercial'' basis, as that term is defined in paragraph (b)(1)(i) of this section, and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scientific research.

(ii) Noncommercial scientific institution requesters are entitled to receive 100 pages of duplication without charge. Following the exhaustion of this entitlement, they will be charged fees for the duplicating of any additional pages of responsive records released. They may not be charged search or review fees.

(iii) If a component fails to comply with the statutory time limits in which to respond to a noncommercial scientific institution request, as provided in 7 CFR 1.6(b), and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), it may not charge duplication fees for the processing of the request.

(iv) If a component fails to comply with the statutory time limits in which to respond to a noncommercial scientific institution request, as provided in 7 CFR 1.6(b), when unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), and the component notifies the requester, in writing, within the statutory 20-working day time period, that unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, and the component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request, the component may charge duplication for the processing of the request. Otherwise, it may not charge duplication fees.

(4) *Representatives of the news media.*

(i) *Representative of the news media* is any person or entity that actively gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include, but are not limited to, television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances where they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public, including news organizations that disseminate solely on the internet. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization. A publication contract would be the clearest proof, but components will also look to the past publication record of a requester in making this determination. To be in this category, a requester must not be seeking the requested records for a commercial use. However, a request for records supporting the news-dissemination function of the requester will not be considered of commercial use.

(ii) Representatives of the news media are entitled to receive 100 pages of duplication without charge. Following the exhaustion of this entitlement, they will be charged fees for the duplication of any additional pages of responsive records released. They may not be charged search or review fees.

(iii) If a component fails to comply with the statutory time limits in which to respond to a news-media use request, as provided in 7 CFR 1.6(b), and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), it may not charge duplication fees for the processing of the request.

(iv) If a component fails to comply with the statutory time limits in which to respond to a news-media request, as provided in 7 CFR 1.6(b), when unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), and the component notifies the requester, in writing, within the statutory 20-working day time period, that unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, and the component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request, the component may charge duplication for the processing of the request. Otherwise, it may not charge duplication fees.

(5) *All other requesters.*

(i) *All other requesters* are individuals and entities who do not fall into any of the four categories described in Section 2(b) paragraphs (1), (2), (3) and (4) of this appendix. Requesters seeking information for personal use, public interest groups, and nonprofit organizations are examples of requesters who might fall into this group.

(ii) All other requesters are entitled to receive 100 pages of duplication without charge. Following the exhaustion of this entitlement, they will be charged fees for the duplicating of any additional pages of responsive records released. All other requesters are also entitled to receive 2 hours of search time without charge. Following the exhaustion of this entitlement, they may be charged search fees for any remaining search time required to locate the records requested. They may not be charged review fees.

(iii) If a component fails to comply with the statutory time limits in which to respond to an all-other request, as provided in 7 CFR 1.6(b), and if no unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), it may not charge search fees for the processing of the request.

(iv) If a component fails to comply with the statutory time limits in which to respond to an all-other request, as provided in 7 CFR 1.6(b), when unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, as discussed in 7 CFR 1.6(d), and the component notifies the requester, in writing,

within the statutory 20-working day time period, that unusual or exceptional circumstances, as those terms are defined by the FOIA, apply to the processing of the request, more than 5,000 pages are necessary to respond to the request, and the component has discussed with the requester by means of written mail, electronic mail, or by telephone (or has made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request, the component may charge search fees for the processing of the request as well as any applicable duplication fees. Otherwise, it may only charge applicable duplication fees.

Section 3. Charging fees.

(a) *In general.* When responding to FOIA requests, components will charge all applicable FOIA fees that exceed the USDA charging threshold, as provided in paragraph (b) of this section, unless a waiver or reduction of fees has been granted under 7 CFR 1.12(p), or statutory time limits on processing are not met, and when unusual or exceptional circumstances apply, components do not meet all of the three conditions for charging as set forth in 7 CFR 1.12(o).

(b) *USDA fee charging threshold.* The OMB Fee Guidelines state that agencies will not charge FOIA fees if the cost of collecting the fee would be equal to or greater than the fee itself. This limitation applies to all requests, including those seeking records for commercial use. At the USDA, the cost of collecting a FOIA fee is currently established as $25.00. Therefore, when calculating FOIA fees, components will charge requesters all applicable FOIA fees when these fees equal or exceed $25.01.

(c) *Charging interest.* Components may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(d) *NARA retrieval fees.* For requests that require the retrieval of records stored by a component at a Federal records center operated by the National Archives and Records Administration (''NARA''), additional costs will be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(e) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires a component to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component will inform the requester of the contact information for that program.

(f) *Social Security Numbers and Tax Identification Numbers.* Components may not require requesters to provide Social Security Numbers or Tax Identification Numbers in order to pay FOIA fees due.

TABLE 1 TO APPENDIX A TO SUBPART A—FOIA FEE SCHEDULE

Type of request	Type of charge	Price
Commercial Requesters.	Duplication charges.	$0.05 per page. When the component has to copy fragile records, the charge is $0.05 per page plus the copying time involved, which includes the actual hourly salary rate of the employee involved, plus 16% of the hourly salary rate.
	Search charges	Actual hourly salary rate of employee involved, plus 16% of the hourly salary rate.
	Review charges	Actual hourly salary rate of employee involved, plus 16% of the hourly salary rate.
Educational or Non-Commercial Scientific Requesters.	Duplication charges.	No charge for first 100 pages, then $0.05 per page. When the component has to copy fragile records, the charge is $0.05 per page plus the copying time involved, which includes the actual hourly salary rate of the employee involved, plus 16% of the hourly salary rate.
	Search charges	Free.
	Review charges	Free.
Representatives of the News Media.	Duplication charges.	No charge for first 100 pages, then $0.05 per page When the component has to copy fragile records, the charge is $0.05 per page plus the copying time involved, which includes the actual hourly salary rate of the employee involved, plus 16% of the hourly salary rate.
	Search charges	Free.
	Review charges	Free.

TABLE 1 TO APPENDIX A TO SUBPART A—FOIA FEE SCHEDULE—Continued

Type of request	Type of charge	Price
All Other Requesters.	Duplication charges.	No charge for first 100 pages, then $0.05 per page. When the component has to copy fragile records, the charge is $0.05 per page plus the copying time involved, which includes the actual hourly salary rate of the employee involved, plus 16% of the hourly salary rate.
	Search charges	No charge for first two (2) hours of search time, then actual hourly salary rate of employee involved, plus 16% of the hourly salary rate.
	Review charges	Free.

Subpart B—Departmental Proceedings

§ 1.26 Representation before the Department of Agriculture.

(a) *Applicability*. This section applies to all hearings and other proceedings before the Department of Agriculture, except to the extent that any other regulation of the Department may specifically make this section, or any part of this section, inapplicable as to particular hearings or other proceedings.

(b) *Administrative provisions*. (1) In any hearing or other proceeding before the Department of Agriculture, the parties may appear in person or by counsel or other representative. Persons who appear as counsel or in a representative capacity in any hearing or proceeding must conform to the standards of ethical conduct required of practitioners before the U.S. District Court for the District of Columbia, and to any applicable standards of ethical conduct established by statutes, executive orders and regulations.

(2) Whenever the Secretary finds, after notice and opportunity for hearing, that a person who is acting or has acted as counsel or representative in any hearing or other proceeding before the Department has not conformed to any such standards of ethical conduct, the Secretary may order that such person be precluded from acting as counsel or representative in any hearing or other proceeding before the Department for such period of time as the Secretary deems warranted. Whenever the Secretary has probable cause to believe that any person who is acting or has acted as counsel or representative in any such hearing or other proceeding has not conformed to any such standards of ethical conduct, the Secretary may, by written notice to such person, suspend the person from acting as such a counsel or representative pending completion of the procedures specified in the preceding sentence.

(3) No employee or former employee of the Department shall be permitted to represent any person before the Department in connection with any particular matter as to which by reason of employment with the Department the employee or former employee acquired personal knowledge of such a nature that it would be improper, unethical, or contrary to the public interest for the employee or former employee so to act.

(4) This section shall not be construed to prevent an employee or former employee of the Department from appearing as a witness in any hearing or other proceeding before the Department.

(18 U.S.C. 203, 205, 207)

[32 FR 5458, Apr. 1, 1967, as amended at 60 FR 66480, Dec. 22, 1995]

§ 1.27 Rulemaking and other notice procedures.

(a) This section shall apply to:

(1) Notices of proposed rulemaking;

(2) Interim final rules;

(3) Advance notices of proposed rulemaking; and

(4) Any other published notice that solicits, or affords interested members of the public an opportunity to submit, written views with respect to any proposed action relating to any program administered in the Department regardless of the fact that the issuance of a rule may not be contemplated.

(b) Each notice identified in paragraph (a) of this section shall indicate the procedure to be followed with respect to the notice, unless the procedure is prescribed by statute or by published rule of the Department. Each notice shall contain a statement that advises the public of the policy regarding the availability of written submissions by indicating whether paragraph (c), (d), or (e) of this section is applicable to written submissions made pursuant to the notice.

(c) All written submissions made pursuant to the notice shall be made available for public inspection at times and places and in a manner convenient to the public business.

(d)(1) Any written submission, pursuant to a notice, may be held confidential if the person making the submission requests that the submission be held confidential, the person making the submission has shown that the written submission may be withheld under the Freedom of Information Act, and the Department official authorized to issue the notice determines that the submission may be withheld under the Freedom of Information Act.

(2) If a request is made in accordance with paragraph (d)(1) of this section for confidential treatment of a written submission, the person making the request shall be informed promptly in the event the request is denied and afforded an opportunity to withdraw the submission.

(3) If a determination is made to grant a request for confidential treatment under paragraph (d)(1) of this section, a statement of the specific basis for the determination that will not be susceptible of identifying the person making the request will be made available for public inspection.

(e) If the subject of the notice is such that meaningful submissions cannot be expected unless they disclose information that may be withheld under the Freedom of Information Act, the notice shall so indicate and contain a statement that written submissions pursuant to the notice will be treated as confidential and withheld under the Freedom of Information Act. *Provided,* That the policy regarding availability of written submissions set forth in this paragraph may only be used with the prior approval of the Secretary, or the Under Secretary or Assistant Secretary that administers the program that is the subject of the notice.

[60 FR 66480, Dec. 22, 1995]

§ 1.28 Petitions.

Petitions by interested persons in accordance with 5 U.S.C. 553(e) for the issuance, amendment or repeal of a rule may be filed with the official that issued or is authorized to issue the rule. All such petitions will be given prompt consideration and petitioners will be notified promptly of the disposition made of their petitions.

[11 FR 177A, Sept. 11, 1946. Redesignated at 13 FR 6703, Nov. 16, 1948, as amended at 60 FR 66481, Dec. 22, 1995]

§ 1.29 Subpoenas relating to investigations under statutes administered by the Secretary of Agriculture.

(a) *Issuance of subpoena.* (1) When the Secretary is authorized by statute to issue a subpoena in connection with an investigation being conducted by the Department, the attendance of a witness and the production of evidence relating to the investigation may be required by subpoena at any designated place, including the witness' place of business. Upon request of any representative of the Secretary involved in connection with the investigation, the subpoena may be issued by the Secretary, the Inspector General, or any Department official authorized pursuant to part 2 of this title to administer the program to which the subpoena relates, if the official who is to issue the subpoena is satisfied as to the reasonableness of the grounds, necessity, and scope of the subpoena. Except as provided in paragraph (a)(2) of this section, the authority to issue subpoenas may not be delegated or redelegated by the head of an agency.

(2) The Administrator, Grain Inspection, Packers and Stockyards Administration, may delegate the authority to issue subpoenas in connection with investigations being conducted under the Packers and Stockyards Act (7 U.S.C. 181–229), to the Deputy Administrator, Packers and Stockyards Programs.

(3) In the case of a subpoena issued under the Animal Health Protection

Act (7 U.S.C. 8301–8317), Plant Protection Act (7 U.S.C. 7701–7772), or Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e–2279f), the subpoena will be reviewed for legal sufficiency by the Office of the General Counsel, USDA.

(b) *Service of subpoena.* (1) A subpoena issued pursuant to this section may be served by:

(i) A U.S. Marshal or Deputy Marshal,

(ii) Any other person who is not less than 18 years of age, or

(iii) Certified or registered mailing of a copy of the subpoena addressed to the person to be served at his, her, or its last known residence or principal place of business or residence.

(2) Proof of service may be made by the return of service on the subpoena by the U.S. Marshal, or Deputy Marshal; or, if served by an individual other than a U.S. Marshal or Deputy Marshal, by an affidavit or certification of such person stating that he or she personally served a copy of the subpoena upon the person named in the subpoena; or, if service was by certified or registered mail, by the signed Postal Service receipt.

(3) In making personal service, the person making service shall leave a copy of the subpoena with the person subpoenaed; and the original, bearing or accompanied by the required proof of service, shall be returned to the official who issued the subpoena.

[39 FR 15277, May 2, 1974, as amended at 40 FR 58281, Dec. 16, 1975; 42 FR 65131, Dec. 30, 1977; 43 FR 12673, Mar. 27, 1978; 60 FR 66481, Dec. 22, 1995; 66 FR 36907, July 16, 2001; 67 FR 70674, Nov. 26, 2002]

Subpart C—Judicial Proceedings

§ 1.41 Service of process.

Process in any suit brought in Washington, District of Columbia, against the United States or any officer of the U.S. Department of Agriculture in any matter involving the activities of this Department, shall be served on the General Counsel of the Department. A U.S. Marshal or other process server attempting to serve process in such a suit on any officer of the Department shall be referred to the Office of the General Counsel, in order that service of process may be made. In the event an officer of the Department of Agriculture is served with process in such a suit, the officer shall immediately notify the General Counsel. Any subpoena, summons, or other compulsory process requiring an officer or employee to give testimony, or to produce or disclose any record or material of the U.S. Department of Agriculture, shall be served on the officer or employee of the U.S. Department of Agriculture named in the subpoena, summons, or other compulsory process.

[19 FR 4052, July 3, 1954, as amended at 33 FR 10273, July 18, 1968; 43 FR 6202, Feb. 14, 1978; 60 FR 66481, Dec. 22, 1995]

Subpart D—Claims

§ 1.51 Claims based on negligence, wrongful act or omission.

(a) *Authority of the Department.* Under the provisions of the Federal Tort Claims Act (FTCA), as amended, 28 U.S.C. 2671–2680, and the regulations issued by the Department of Justice (DOJ) contained in 28 CFR part 14, the United States Department of Agriculture (USDA) may, subject to the provisions of the FTCA and DOJ regulations, consider, ascertain, adjust, determine, compromise, and settle claims for money damages against the United States for personal injury, death, or property loss or damage caused by the negligent or wrongful act or omission of any employee of USDA while acting within the scope of his or her office or employment, under circumstances where the United States, if it were a private person, would be liable, in accordance with the law of the place where the act or omission occurred.

(b) *Procedure for filing claims.* Claims must be presented by the claimant, or by his or her duly authorized agent or legal representative as specified in 28 CFR 14.3. Standard Form 95, Claim for Damage or Injury, may be obtained from the agency within USDA that employs the employee who allegedly committed the negligent or wrongful act or omission. The completed claim form, together with appropriate evidence and information, as specified in 28 CFR 14.4, shall be filed with the agency from which it was obtained.

(c) *Determination of claims*—(1) *Delegation of authority to determine claims.* The General Counsel, and such employees of the Office of the General Counsel as may be designated by the General Counsel, are hereby authorized to consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the FTCA, as amended, and the regulations contained in 28 CFR part 14 and in this section.

(2) *Disallowance of claims.* If a claim is denied, the General Counsel, or his or her designee, shall notify the claimant, or his or her duly authorized agent or legal representative.

[61 FR 57577, Nov. 7, 1996]

Subpart E—Cooperative Production of Television Films

SOURCE: 22 FR 2904, Apr. 25, 1957, unless otherwise noted.

§ 1.71 Purpose.

This subpart establishes procedures for developing special working relationships with the Department of Agriculture requested by producers of films for television use. These procedures are designed to guide Department employees and producers of commercial television pictures in entering into such arrangements.

§ 1.72 Policy.

(a) *General.* It is a basic policy of the Department of Agriculture to make information freely available to the public.

(b) *Cooperation with television film producers.* The Department recognizes that its people and programs constitute a rich source of materials on public services, often dramatic and interesting for their human values, which are suitable for production of films for television showings. The Department welcomes the interest of television film producers in its activities and maintains an ''open door'' policy with respect to the availability of factual information to such producers, as it does to representatives of other media. As its resources will permit, the Department will work with producers at their request, to assure technical accuracy of scripts and story treatments.

(c) *Special working relationships.* In those instances where a producer of films for television seeks special Department participation such as the use of official insignia of the Department, or who request special assistance such as the services of technical advisors, use of Government equipment and similar aids which require a material expenditure of public funds, and where the proposed film will further the public service of the Department, the Department will consider entering into a special working relationship with such producer.

(d) *News film reporting exempted.* Television and news film reporting of Department activities is not covered by this subpart.

§ 1.73 Responsibility.

The Director of Information or his designee will be the authority for the approval of special working relationships on the part of the Department of Agriculture and its agencies. The Director or his designee shall not commit the Department to such special arrangements without proper concurrence and coordination with interested agencies and approval by the appropriate Assistant Secretary or Group Director.

§ 1.74 Basis for special working relationships.

The Department and its agencies may lend special assistance on television films when it is clearly evident that public interests are served. Where special assistance is sought, an individual cooperative agreement will be drawn up between the Department with the Director of Information as its agent, and the producer. Details on such assistance as reviewing stories and scripts, loan of material, arrangements for locations, use of official motion picture footage, assignment of technical advisors and similar aids will be covered in the agreement, which shall delineate the general stipulations listed in §1.75.

§ 1.75 General stipulations.

In requesting special working arrangements the producer must agree to the following stipulations:

(a) The producer must show that he has legal authority to the literary property concerned.

(b) The producer must show access to a distribution channel recognized by the motion picture or television industry. In lieu of complete distribution plans for a television series, a producer must produce satisfactory evidence of financial responsibility (showing financial resources adequate for the defrayment of costs for the proposed undertaking).

(c) The commercial advertising of any show produced, using oral or written rights granted to the producer, shall not indicate any endorsement, either direct or implied, by the U.S. Department of Agriculture or its agencies, of the sponsor's product.

(d) Commercial sponsorship shall be only by a person, firm, or corporation acceptable under the terms of the 1954 Television Code of the National Association of Radio and Television Broadcasters, and all subsequent amendments thereto. Political sponsorship shall not be permitted.

(e) That no production costs shall be chargeable to the U.S. Department of Agriculture.

(f) That such cooperation will not interfere with the conduct of Department programs.

(g) All damages, losses and personal liability incurred by producer will be his responsibility.

(h) That mutual understanding and agreement will be reached upon story, script and film treatment with the Department before film production is begun.

§ 1.76 Department cooperation.

When the producer agrees to meet the above stipulations to the satisfaction of the Director of Information, the U.S. Department of Agriculture and its agencies will be available for consultation on story ideas and give guidance through the services of a technical advisor to insure technical authenticity. Equipment, locations, and personnel will be available to the extent that such availability is concurrent with normal and usual conduct of the operations of the Department. The Department will check and work with the cooperators to arrange shooting schedules in order to avoid interferences with working schedules.

§ 1.77 Assignment of priorities.

(a) *Authority.* (1) The Director of Information or his designee will make assignment of priorities for the U.S. Department of Agriculture for a television film company's and/or individual producer's story treatment of the subject matter, but no such priority shall limit use of the subject matter itself.

(2) A priority will be given in writing upon acceptance in writing by the producer of the stipulations in §1.75(b). The U.S. Department of Agriculture will hold the producer's treatment of the story material in confidence until the producer has made a public release pertaining to the subject.

(b) *Time and scope.* A priority will be given on the producer's story treatment for an agreed upon period of time. Requests for cooperation with similar or conflicting ideas and backgrounds will be considered only after holder of the first priority has used the agreed upon time to develop the materials.

(1) Details on priorities will be written into the agreements.

(2) The Director of Information will retain the right to cancel priorities when the producer at any stage violates the provisions of the regulations or of a particular agreement, or when public interest is no longer served.

(3) No priority will be canceled until the producer has had an opportunity to appear before the Secretary of Agriculture or his designee.

§ 1.78 Development of special working relationships.

(a) *Preliminary.* Prior to the submittal of a script or the rendering of an agreement, assistance may be given by the Department or one of its agencies in outlining story plans, visits to field points, and other incidentals that will assist the producer in determining his course of action.

(b) *Request for special working arrangements.* Once the decision is made to go ahead with an agreement, either the interested agency or the producer will make a written submission to the Director of Information, requesting that special working arrangements be established.

(1) In submitting scripts prior or subsequent to executing a written agreement under a special working relationship four (4) copies of the completed script shall be submitted to the Director of Information or his designee, along with a statement of specific requirements and the anticipated production schedule.

(2) No script will be used under a special working relationship without the specific approval of the Director of Information.

(3) Upon approval of the script, the agency of the Department concerned with subject matter will endeavor to arrange for the desired assistance with the stipulations of this policy.

§ 1.79 Credits.

On films on which the Department or one of its agencies provides special assistance it shall be mutually agreed by the producer and the Director of Information what credits shall be given to the Department, and the form these credits will take.

Subpart G—Privacy Act Regulations

AUTHORITY: 5 U.S.C. 301 and 552a; 31 U.S.C. 9701.

SOURCE: 40 FR 39519, Aug. 28, 1975, unless otherwise noted.

§ 1.110 Purpose and scope.

This subpart contains the regulations of the U.S. Department of Agriculture (USDA) implementing the Privacy Act of 1974 (5 U.S.C. 552a). This subpart sets forth the basic responsibilities of each agency of USDA with regard to USDA's compliance with the requirements of the Privacy Act, and offers guidance to members of the public who wish to exercise any of the rights established by the Privacy Act with regard to records maintained by an agency of USDA.

[40 FR 39519, Aug. 28, 1975, as amended at 62 FR 33981, June 24, 1997]

§ 1.111 Definitions.

For purposes of this subpart the terms *individual*, *maintain*, *record*, *system of records*, *statistical record*, and *routine use* shall have the meanings set forth in 5 U.S.C. 552a(a). The term *agency* shall mean an agency of USDA, unless otherwise indicated.

§ 1.112 Procedures for requests pertaining to individual records in a record system.

(a) Any individual who wishes to be notified if a system of records maintained by an agency contains any record pertaining to him or her, or to request access to such records, shall submit a written request in accordance with the instructions set forth in the system notice for that system of records. This request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records (as set forth in the system notice to which the request relates);

(3) Any other information specified in the system notice; and

(4) When the request is one for access, a statement as to whether the requester desires to make a personal inspection of the records, or be supplied with copies by mail.

(b) Any individual whose request under paragraph (a) of this section is denied may appeal that denial to the head of the agency which maintains the system of records to which the request relates.

(c) In the event that an appeal under paragraph (b) of this section is denied, the requester may bring a civil action in federal district court to seek review of the denial.

[40 FR 39519, Aug. 28, 1975, as amended at 62 FR 33981, June 24, 1997]

§ 1.113 Times, places, and requirements for identification of individuals making requests.

(a) If an individual submitting a request for access under § 1.112 has asked that an agency authorize a personal inspection of records pertaining to him or her, and the agency has granted that request, the requester shall present himself or herself at the time and place specified in the agency's response or arrange another, mutually convenient, time with the appropriate agency official.

(b) Prior to inspection of the records, the requester shall present sufficient identification (e.g., driver's license,

employee identification card, social security card, credit cards) to establish that the requester is the individual to whom the records pertain. If the requester is unable to provide such identification, the requester shall complete and sign in the presence of an agency official a signed statement asserting the requester's identity and stipulating that the requester understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor punishable by fine up to $5,000. No identification shall be required, however, if the records are required by 5 U.S.C. 552 to be released.

(c) Any individual who has requested access to records about himself or herself by personal inspection, and who wishes to have another person or persons accompany the requester during this inspection, shall submit a written statement authorizing disclosure of the record in the presence of such other person or persons.

(d) Any individual having made a personal inspection of records pertaining to the requester may request the agency to provide the requester copies of those records or any portion of those records. Each agency shall grant such requests but may charge fees in accordance with §1.120.

(e) If an individual submitting a request for access under §1.112 wishes to be supplied with copies of the records by mail, the requester shall include with his or her request sufficient data for the agency to verify the requester's identity. If the sensitivity of the records warrant it, however, the agency to which the request is directed may require the requester to submit a signed, notarized statement indicating that the requester is the individual to whom the records pertain and stipulating the requester understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is a misdemeanor punishable by fine up to $5,000. No identification shall be required, however, if the records are required by 5 U.S.C. 552 to be released. If the agency to which this request is directed determines to grant the requested access, it may charge fees in accordance with §1.120 before making the necessary copies.

[40 FR 39519, Aug. 28, 1975, as amended at 62 FR 33981, June 24, 1997]

§1.114 Disclosure of requested information to individuals.

(a) Any agency which receives a request or appeal under §1.112 should acknowledge the request or appeal within 10 days of its receipt (excluding Saturdays, Sundays, and legal public holidays). Wherever practicable, the acknowledgment should indicate whether or not access will be granted and, if so, when and where. When access is to be granted, the agency should provide the access within 30 days of receipt of the request or appeal (excluding Saturdays, Sundays and legal public holidays) unless, for good cause shown, it is unable to do so. If the agency is unable to meet this deadline, it shall inform the requester of this fact, the reasons for its inability to do so, and an estimate of the date on which access will be granted.

(b) Nothing in 5 U.S.C. 552a or this subpart shall be interpreted to require that an individual making a request under §1.112 be granted access to the physical record itself. The form in which a record is kept (e.g., on magnetic tape), or the content of the record (e.g., a record indexed under the name of the requester may contain records which are not about the requester) may require that the record be edited or translated in some manner. Neither of these procedures may be utilized, however, to withhold information in a record about the requester.

(c) No agency shall deny any request under §1.112 for information concerning the existence of records about the requester in any system of records it maintains, or deny any request for access to records about the requester in any system of records it maintains, unless that system is exempted from the requirements of 5 U.S.C. 552a(d) in §1.123.

(d) If any agency receives a request pursuant to §1.112(a) for access to records in a system of records it maintains which is so exempted, the system manager shall determine if the exemption is to be asserted. If the system

manager determines to deny the request, the system manager shall inform the requester of that determination, the reason for the determination, and the title and address of the agency head to whom the denial can be appealed.

(e) If the head of an agency determines that an appeal pursuant to §1.112(b) is to be denied, the head of the agency shall inform the requester of that determination, the reason for the determination, and the requester's right under 5 U.S.C. 552a(g) to seek judicial review of the denial in Federal district court.

(f) Nothing in 5 U.S.C. 552a or this subpart shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding.

[40 FR 39519, Aug. 28, 1975, as amended at 62 FR 33981, June 24, 1997]

§ 1.115 Special procedures: Medical records.

In the event an agency receives a request pursuant to §1.112 for access to medical records (including psychological records) whose disclosure it determines would be harmful to the individual to whom they relate, it may refuse to disclose the records directly to the requester but shall transmit them to a doctor designated by that individual.

§ 1.116 Request for correction or amendment to record.

(a) Any individual who wishes to request correction or amendment of any record pertaining to him or her contained in a system of records maintained by an agency shall submit that request in writing in accordance with the instructions set forth in the system notice for that system of records. This request shall include:

(1) The name of the individual making the request;

(2) The name of the system of records (as set forth in the system notice to which the request relates);

(3) A description of the nature (e.g., modification, addition or deletion) and substance of the correction or amendment requested; and

(4) Any other information specified in the system notice.

(b) Any individual submitting a request pursuant to paragraph (a) of this section shall include sufficient information in support of that request to allow the agency to which it is addressed to apply the standards set forth in 5 U.S.C. 552a(e) (1) and (5).

(c) Any individual whose request under paragraph (a) of this section is denied may appeal that denial to the head of the agency which maintains the system of records to which the request relates.

(d) In the event that an appeal under paragraph (c) of this section is denied, the requester may bring a civil action in federal district court to seek review of the denial.

[40 FR 39519, Aug. 28, 1975, as amended at 62 FR 33981, June 24, 1997]

§ 1.117 Agency review of request for correction or amendment of record.

(a) Any agency which receives a request for amendment or correction under §1.116 shall acknowledge that request within 10 days of its receipt (excluding Saturdays, Sundays and legal public holidays). The agency shall also promptly, either:

(1) Make any correction, deletion or addition with regard to any portion of a record which the requester believes is not accurate, relevant, timely or complete; or

(2) Inform the requester of its refusal to amend the record in accordance with the request; the reason for the refusal; the procedures whereby the requester can appeal the refusal to the head of the agency; and the title and business address of that official. If the agency informs the requester of its determination within the 10-day deadline, a separate acknowledgement is not required.

(b) If an agency is unable to comply with either paragraphs (a)(1) or (2) of this section within 30 days of its receipt of a request for correction or amendment, (excluding Saturdays, Sundays and legal public holidays), it should inform the requester of that fact, the reasons for the inability to comply with paragraphs (a)(1) or (a)(2) of this section within 30 days, and the approximate date on which a determination will be reached.

(c) In conducting its review of a request for correction or amendment,

each agency shall be guided by the requirements of 5 U.S.C. 552a(e)(1) and (5).

(d) If an agency determines to grant all or any portion of a request for correction or amendment, it shall:

(1) Advise the individual of that determination;

(2) Make the requested correction or amendment; and

(3) Inform any person or agency outside USDA to whom the record has been disclosed, if an accounting of that disclosure is maintained in accordance with 5 U.S.C. 552a(c), of the occurrence and substance of the correction or amendments.

(e) If an agency determines not to grant all or any portion of a request for correction or amendment, it shall:

(1) Comply with paragraph (d) of this section with regard to any correction or amendment which is made;

(2) Advise the requester of its determination and the reasons for the determination not to grant all or a portion of the request for a correction or amendment;

(3) Inform the requester that he or she may appeal this determination to the head of the agency which maintains the system of records; and

(4) Describe the procedures for making such an appeal, including the title and business address of the official to whom the appeal is to be addressed.

(f) In the event that an agency receives a notice of correction or amendment to information in a record contained in a system of records which it maintains, it shall comply with paragraphs (d)(2) and (3) of this section in the same manner as if it had made the correction or amendment itself.

[40 FR 39519, Aug. 28, 1975, as amended at 62 FR 33981, June 24, 1997]

§ 1.118 Appeal of initial adverse agency determination on correction or amendment.

(a) Any individual whose request for correction or amendment under § 1.116 is denied, and who wishes to appeal that denial, shall address such appeal to the head of the agency which maintains the system of records to which the request relates, in accordance with the procedures set forth in the agency's initial denial of the request.

(b) The head of each agency shall make a final determination with regard to an appeal submitted under paragraph (a) of this section not later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests a review, unless, for good cause shown, the head of the agency extends this 30-day period and so notifies the requester, together with an estimate of the date on which a final determination will be made. Such extension should be utilized only in exceptional circumstances and should not normally exceed 30 days. The delegation of authority set forth in this paragraph may not be redelegated.

(c) In conducting a review of an appeal submitted under paragraph (a) of this section, the head of an agency shall be guided by the requirements of 5 U.S.C. 552a(e)(1) and (5).

(d) If the head of an agency determines to grant all or any portion of an appeal submitted under paragraph (a) of this section, the head of the agency shall inform the requester and the agency shall comply with the procedures set forth in § 1.117(d)(2) and (d)(3).

(e) If the head of an agency determines in accordance with paragraph (c) of this section not to grant all or any portion of an appeal submitted under paragraph (a) of this section, the head of the agency shall inform the requester:

(1) Of this determination and the reasons for the determination;

(2) Of the requester's right to file a concise statement of the requester's reasons for disagreeing with the agency's decision;

(3) Of the procedures for filing such a statement of disagreement;

(4) That such statements of disagreements will be made available to anyone to whom the record is subsequently disclosed, together with (if the agency deems it appropriate) a brief statement by the agency summarizing its reasons for refusing to amend the record;

(5) That prior recipients of the disputed record will be provided with a copy of the statement of disagreement, together with (if the agency deems it appropriate) a brief statement of the agency's reasons for refusing to amend

the record, to the extent that an accounting of disclosures is maintained under 5 U.S.C. 552a(c); and

(6) Of the requester's right to seek judicial review of the agency's determination in accordance with 5 U.S.C. 552a(g). The agency shall insure that any statements of disagreement submitted by a requester are handled in accordance with paragraphs (e)(4) and (5) of this section.

[40 FR 39519, Aug. 28, 1975, as amended at 62 FR 33981, June 24, 1997]

§ 1.119 Disclosure of record to person other than the individual to whom it pertains.

No agency shall disclose any record which is contained in a system of records it maintains, by any means of communication to any person, or to another agency outside USDA, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless the disclosure is authorized by one or more provisions of 5 U.S.C. 552a(b).

§ 1.120 Fees.

Any agency which provides copies of records pursuant to a request under this subpart may charge fees for the direct costs of producing such copies in accordance with appendix A to subpart A of this part. No agency, however, shall charge any fee for searches necessary to locate records. Nor shall an agency charge any fees for copies or searches, when the requester sought to make a personal inspection but was provided copies instead at the discretion of the agency.

§ 1.121 Penalties.

The criminal penalties which have been established for violations of the Privacy Act of 1974 are set forth in 5 U.S.C. 552a(i). These penalties are applicable to any officer or employee of an agency who commits any of the acts enumerated in 5 U.S.C. 552a(i). These penalties also apply to contractors and employees of such contractors who enter into contracts with an agency of USDA and who are considered to be employees of the agency within the meaning of 5 U.S.C. 552a(m)(1).

[40 FR 39519, Aug. 28, 1975, as amended at 62 FR 33982, June 24, 1997]

§ 1.122 General exemptions.

Pursuant to 5 U.S.C. 552a(j), and for the reasons set forth in 54 FR 11204–11206 (March 17, 1989), the systems of records (or portions of systems of records) maintained by agencies of USDA identified in this section are exempted from the provisions of 5 U.S.C. 552a, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i).

Office of Inspector General

Informant and Undercover Agent Records, USDA/OIG–2.
Investigative Files and Automated Investigative Indices System, USDA/OIG–3.
OIG Hotline Complaint Records, USDA/OIG–4.
Consolidated Assignments, Personnel Tracking, and Administrative Information Network (CAPTAIN), USDA/OIG–5.

[54 FR 39517, Sept. 27, 1989, as amended at 62 FR 33982, June 24, 1997; 62 FR 61209, Nov. 17, 1997]

§ 1.123 Specific exemptions.

Pursuant to 5 U.S.C. 552a(k), the systems of records (or portions thereof) maintained by agencies of USDA identified below are exempted from the provisions of 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H) and (I), and (f). The reasons for exempting each system are set out in the notice for that system published in the FEDERAL REGISTER.

AGRICULTURAL MARKETING SERVICE

AMS Office of Compliance Review Cases, USDA/AMS–11.

AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE

EEO Complaints and Discrimination Investigation Reports, USDA/ASCS–12.
Investigation and Audit Reports, USDA/ASCS–18.
Producer Appeals, USDA/ASCS–21.

ANIMAL AND PLANT HEALTH INSPECTION SERVICE

Investigative and Enforcement Records Regarding Regulatory Activities, USDA/APHIS–1.
Veterinary Services Programs—Records of Accredited Veterinarians, USDA/APHIS–2.

Smuggling Interdiction and Trade Compliance (SITC) National Information Communication Activity System (SNICAS), USDA/APHIS–21.

FARMERS HOME ADMINISTRATION

Credit Report File, USDA/FmHA–3.

FEDERAL CROP INSURANCE CORPORATION

FCIC Compliance Review Cases, USDA/FCIC–2.

FEDERAL GRAIN INSPECTION SERVICE

Investigations Undertaken by the Government Pursuant to the United States Grain Standards Act of 1976, as amended, or the Agricultural Marketing Act of 1946, as amended, USDA/FGIS–2.

FOOD AND NUTRITION SERVICE

Civil Rights Complaints and Investigations, USDA/FNS–1.

Claims Against Food Stamp Recipients, USDA/FNS–3.

Investigations of Fraud, Theft, or Other Unlawful Activities of Individuals Involving Food Stamps, USDA/FNS–5.

FOOD SAFETY AND INSPECTION SERVICE

Meat and Poultry Inspection Program—Slaughter, Processing and Allied Industries Compliance Records System, USDA/FSIS–1.

FOREST SERVICE

Law Enforcement Investigation Records, USDA/FS–33.

OFFICE OF THE GENERAL COUNSEL

Regulatory Division

Cases by the Department under the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the voluntary inspection and certification provisions of the Agricultural Marketing Act of 1946, USDA/OGC–6.

Cases by the Department under the Humane Methods of Livestock Slaughter Law (i.e., the Act of August 27, 1958), USDA/OGC–7.

Cases by the Department under the 28 Hour Law, as amended, USDA/OGC–8.

Cases by the Department under the various Animal Quarantine and related laws, USDA/OGC–9.

Cases by the Department under the various Plant Protection Quarantine and related laws, USDA/OGC–10.

Cases by the Department under Horse Protection Act of 1970, USDA/OGC–41.

Cases by the Department under the Laboratory Animal Welfare Act, USDA/OGC–42.

Community Development Division

Community Development Division Litigation, USDA/OGC–11.

Farmers Home Administration (FmHA) General Case Files, USDA/OGC–12.

Food and Nutrition Division

Claims by and against USDA under the Food Assistance Legislation, USDA/OGC–13.

Perishable Agricultural Commodities, USDA/OGC–14.

Foreign Agriculture and Commodity Stabilization Division

Agricultural Stabilization and Conservation Service (ASCS), Foreign Agricultural Service (FAS), and Commodity Credit Corporation Cases, USDA/OGC–15.

Federal Crop Insurance Corporation (FCIC) Cases, USDA/OGC–16.

Administrative proceedings brought by the Department, court cases in which the government is plaintiff and court cases in which the government is a defendant brought pursuant to the United States Warehouse Act, USDA/OGC–43.

Marketing Division

Administrative proceedings brought by the Department pursuant to the Plant Variety Protection Act, the Federal Seed Act, or the Agricultural Marketing Act of 1946, USDA/OGC–18.

Cases brought by the Government pursuant to the Cotton Futures provisions of the Internal Revenue Code of 1954, USDA/OGC–22.

Court cases brought by the Government pursuant to either the Agricultural Marketing Act of 1946 or the Tobacco Inspection Act, USDA/OGC–24.

Court cases brought by the Government pursuant to either the Agricultural Marketing Agreement Act of 1937, as amended, or the Anti-Hog-Cholera Serum and Hog Cholera Virus Act, USDA/OGC–25.

Court cases brought by the Government pursuant to either the Cotton Research and Promotion Act, Potato Research and Promotion Act, the Egg Research and Consumer Information Act, USDA/OGC–26.

Court cases brought by the Government pursuant to either the Export Apple and Pear Act or the Export Grape and Plum Act, USDA/OGC–27.

Court cases brought by the Government pursuant to either the Cotton Statistics and Estimates Act of 1927 or the United States Cotton Standards Act, USDA/OGC–28.

Court cases brought by the Government pursuant to either the Naval Stores Act, or the Tobacco Seed and Plant Exportation Act, USDA/OGC–29.

Court cases brought by the Government pursuant to either the Peanut Statistics Act or the Tobacco Statistics Act, USDA/OGC–30.

Court cases brought by the Government pursuant to either the Plant Variety Protection Act or the Egg Products Inspection Act, USDA/OGC–31.
Court cases brought by the Government pursuant to either the Produce Agency Act, or the Process of Renovated Butter Provisions of the Internal Revenue Code of 1954, USDA/OGC–32.
Court cases brought by the Government pursuant to either the United States Grain Standards Act or the Federal Seed Act, USDA/OGC–33.
Court cases brought by the Government pursuant to the Agricultural Fair Practices Act, USDA/OGC–34.
Cases by and against the Department under the Virus-Serum Toxin Act, USDA/OGC–44.

Office of Inspector General

Informant and Undercover Agent Records, USDA/OIG–2.
Investigative Files and Automated Investigative Indices System, USDA/OIG–3.
OIG Hotline Complaint Records, USDA/OIG–4.
Consolidated Assignments, Personnel Tracking, and Administrative Information Network (CAPTAIN), USDA/OIG–5.

Packers and Stockyards Division

Packers and Stockyards Act, Administrative Cases, USDA/OGC–69.
Packers and Stockyards Act, Civil and Criminal Cases, USDA/OGC–70.

Research and Operations Division

Personnel Irregularities, USDA/OGC–75.

Office of the Secretary

Non-Career Applicant File, USDA/SEC–1.

[40 FR 45103, Sept. 30, 1975, as amended at 41 FR 22333, June 3, 1976; 53 FR 5969, Feb. 29, 1988; 54 FR 5073, Feb. 1, 1989; 55 FR 41179, Oct. 10, 1990; 62 FR 61209, Nov. 17, 1997; 90 FR 1848, Jan. 10, 2025]

APPENDIX A TO SUBPART G OF PART 1—INTERNAL DIRECTIVES

SECTION 1. *General requirements.* Each agency that maintains a system of records subject to 5 U.S.C. 552a and the regulations of this subpart shall:

(a) Maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;

(b) Collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs;

(c) Inform each individual whom it asks to supply information, on the form which it uses to collect the information, or on a separate form that can be retained by the individual, of:

(1) The authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(2) The principal purpose or purposes for which the information is intended to be used;

(3) The routine uses which may be made of the information, as published pursuant to paragraph (d)(4) of this section; and

(4) The effects on the individual, if any, of not providing all or any part of the requested information;

(d) Subject to the provisions of section 2 of this appendix, prepare for publication in the FEDERAL REGISTER at least annually a notice of the existence and character of each system it maintains, which notice shall include:

(1) The name and location(s) of the system;

(2) The categories of individuals on whom records are maintained in the system;

(3) The categories of records maintained in the system;

(4) Each routine use of the records contained in the system, including the categories of uses and the purpose of such use;

(5) The policies and practices of the agency regarding storage, retrievability, access controls, retention, and disposal of the records;

(6) The title and business address of the agency official who is responsible for the system of records;

(7) The agency procedures whereby an individual can be notified at his or her request if the system of records contains a record pertaining to the individual;

(8) The agency procedures whereby an individual can be notified at his or her request how the individual can gain access to any record pertaining to him or her contained in the system of records, and how he can contest its content; and

(9) The categories of sources of records in the system;

(e) Maintain all records which are used by the agency in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination;

(f) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to 5 U.S.C. 552a(b)(2), make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes;

(g) Maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained, or unless

pertinent to and within the scope of an authorized law enforcement activity;

(h) Make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record;

(i) Establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance;

(j) Establish appropriate administrative, technical, and physical safeguards to insure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

SEC. 2. *Amendment of routine uses for an existing system of records, or establishment of a new system of records.*

(a) Any agency which intends to add a routine use, or amend an existing one, in a system of records it maintains, shall, in accordance with 5 U.S.C. 552a(e)(11), ensure that at least 30 days advance notice of such action is given by publication in the FEDERAL REGISTER and an opportunity provided for interested persons to submit written data, views or arguments to the agency.

(b) Any agency which intends to establish a new system of records, or to alter any existing system of records, shall insure that adequate advance notice is provided to Congress and the Office of Management and Budget to permit an evaluation of the probable or potential effect of such action on the privacy and other personal or property rights of individuals or the disclosure of information relating to such individuals, and its effect on the preservation of the constitutional principles of federalism and separation of powers. Such notice is required for any new system of records and for any alteration in an existing one which will:

(1) Increase the number or types of individuals on whom records are maintained;

(2) Expand the type or amount of information maintained;

(3) Increase the number or categories of agencies or other persons who may have access to those records;

(4) Alter the manner in which the records are organized so as to change the nature or scope of those records (e.g., the combining of two or more existing systems);

(5) Modify the way the system operates at its location(s) in such a manner as to alter the procedures by which individuals can exercise their rights under this subpart; or

(6) Change the equipment configuration on which the system is operated so as to create the potential for greater access (e.g., adding a telecommunications capability).

SEC. 3. *Accounting of certain disclosures.* Each agency, with respect to each system of records under its control, shall:

(a) Except for disclosures made under 5 U.S.C. 552a(b)(1) and (2), keep an accurate account of:

(1) The date, nature, and purpose of each disclosure of a record to any person or agency outside the Department; and

(2) The name and address of the person or agency to whom the disclosure is made;

(b) Retain the accounting made under paragraph (a) of this section for the longer of a period of five years, after the date of the disclosure for which the accounting is made, or the life of the record disclosed;

(c) Except for disclosures made under 5 U.S.C. 552a(b)(7), make the accounting required under paragraph (a) of this section available to the individual named in the record at his or her request.

SEC. 4. *Government contractors.* When an agency within the Department provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish an agency function, the agency shall, consistent with its authority, cause the requirements of this subpart to be applied to such system. For purposes of 5 U.S.C. 552a(i) any such contractor or any employee of such contractor shall be considered to be an employee of an agency and therefore subject to the criminal penalties set forth in 5 U.S.C. 552a(i).

SEC. 5. *Mailing lists.* No agency within the Department shall sell or rent any individual's name and address unless such action is specifically authorized by law. This section shall not be construed to require, or to authorize, the withholding of names and addresses whose disclosure is required by 5 U.S.C. 552.

SEC. 6. *Social security account numbers.* (a) No agency shall deny, or permit any State or local government with whom it is involved in a cooperative venture to deny, to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security account number.

(b) Paragraph (a) of this section shall not apply with respect to:

(1) Any disclosure required by Federal statute; or

(2) Any disclosure to any agency relating to a system of records it maintained prior to January 1, 1975, if such disclosure was required under statute or regulation adopted prior to that date, to verify the identity of an individual.

(c) Any agency in the Department which requests an individual to disclose his or her social security account number shall inform

that individual whether the disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and what uses will be made of it. The agency shall also insure that this information is provided by a State or local government with whom it is involved in a cooperative agreement.

SEC. 7. *Annual report.* Each agency in the Department shall submit to the Office of the General Counsel prior to March 30 of each year a report containing the following information related to implementation of 5 U.S.C. 552a:

(a) A summary of major accomplishments;

(b) A summary of major plans for activities in the upcoming year;

(c) A list of the systems which were exempted during the year from any of the operative provisions of this subpart pursuant to 5 U.S.C. 552a (j) and (k), whether or not the exemption was effected during that year, the number of instances with respect to each system exempted in which the exemption was invoked to deny access, and the reasons for invoking the exemption;

(d) A brief summary of changes to the total inventory of personal data system subject to this subpart including reasons for major changes; and

(e) A general description of operational experiences including estimates of the number of individuals (in relation to the total number of records in the system):

(1) Requesting information on the existence of records pertaining to them;

(2) Refusing to provide information;

(3) Requesting access to their records;

(4) Appealing initial refusals to amend records; and

(5) Seeking redress through the courts.

SEC. 8. *Effect of 5 U.S.C. 552.* No agency in the Department shall rely on any exemption in 5 U.S.C. 552 to withhold from an individual any record which is otherwise accessible to such individual under 5 U.S.C. 552a and this subpart.

[40 FR 44480, Sept. 26, 1975, as amended at 62 FR 33982, June 24, 1997]

Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes

AUTHORITY: 5 U.S.C. 301; 7 U.S.C 61, 87e, 228, 268, 499o, 608c(14), 1592, 1624(b), 1636b, 1638b, 2151, 2279e, 2621, 2714, 2908, 3812, 4610, 4815, 4910, 6009, 6107, 6207, 6307, 6411, 6519, 6520, 6808, 7107, 7734, 8313; 15 U.S.C. 1828; 16 U.S.C. 534, 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 30 U.S.C. 185(o)(1); 43 U.S.C. 1740; 7 CFR 2.27, 2.35.

SOURCE: 42 FR 743, Jan. 4, 1977, unless otherwise noted.

§ 1.130 Meaning of words.

As used in this subpart, words in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

§ 1.131 Scope and applicability of this subpart.

(a) The rules of practice in this subpart shall be applicable to all adjudicatory proceedings under the statutory provisions listed below as those provisions have been or may be amended from time to time,[1] except that those rules shall not be applicable to reparation proceedings under section 6(c) of the Perishable Agricultural Commodities Act, 1930. Section 1.26 shall be inapplicable to the proceedings covered by this subpart.

Agricultural Bioterrorism Protection Act of 2002, section 212(i) (7 U.S.C. 8401(i)).

Agricultural Marketing Act of 1946, as amended, section 253 (7 U.S.C. 1636b) and section 283 (7 U.S.C. 1638b).

Agricultural Marketing Agreement Act of 1937, as amended, section 8c(14), 7 U.S.C. 608c(14).

Animal Health Protection Act, section 10414 (7 U.S.C. 8313).

Animal Welfare Act, section 19 (7 U.S.C. 2149).

Beef Promotion and Research Act of 1985, section 9 (7 U.S.C. 2908).

Egg Products Inspection Act, section 18 (21 U.S.C. 1047).

Endangered Species Act of 1973, as amended, section 11(a) (16 U.S.C. 1540(a)).

Egg Research and Consumer Information Act, as amended, 7 U.S.C. 2714, Pub. L. 96–276, 94 Stat. 541.

Federal Land Policy and Management Act of 1976, section 506 (43 U.S.C. 1766).

Federal Meat Inspection Act, sections 4, 6, 7(e), 8, and 401 (21 U.S.C. 604, 606, 607(e), 608, 671).

Federal Seed Act, section 409 (7 U.S.C. 1599).

Fluid Milk Promotion Act of 1990, section 1999L [7 U.S.C. 6411].

Forest Resources Conversation and Shortage Relief Act of 1990, section 492 (16 U.S.C. 620d)

[1] See also the regulations promulgated under these statutes for any supplemental rules relating to particular circumstances arising thereunder.

Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act of 1993, section 9 [7 U.S.C. 6808].
Honey Research, Promotion, and Consumer Information Act, section 11 (7 U.S.C. 4610).
Horse Protection Act of 1970, sections 4(c) and 6 (15 U.S.C. 1823(c), 1825).
Lacey Act Amendments of 1981, section 4 (a) and (b) (16 U.S.C. 3373 (a) and (b)).
Lime Research, Promotion, and Consumer Information Act of 1990, as amended, section 1958 [7 U.S.C. 6207]
Mineral Leasing Act, section 28(o)(1) (30 U.S.C. 185(o)(1)).
Mushroom Promotion, Research, and Consumer Information Act of 1990, section 1928 [7 U.S.C. 6107]
National Forest Roads and Trails Act (16 U.S.C. 534).
Organic Foods Production Act of 1990, sections 2119 and 2120 (7 U.S.C. 6519, 6520).
Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, and 401 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 221)
Pecan Promotion and Research Act of 1990, section 1914 [7 U.S.C. 6009]
Perishable Agricultural Commodities Act, 1930, sections 1(b)(9), 3(c), 4(d), 6(c), 8(a), 8(b), 8(c), 8(e), 9, and 13(a) (7 U.S.C. 499a(b)(9), 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499h(e), 499i, 499m(a))
Plant Protection Act, section 424 (7 U.S.C. 7734).
Pork Promotion, Research, and Consumer Information Act of 1985, section 1626 (7 U.S.C. 4815).
Potato Research and Promotion Act, as amended, 7 U.S.C. 2621, Pub. L. 97–244, 96 Stat. 310.
Poultry Products Inspection Act, sections 6, 7, 8(d), and 18 (21 U.S.C. 455, 456, 457(d), 467).
Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7107].
Soybean Promotion, Research, and Consumer Information Act, section 1972 [7 U.S.C. 6307].
Swine Health Protection Act, sections 5 and 6 (7 U.S.C. 3804, 3805).
Title V of the Agricultural Risk Protection Act of 2000, section 501(a) (7 U.S.C. 2279e).
United States Cotton Standards Act, as supplemented, section 3 of the Act and section 2 of 47 Stat. 1621 (7 U.S.C. 51b, 53).
United States Grain Standards Act, sections 7(g)(3), 9, 10, and 17A(d) (7 U.S.C. 79(g)(3), 85, 86, 87f-1(d)).
United States Warehouse Act, sections 12 and 25 (7 U.S.C. 246, 253).
Virus-Serum-Toxin Act (21 U.S.C. 156).
Watermelon Research and Promotion Act, section 1651 (7 U.S.C. 4910).

(b) These rules of practice shall also be applicable to:

(1) Adjudicatory proceedings under the regulations promulgated under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) for the denial or withdrawal of inspection, certification, or grading service; [1]

(2) Adjudicatory proceedings under the regulations promulgated under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) for the suspension or revocation of accreditation of veterinarians (9 CFR parts 160, 161);

(3) Proceedings for debarment of counsel under §1.141(d) of this subpart;

(4) Adjudicatory proceedings under the regulations promulgated under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*) for the denial of an initial license application (9 CFR 2.11) or the termination of a license during the license renewal process or at any other time (9 CFR 2.12);

(5) Adjudicatory proceedings under the regulations promulgated under sections 901–905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note) pertaining to the commercial transportation of equines to slaughtering facilities (9 CFR part 88); and

(6) Other adjudicatory proceedings in which the complaint instituting the proceeding so provides with the concurrence of the Assistant Secretary for Administration.

[42 FR 743, Jan. 4, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §1.131, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 1.132 Definitions.

As used in this subpart, the terms as defined in the statute under which the proceeding is conducted and in the regulations, standards, instructions, or orders issued thereunder, shall apply with equal force and effect. In addition and except as may be provided otherwise in this subpart:

Administrator means the Administrator of the Agency administering the statute involved, or any officer or employee of the Agency to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Administrator.

Complainant means the party instituting the proceeding.

Complaint means the formal complaint, order to show cause, or other document by virtue of which a proceeding is instituted.

Decision means: (1) The Judge's initial decision made in accordance with the provisions of 5 U.S.C. 556 and 557, and includes the Judge's (i) findings and conclusions and the reasons or basis therefor on all material issues of fact, law or discretion, (ii) order, and (iii) rulings on proposed findings, conclusions and orders submitted by the parties; and

(2) The decision and order by the Judicial Officer upon appeal of the Judge's decision.

Hearing means that part of the proceeding which involves the submission of evidence before the Judge for the record in the proceeding.

Hearing Clerk means the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250.

Judge means any Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 and assigned to the proceeding involved.

Judicial Officer means an official of the United States Department of Agriculture delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–450g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. App. (1988)), to perform the function involved (§ 2.35(a) of this chapter), or the Secretary of Agriculture if the authority so delegated is exercised by the Secretary.

Mail means to deposit an item in the United States Mail with postage affixed and addressed as necessary to cause it to be delivered to the address shown by ordinary mail, or by certified or registered mail if specified.

Petitioner means an individual who has filed a petition for review of a determination that the individual is responsibly connected to a licensee within the meaning of 7 U.S.C. 499a(b)(9).

Re-mail means to mail by ordinary mail to an address an item that has been returned after being sent to the same address by certified or registered mail.

Respondent means the party proceeded against.

[42 FR 743, Jan. 4, 1977, as amended at 55 FR 30673, July 27, 1990; 60 FR 8455, Feb. 14, 1995; 61 FR 11503, Mar. 21, 1996; 68 FR 6340, Feb. 7, 2003]

§ 1.133 Institution of proceedings.

(a) *Submission of information concerning apparent violations.* (1) Any interested person desiring to submit information regarding an apparent violation of any provision of a statute listed in § 1.131 or of any regulation, standard, instruction, or order issued pursuant thereto, may file the information with the Administrator of the agency administering the statute involved in accordance with this section and any applicable statutory or regulation provisions. Such information may be made the basis of any appropriate proceeding covered by the rules in this subpart, or any other appropriate proceeding authorized by the particular statute or the regulations promulgated thereunder.

(2) The information may be submitted by telegram, by letter, or by a preliminary statement of facts, setting forth the essential details of the transaction complained of. So far as practicable, the information shall include such of the following items as may be applicable:

(i) The name and address of each person and of the agent, if any, representing such person in the transaction involved;

(ii) Place where the alleged violation occurred;

(iii) Quantity and quality or grade of each kind of product or article involved;

(iv) Date of alleged violation;

(v) Car initial and number, if carlot;

(vi) Shipping and destination points;

(vii) If a sale, the date, sale price, and amount actually received;

(viii) If a consignment, the date, reported proceeds, gross, net;

(ix) Amount of damage claimed, if any;

(x) Statement of other material facts, including terms of contract; and

(xi) So far as practicable, true copies of all available papers relating to the

transaction complained about, including shipping documents, letters, telegrams, invoices, manifests, inspection certificates, accounts of sales and any special contracts or agreements.

(3) Upon receipt of the information and supporting evidence, the Administrator shall cause such investigation to be made as, in the opinion of the Administrator, is justified by the facts. If such investigation discloses that no violation of the Act or of the regulations, standards, instructions, or orders issued pursuant thereto, has occurred, no further action shall be taken and the person submitting the information shall be so informed.

(4) The person submitting the information shall not be a party to any proceeding which may be instituted as a result thereof and such person shall have no legal status in the proceeding, except as a subpoenaed witness or as a deponent in a deposition taken without expense to such person.

(b) *Filing of complaint or petition for review.* (1) If there is reason to believe that a person has violated or is violating any provision of a statute listed in §1.131 or of any regulation, standard, instruction or order issued pursuant thereto, whether based upon information furnished under paragraph (a) of this section or other information, a complaint may be filed with the Hearing Clerk pursuant to these rules.

(2) Any person determined by the Chief, PACA Branch, pursuant to §§47.47–47.49 of this title to have been responsibly connected within the meaning of 7 U.S.C. 499a(b)(9) to a licensee who is subject or potentially subject to license suspension or revocation as the result of an alleged violation of 7 U.S.C. 499b or 499h(b) or as provided in 7 U.S.C. 499g(d) shall be entitled to institute a proceeding under this section and to have determined the facts with respect to such responsibly connected status by filing with the Hearing Clerk a petition for review of such determination.

(3) As provided in 5 U.S.C. 558, in any case, except one of willfulness or one in which public health, interest, or safety otherwise requires, prior to the institution of a formal proceeding which may result in the withdrawal, suspension, or revocation of a ''license'' as that term is defined in 5 U.S.C. 551(8), the Administrator, in an effort to effect an amicable or informal settlement of the matter, shall give written notice to the person involved of the facts or conduct concerned and shall afford such person an opportunity, within a reasonable time fixed by the Administrator, to demonstrate or achieve compliance with the applicable requirements of the statute, or the regulation, standard, instruction or order promulgated thereunder.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8455, Feb. 14, 1995; 61 FR 11503, Mar. 21, 1996; 68 FR 6340, Feb. 7, 2003]

§1.134 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the Hearing Clerk, and thereafter the proceeding shall be referred to by such number.

§1.135 Contents of complaint or petition for review.

(a) *Complaint.* A complaint filed pursuant to §1.133(b) shall state briefly and clearly the nature of the proceeding, the identification of the complainant and the respondent, the legal authority and jurisdiction under which the proceeding is instituted, the allegations of fact and provisions of law which constitute a basis for the proceeding, and the nature of the relief sought.

(b) *Petition for review.* The Petition for Review of responsibly connected status shall describe briefly and clearly the determination sought to be reviewed and shall include a brief statement of the factual and legal matters that the petitioner believes warrant the reversal of the determination.

[42 FR 743, Jan. 4, 1977, as amended at 61 FR 11503, Mar. 21, 1996]

§1.136 Answer.

(a) *Filing and service.* Within 20 days after the service of the complaint (within 10 days in a proceeding under section 4(d) of the Perishable Agricultural Commodities Act, 1930), or such other time as may be specified therein, the respondent shall file with the Hearing Clerk an answer signed by the respondent or the attorney of record in

the proceeding. The attorney may file an appearance of record prior to or simultaneously with the filing of the answer. The answer shall be served upon the complainant, and any other party of record, by the Hearing Clerk. As response to a petition for review of responsibly connected status, the Chief, PACA Branch, shall within ten days after being served by the Hearing Clerk with a petition for review, file with the Hearing Clerk a certified copy of the agency record upon which the Chief, PACA Branch, made the determination that the individual was responsibly connected to a licensee under the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, and such agency record shall become part of the record in the review proceeding.

(b) *Contents.* The answer shall:

(1) Clearly admit, deny, or explain each of the allegations of the Complaint and shall clearly set forth any defense asserted by the respondent; or

(2) State that the respondent admits all the facts alleged in the complaint; or

(3) State that the respondent admits the jurisdictional allegations of the complaint and neither admits nor denies the remaining allegations and consents to the issuance of an order without further procedure.

(c) *Default.* Failure to file an answer within the time provided under paragraph (a) of this section shall be deemed, for purposes of the proceeding, an admission of the allegations in the Complaint, and failure to deny or otherwise respond to an allegation of the Complaint shall be deemed, for purposes of the proceeding, an admission of said allegation, unless the parties have agreed to a consent decision pursuant to §1.138.

[42 FR 743, Jan. 4, 1977, as amended at 61 FR 11504, Mar. 21, 1996; 68 FR 6340, Feb. 7, 2003]

§ 1.137 Amendment of complaint, petition for review, or answer; joinder of related matters.

(a) *Amendment.* At any time prior to the filing of a motion for a hearing, the complaint, petition for review, answer, or response to petition for review may be amended. Thereafter, such an amendment may be made with consent of the parties, or as authorized by the Judge upon a showing of good cause.

(b) *Joinder.* The Judge shall consolidate for hearing with any proceeding alleging a violation of the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, any petitions for review of determination of status by the Chief, PACA Branch, that individuals are responsibly connected, within the meaning of 7 U.S.C. 499a(b)(9), to the licensee during the period of the alleged violations. In any case in which there is no pending proceeding alleging a violation of the Perishable Agricultural Commodities Act, 7 U.S.C. 499a *et seq.*, but there have been filed more than one petition for review of determination of responsible connection to the same licensee, such petitions for review shall be consolidated for hearing.

[61 FR 11504, Mar. 21, 1996, as amended at 68 FR 6340, Feb. 7, 2003]

§ 1.138 Consent decision.

At any time before the Judge files the decision, the parties may agree to the entry of a consent decision. Such agreement shall be filed with the Hearing Clerk in the form of a decision signed by the parties with appropriate space for signature by the Judge, and shall contain an admission of at least the jurisdictional facts, consent to the issuance of the agreed decision without further procedure and such other admissions or statements as may be agreed between the parties. The Judge shall enter such decision without further procedure, unless an error is apparent on the face of the document. Such decision shall have the same force and effect as a decision issued after full hearing, and shall become final upon issuance to become effective in accordance with the terms of the decision.

§ 1.139 Procedure upon failure to file an answer or admission of facts.

The failure to file an answer, or the admission by the answer of all the material allegations of fact contained in the complaint, shall constitute a waiver of hearing. Upon such admission or failure to file, complainant shall file a proposed decision, along with a motion for the adoption thereof, both of which shall be served upon the respondent by

the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. If the Judge finds that meritorious objections have been filed, complainant's Motion shall be denied with supporting reasons. If meritorious objections are not filed, the Judge shall issue a decision without further procedure or hearing. Copies of the decision or denial of complainant's Motion shall be served by the Hearing Clerk upon each of the parties and may be appealed pursuant to §1.145. Where the decision as proposed by complainant is entered, such decision shall become final and effective without further proceedings 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to §1.145: *Provided, however,* That no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

§ 1.140 Conferences and procedure.

(a) *Purpose and scope.* (1) Upon motion of a party or upon the Judge's own motion, the Judge may direct the parties or their counsel to attend a conference at any reasonable time, prior to or during the course of the hearing, when the Judge finds that the proceeding would be expedited by a conference. Reasonable notice of the time, place, and manner of the conference shall be given. The Judge may order each of the parties to furnish at or subsequent to the conference any or all of the following:

(i) An outline of the case or defense;

(ii) The legal theories upon which the party will rely;

(iii) Copies of or a list of documents which the party anticipates introducing at the hearing; and

(iv) A list of anticipated witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way such as a short statement of the type of evidence they will offer.

(2) The Judge shall not order any of the foregoing procedures that a party can show is inappropriate or unwarranted under the circumstances of the particular case.

(3) At the conference, the following matters shall be considered:

(i) The simplification of issues;

(ii) The necessity of amendments to pleadings;

(iii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(iv) The limitation of the number of expert or other witnesses;

(v) Negotiation, compromise, or settlement of issues;

(vi) The exchange of copies of proposed exhibits;

(vii) The identification of documents or matters of which official notice may be requested;

(viii) A schedule to be followed by the parties for completion of the actions decided at the conference; and

(ix) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A conference will not be stenographically reported unless so directed by the Judge.

(c) *Manner of Conference.* (1) The conference shall be conducted by telephone or correspondence unless the Judge determines that conducting the conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by telephone or correspondence. If the Judge determines that a conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the conference, the conference shall be conducted by personal attendance of any individual who is expected to participate in the conference, by telephone, or by correspondence.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the Judge determines that conducting

the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by audio-visual telecommunication.

(d) *Order*. Actions taken as a result of a conference shall be reduced to a written appropriate order, unless the Judge concludes that a stenographic report shall suffice, or, if the conference takes place within 7 days of the beginning of the hearing, the Judge elects to make a statement on the record at the hearing summarizing the actions taken.

(e) *Related matters*. Upon motion of a respondent, the Judge may order the attorney for the complainant to produce and permit the respondent to inspect and copy or photograph any relevant written or recorded statements or confessions made by such respondent within the possession, custody or control of the complainant.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8455, Feb. 14, 1995]

§ 1.141 Procedure for hearing.

(a) *Request for hearing*. Any party may request a hearing on the facts by including such request in the complaint or answer, or by a separate request, in writing, filed with the Hearing Clerk within the time in which an answer may be filed. A petition for review shall be deemed a request for a hearing. Failure to request a hearing within the time allowed for the filing of the answer shall constitute a waiver of such hearing. Waiver of hearing shall not be deemed to be a waiver of the right to request oral argument before the Judicial Officer upon appeal of the Judge's decision. In the event the respondent denies any material fact and fails to file a timely request for a hearing, the matter may be set down for hearing on motion of the complainant or upon the Judge's own motion.

(b) *Time, place, and manner*. (1) If any material issue of fact is joined by the pleadings, the Judge, upon motion of any party stating that the matter is at issue and is ready for hearing, shall set a time, place, and manner for hearing as soon as feasible after the motion is filed, with due regard for the public interest and the convenience and necessity of the parties. The Judge shall file with the Hearing Clerk a notice stating the time and place of the hearing.[2] This notice shall state whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to participate in the hearing. The Judge's determination regarding the manner of the hearing shall be made in accordance with paragraphs (b)(3) and (b)(4) of this section. If any change in the time, place, or manner of the hearing is made, the Judge shall file with the Hearing Clerk a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2)(i) If any material issue of fact is joined by the pleadings and the matter is at issue and is ready for hearing, any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion

[2] The place of hearing in a proceeding under the Packers and Stockyards Act shall be set in accordance with the Packers and Stockyards Act (7 U.S.C. 228(e) and (f)). In essence, if there is only one respondent, the hearing is to be held as near as possible to the respondent's place of business or residence depending on the availability of an appropriate location for conducting the hearing. If there is more than one respondent and they have their places of business or residence within a single unit of local government, a single geographical area within a State, or a single State, the hearing is to be held as near as possible to their places of business or residence depending on the availability of an appropriate location for conducting the hearing. If there is more than one respondent, and they have their places of business or residence distant from each other, 7 U.S.C. 228(e) and (f) have no applicability.

stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(ii) Within 10 days after the Judge issues a notice stating the manner in which the hearing is to be conducted, any party may move that the Judge reconsider the manner in which the hearing is to be conducted. Any motion for reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the Judges's notice.

(3) The hearing shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the Judge determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(4) The Judge may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the Judge finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

(c) *Appearances.* The parties may appear in person or by attorney of record in the proceeding. Any person who appears as attorney must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(d) *Debarment of attorney.* (1) Whenever a Judge finds that a person acting as attorney for any party to the proceeding is guilty of unethical or contumacious conduct, in or in connection with a proceeding , the Judge may order that such person be precluded from further acting as attorney in the proceeding. An appeal to the Judicial Officer may be taken from any such order, but no proceeding shall be delayed or suspended pending disposition of the appeal: *Provided,* That the Judge shall suspend the proceeding for a reasonable time for the purpose of enabling the party to obtain another attorney.

(2) Whenever it is found, after notice and opportunity for hearing, that a person, who is acting or has acted as attorney for another person in any proceeding before the United States Department of Agriculture, is unfit to act as such counsel because of such unethical or contumacious conduct, such person will be precluded from acting as counsel in any or all proceedings before the Department as found to be appropriate.

(e) *Failure to appear.* (1) A respondent who, after being duly notified, fails to appear at the hearing without good cause, shall be deemed to have waived the right to an oral hearing in the proceeding and to have admitted any facts which may be presented at the hearing. Such failure by the respondent shall also constitute an admission of all the material allegations of fact contained in the complaint. Complainant shall have an election whether to follow the procedure set forth in §1.139 or whether to present evidence, in whole or in part, in the form of affidavits or by oral testimony before the Judge. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's decision and to appeal and request oral argument before the Judicial Officer with respect thereto in the manner provided in §1.145.

(2) If the petitioner in the case of a Petition for Review of a determination of responsibly connected status within the meaning of 7 U.S.C. 499a(b)(9), having been duly notified, fails to appear

at the hearing without good cause, such petitioner shall be deemed to have waived the right to a hearing and to have voluntarily withdrawn the petition for review.

(f) *Order of proceeding.* Except as may be determined otherwise by the Judge, the complainant shall proceed first at the hearing.

(g) *Written statements of direct testimony.* (1) Except as provided in paragraph (g)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the Judge finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the Judge's notice stating the time of the hearing.

(h) *Evidence*—(1) *In general.* (i) The testimony of witnesses at a hearing shall be on oath or affirmation and subject to cross-examination.

(ii) Upon a finding of good cause, the Judge may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(iii) After a witness called by the complainant has testified on direct examination, any other party may request and obtain the production of any statement, or part thereof, of such witness in the possession of the complainant which relates to the subject matter as to which the witness has testified. Such production shall be made according to the procedures and subject to the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(iv) Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(2) *Objections.* (i) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the Judge, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the Judge.

(ii) Only objections made before the Judge may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness shall be admitted in the manner provided in and subject to the provisions of § 1.148.

(4) *Exhibits.* Unless the Judge finds that the furnishing of copies is impracticable, four copies of each exhibit shall be filed with the Judge: *Provided,* That, where there are more than two parties in the proceeding, an additional copy shall be filed for each additional party. A true copy of an exhibit may be substituted for the original.

(5) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof or by a copy certified by a person having legal authority to make such certification.

(6) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the parties shall be given adequate notice of matters so noticed, and shall be given adequate opportunity to

show that such facts are erroneously noticed.

(7) *Offer of proof.* Whenever evidence is excluded by the Judge, the party offering such evidence may make an offer of proof, which shall be included in the transcript or recording. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript or recording in toto. If the evidence consists of an exhibit, it shall be marked for identification and inserted in the hearing record. In either event, the evidence shall be considered a part of the transcript or recording and hearing record if the Judicial Officer, upon appeal, decides the Judge's ruling excluding the evidence was erroneous and prejudicial. If the Judicial Officer decides the Judge's ruling excluding the evidence was erroneous and prejudicial and that it would be inappropriate to have such evidence considered a part of the hearing record, the Judicial Officer may direct that the hearing be reopened to permit the taking of such evidence or for any other purpose in connection with the excluded evidence.

(i) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the Judge finds that recording the hearing verbatim would expedite the proceeding and the Judge orders the hearing to be recorded verbatim. The Judge shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the Judge determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the Judge shall order the verbatim transcription of the recording as requested by the party.

(3) Recordings or transcripts of hearings shall be made available to any person at actual cost of duplication.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8455, Feb. 14, 1995; 61 FR 11504, Mar. 21, 1996; 68 FR 6340, Feb. 7, 2003]

§ 1.142 Post-hearing procedure.

(a) *Corrections to transcript or recording.* (1) Within the period of time fixed by the Judge, any party may file a motion proposing corrections to the transcript or recording.

(2) Unless a party files such a motion in the manner prescribed, the transcript or recording shall be presumed, except for obvious typographical errors, to be a true, correct, and complete transcript or recording of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record, and shall be deemed to be certified without further action by the Judge.

(3) As soon as practicable after the close of the hearing and after consideration of any timely objections filed as to the transcript or recording, the Judge shall issue an order making any corrections to the transcript or recording which the Judge finds are warranted, which corrections shall be entered onto the original transcript or recording by the Hearing Clerk (without obscuring the original text).

(b) *Proposed findings of fact, conclusions, orders, and briefs.* Prior to the Judge's decision, each party shall be afforded a reasonable opportunity to submit for consideration proposed findings of fact, conclusions, order, and brief in support thereof. A copy of each such document filed by a party shall be served upon each of the other parties.

(c) *Judge's decision.* (1) The Judge may, upon motion of any party or in his or her own discretion, issue a decision orally at the close of the hearing, or within a reasonable time after the closing of the hearing.

(2) If the decision is announced orally, a copy thereof, excerpted from the transcript or recording, shall be furnished to the parties by the Hearing Clerk. Irrespective of the date such copy is mailed, the issuance date of the

decision shall be the date the oral decision was announced.

(3) If the decision is in writing, it shall be filed with the Hearing Clerk and served upon the parties as provided in §1.147.

(4) The Judge's decision shall become final and effective without further proceedings 35 days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to §1.145; *Provided, however*, that no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

[42 FR 743, Jan. 4, 1977, as amended at 53 FR 7177, Mar. 7, 1988; 60 FR 8456, Feb. 14, 1995; 68 FR 6340, Feb. 7, 2003]

§1.143 Motions and requests.

(a) *General.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties, except (1) requests for extensions of time pursuant to §1.147, (2) requests for subpoenas pursuant to §1.149, and (3) motions and requests made on the record during the oral hearing. The Judge shall rule upon all motions and requests filed or made prior to the filing of an appeal of the Judge's decision pursuant to §1.145, except motions directly relating to the appeal. Thereafter, the Judicial Officer will rule on any motions and requests, as well as the motions directly relating to the appeal.

(b) *Motions entertained.* (1) Any motion will be entertained other than a motion to dismiss on the pleading.

(2) All motions and request concerning the complaint must be made within the time allowed for filing an answer.

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

(d) *Response to motions and requests.* Within 20 days after service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge or the Judicial Officer, an opposing party may file a response to the motion or request. The other party shall have no right to reply to the response; however, the Judge or the Judicial Officer, in the Judge's or the Judicial Officer's discretion, may order that a reply be filed.

(e) *Certification to the judicial officer.* The submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the filing of an appeal pursuant to §1.145 shall be made by and in the discretion of the Judge. The Judge may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

[42 FR 743, Jan. 4, 1977, as amended at 55 FR 30673, July 27, 1990; 68 FR 6340, Feb. 7, 2003]

§1.144 Judges.

(a) *Assignment.* No Judge shall be assigned to serve in any proceeding who (1) has any pecuniary interest in any matter or business involved in the proceeding, (2) is related within the third degree by blood or marriage to any party to the proceeding, or (3) has any conflict of interest which might impair the Judge's objectivity in the proceeding.

(b) *Disqualification of Judge.* (1) Any party to the proceeding may, by motion made to the Judge, request that the Judge withdraw from the proceeding because of an alleged disqualifying reason. Such motion shall set forth with particularity the grounds of alleged disqualification. The Judge may then either rule upon or certify the motion to the Secretary, but not both.

(2) A Judge shall withdraw from any proceeding for any reason deemed by the Judge to be disqualifying.

(c) *Powers.* Subject to review as provided in this subpart, the Judge, in any assigned proceeding, shall have power to:

(1) Rule upon motions and requests;

(2) Set the time, place, and manner of a conference and the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

(3) Administer oaths and affirmations;

(4) Issue subpoenas as authorized by the statute under which the proceeding is conducted, requiring the attendance and testimony of witnesses and the production of books, contracts, papers,

and other documentary evidence at the hearing;

(5) Summon and examine witnesses and receive evidence at the hearing;

(6) Take or order the taking of depositions as authorized under these rules;

(7) Admit or exclude evidence;

(8) Hear oral argument on facts or law;

(9) Require each party to provide all other parties and the Judge with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(10) Require each party to provide all other parties with a copy of any document that the party intends to use to examine a deponent prior to any deposition to be conducted by telephone or audio-visual telecommunication;

(11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the Judge are able to transmit and receive documents during the hearing;

(12) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition;

(13) Do all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons; and

(14) Take all other actions authorized under these rules.

(d) *Who may act in the absence of the Judge.* In case of the absence of the Judge or the Judge's inability to act, the powers and duties to be performed by the Judge under these rules of practice in connection with any assigned proceeding may, without abatement of the proceeding unless otherwise directed by the Chief Judge, be assigned to any other Judge.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6340, Feb. 7, 2003]

§ 1.145 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, if the decision is a written decision, or within 30 days after issuance of the Judge's decision, if the decision is an oral decision, a party who disagrees with the decision, any part of the decision, or any ruling by the Judge or who alleges any deprivation of rights, may appeal the decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in §1.141(h)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the appeal petition and the arguments regarding each issue shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations, or authorities being relied upon in support of each argument. A brief may be filed in support of the appeal simultaneously with the appeal petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral argument before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the judicial officer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of judicial review without filing a petition for rehearing, reargument, or reconsideration of the decision of the Judicial Officer.

[42 FR 743, Jan. 4, 1977, as amended at 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

§ 1.146 Petitions for reopening hearing; for rehearing or reargument of proceeding; or for reconsideration of the decision of the Judicial Officer.

(a) *Petition requisite*—(1) *Filing; service; ruling.* A petition for reopening the hearing to take further evidence, or for rehearing or reargument of the proceeding, or for reconsideration of the decision of the Judicial Officer, must be made by petition filed with the Hearing Clerk. Every such petition must state specifically the grounds relied upon. Any such petition filed prior to the filing of an appeal of the Judge's decision pursuant to §1.145 shall be ruled upon by the Judge, and any such petition filed thereafter shall be ruled upon by the Judicial Officer.

(2) *Petition to reopen hearing.* A petition to reopen a hearing to take further evidence may be filed at any time prior to the issuance of the decision of the Judicial Officer. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing.

(3) *Petition to rehear or reargue proceeding, or to reconsider the decision of* the Judicial Officer. A petition to rehear or reargue the proceeding or to reconsider the decision of the Judicial Officer shall be filed within 10 days after the date of service of such decision upon the party filing the petition. Every petition must state specifically the matters claimed to have been erroneously decided and alleged errors must be briefly stated.

(b) *Procedure for disposition of petitions.* Within 20 days following the service of any petition provided for in this section, any party to the proceeding may file with the Hearing Clerk a reply thereto. As soon as practicable thereafter, the Judge or the Judicial Officer, as the case may be, shall announce the determination whether to grant or deny the petition. The decision of the Judicial Officer shall automatically be stayed pending the determination to grant or deny a timely petition. Such decision shall not be final for purposes of judicial review until the petition is denied or the decision is affirmed or modified pursuant to the petition and the time for judicial review shall begin to run upon the filing of such final action on the petition. In the event that any such petition is granted, the applicable rules of practice, as set out elsewhere herein, shall be followed. A person filing a petition under this section shall be regarded as the moving party, although such person shall be referred to as the complainant or respondent, depending upon the designation in the original proceeding.

§ 1.147 Filing; service; extensions of time; and computation of time.

(a) *Filing; number of copies.* Except as otherwise provided in this section, all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be filed in quadruplicate: *Provided,* That where there are more than two parties in the proceeding, an additional copy shall be filed for each additional party. Any document or paper required or authorized under the rules in this part to be filed with the Hearing Clerk shall, during the course of an oral hearing, be filed with the Judge.

(b) *Who shall make service.* Copies of all such documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be served upon the parties by the Hearing Clerk, or by some other employee of the Department, or by a U.S. Marshal or deputy marshal.

(c) *Service on party other than the Secretary.* (1) Any complaint or other document initially served on a person to make that person a party respondent in a proceeding, proposed decision and motion for adoption thereof upon failure to file an answer or other admission of all material allegations of fact contained in a complaint, initial decision, final decision, appeal petition filed by the Department, or other document specifically ordered by the Judge to be served by certified or registered mail, shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of delivery by certified or registered mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, *Provided that,* if any such document or paper is sent by certified or registered mail but is returned marked by the postal service as unclaimed or refused, it shall be deemed to be received by such party on the date of remailing by ordinary mail to the same address.

(2) Any document or paper, other than one specified in paragraph (c)(1) of this section or written questions for a deposition as provided in §1.148(d)(2), shall be deemed to be received by any party to a proceeding, other than the Secretary or agent thereof, on the date of mailing by ordinary mail to the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual.

(3) Any document or paper served other than by mail, on any party to a proceeding, other than the Secretary or agent thereof, shall be deemed to be received by such party on the date of:

(i) Delivery to any responsible individual at, or leaving in a conspicuous place at, the last known principal place of business of such party, last known principal place of business of the attorney or representative of record of such party, or last known residence of such party if an individual, or

(ii) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(d) *Service on another.* Any subpoena, written questions for a deposition

under §1.148(d)(2), or other document or paper, served on any person other than a party to a proceeding, the Secretary or agent thereof, shall be deemed to be received by such person on the date of:

(1) Delivery by certified mail or registered mail to the last known principal place of business of such person, last known principal place of business of the attorney or representative of record of such person, or last known residence of such person if an individual;

(2) Delivery other than by mail to any responsible individual at, or leaving in a conspicuous place at, any such location; or

(3) Delivery to such party if an individual, to an officer or director of such party if a corporation, or to a member of such party if a partnership, at any location.

(e) *Proof of service.* Any of the following, in the possession of the Department, showing such service, shall be deemed to be accurate:

(1) A certified or registered mail receipt returned by the postal service with a signature;

(2) An official record of the postal service;

(3) An entry on a docket record or a copy placed in a docket file by the Hearing Clerk of the Department or by an employee of the Hearing Clerk in the ordinary course of business;

(4) A certificate of service, which need not be separate from and may be incorporated in the document or paper of which it certifies service, showing the method, place and date of service in writing and signed by an individual with personal knowledge thereof, *Provided* that such certificate must be verified by oath or declaration under penalty of perjury if the individual certifying service is not a party to the proceeding in which such document or paper is served, an attorney or representative of record for such a party, or an official or employee of the United States or of a State or political subdivision thereof.

(f) *Extensions of time.* The time for the filing of any document or paper required or authorized under the rules in this part to be filed may be extended by the Judge or the Judicial Officer as provided in §1.143, if, in the judgment of the Judge or the Judicial Officer, as the case may be, there is good reason for the extension. In all instances in which time permits, notice of the request for extension of the time shall be given to the other party with opportunity to submit views concerning the request.

(g) *Effective date of filing.* Any document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed at the time when it reaches the Hearing Clerk; or, if authorized to be filed with another officer or employee of the Department it shall be deemed to be filed at the time when it reaches such officer or employee.

(h) *Computation of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

[42 FR 743, Jan. 4, 1977, as amended at 55 FR 30674, July 27, 1990; 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

§1.148 Depositions.

(a) *Motion for taking deposition.* Upon the motion of a party to the proceeding, the Judge may, at any time after the filing of the complaint, order the taking of testimony by deposition. The Motion shall be in writing, shall be filed with the Hearing Clerk, and shall set forth:

(1) The name and address of the proposed deponent;

(2) The name and address of the person (referred to hereafter in this section as the ''officer'') qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made;

(3) The proposed time and place of the examination, which shall be at least 15 days after the date of the mailing of the motion; and

(4) The reasons why such deposition should be taken, which shall be solely for the purpose of eliciting testimony which otherwise might not be available at the time of hearing, for uses as provided in paragraph (g) of this section.

(b) *Judge's order for taking deposition.* (1) If the Judge finds that the testimony may not be otherwise available at the hearing, the taking of the deposition may be ordered. The order shall be filed with the Hearing Clerk and shall state:

(i) The time of the deposition;

(ii) The place of the deposition;

(iii) The manner of the deposition (telephone, audio-visual telecommunication, or personal attendance of those who are to participate in the deposition);

(iv) The name of the officer before whom the deposition is to be made; and

(v) The name of the deponent. The officer and the time, place, and manner need not be the same as those suggested in the motion for the deposition.

(2) The deposition shall be conducted by telephone unless the Judge determines that conducting the deposition by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the deposition; or

(iii) Would cost less than conducting the deposition by telephone. If the Judge determines that a deposition conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the deposition, the deposition shall be conducted by personal attendance of any individual who is expected to participate in the deposition or by telephone.

(3) If the deposition is not conducted by telephone, the deposition shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the deposition by personal attendance of any individual who is expected to participate in the deposition:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the deposition; or

(iii) Would cost less than conducting the deposition by telephone or audio-visual telecommunication.

(c) *Qualifications of officer.* The deposition shall be made before the Judge or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(d) *Procedure on examination.* (1) The deponent shall be examined under oath or affirmation and shall be subject to cross-examination. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. The questions proponded, together with all objections made (but not including argument or debate), shall be recorded verbatim. In lieu of oral examination, parties may transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(2) The applicant shall arrange for the examination of the witness either by oral examination, or by written questions upon agreement of the parties or as directed by the Judge. If the examination is conducted by means of written questions, copies of the applicant's questions must be received by the other party to the proceeding and the officer at least 10 days prior to the date set for the examination unless otherwise agreed, and any cross questions of a party other than the applicant must be received by the applicant and the officer at any time prior to the time of the examination.

(e) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the deponent's testimony. The officer shall then securely seal the deposition, together with one copy thereof (unless there are more than two parties in the proceeding, in which case there should be another copy for each additional party), in an envelope and mail the same by registered or certified mail to the Hearing Clerk.

(f) *Corrections to the transcript or recording.* (1) At any time prior to the hearing, any party may file a motion proposing corrections to the transcript or recording of the deposition.

(2) Unless a party files such a motion in the manner prescribed, the transcript or recording shall be presumed,

except for obvious typographical errors, to be a true, correct, and complete transcript or recording of the testimony given in the deposition proceeding and to contain an accurate description or reference to all exhibits in connection therewith, and shall be deemed to be certified correct without further procedure.

(3) At any time prior to use of the deposition in accordance with paragraph (g) of this section and after consideration of any objections filed thereto, the Judge may issue an order making any corrections in the transcript or recording which the Judge finds are warranted, which corrections shall be entered onto the original transcript or recording by the Hearing Clerk (without obscuring the original text).

(g) *Use of deposition.* A deposition ordered and taken in accordance with the provisions of this section may be used in a proceeding under these rules if the Judge finds that the evidence is otherwise admissible and (1) that the witness is dead; (2) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; (3) that the party offering the deposition has endeavored to procure the attendance of the witness by subpoena, but has been unable to do so; or (4) that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any part thereof in evidence. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

[42 FR 743, Jan. 4, 1977, as amended at 55 FR 30674, July 27, 1990; 60 FR 8456, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

§ 1.149 Subpoenas.[3]

(a) *Issuance of subpoenas.* The attendance and testimony of witnesses and the production of documentary evidence from any place in the United States on behalf of any party to the proceeding may be required by subpoena at any designated place of hearing if authorized by the statute under which the proceeding is conducted. Subpoenas shall be issued by the Judge upon a reasonable showing by the applicant of the grounds and necessity thereof; and with respect to subpoenas for the production of documents, the request shall also show their competency, relevancy, and materiality. All requests for subpoenas shall be in writing, unless waived by the Judge for good cause shown. Except for good cause shown, requests for subpoenas shall be received by the Judge at least 10 days prior to the date set for the hearing.

(b) *Service of subpoenas.* Subpoenas may be served by any person not less than 18 years of age. The party at whose instance a subpoena is issued shall be responsible for service thereof. Subpoenas shall be served as provided in § 1.147.

[42 FR 743, Jan. 4, 1977, as amended at 55 FR 30674, July 27, 1990; 60 FR 8457, Feb. 14, 1995; 68 FR 6341, Feb. 7, 2003]

§ 1.150 Fees of witnesses.

Witnesses summoned under these rules of practice shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken, and the officer taking the same, shall be entitled to the same fees as are paid for like services in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears or the deposition is taken.

§ 1.151 *Ex parte* communications.

(a) At no stage of the proceeding between its institution and the issuance of the final decision shall the Judge or Judicial Officer discuss *ex parte* the merits of the proceeding with any person who is connected with the proceeding in an advocative or in an investigative capacity, or with any representative of such person: *Provided*, That procedural matters shall not be included within this limitation; and *Provided further*, That the Judge or Judicial Officer may discuss the merits of

[3] This section relates only to subpoenas for the stated purpose and has no relevance with respect to investigatory subpoenas.

the case with such a person if all parties to the proceeding, or their attorneys have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record.

(b) No interested person shall make or knowingly cause to be made to the Judge or Judicial Officer an *ex parte* communication relevant to the merits of the proceeding.

(c) If the Judge or the Judicial Officer receives an *ex parte* communication in violation of this section, the one who receives the communication shall place in the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Judge or Judicial Officer may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(e) To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation to occur.

(f) For purposes of this section *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or the proceeding.

Subpart I—Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act

AUTHORITY: 7 U.S.C. 291, 292; 7 CFR 2.35, 2.41.

SOURCE: 45 FR 6587, Jan. 29, 1980, unless otherwise noted.

§ 1.160 Scope and applicability of rules in this part.

The rules of practice in this part shall be applicable to cease and desist proceedings, initiated upon complaint by the Secretary of Agriculture, pursuant to section 2 of the Capper-Volstead Act.

§ 1.161 Definitions.

As used in this part, words in the single form shall be deemed to import the plural, and vice versa, as the case may require. The following terms shall be construed, respectively, to mean:

Act means the Capper-Volstead Act, approved February 18, 1922, 42 Stat. 388, 7 U.S.C. 291, 292.

Association means a cooperative association, a federation of cooperatives, or other association of agricultural producers, as defined in section 1 of the Act.

Complainant or *Secretary* means the Secretary of Agriculture, United States Department of Agriculture, or any officer(s) or employee(s) to whom authority has heretofore been delegated, or whom authority may hereafter be delegated, to act in his or her stead.

Complaint means a formal complaint instituted by the Secretary of Agriculture requiring respondent to show cause why an order should not be made directing it to cease and desist from acts of monopolization or restraint of trade, which result in undue price enhancement.

Decision means: (1) the Judge's decision, and includes (i) findings and conclusions and the reasons or basis therefor on all material issues of fact, law, or discretion, (ii) order, and (iii) rulings on proposed findings, conclusions and order submitted by the parties, and (2) the decision and order by the Judicial Officer upon an appeal of the Judge's decision.

Hearing means that part of the proceeding which involves the submission of evidence before the Judge for the record in the proceeding.

Hearing Clerk means the Hearing Clerk, United States Department of Agriculture, Washington, DC 20250.

Judge means any Administrative Law Judge appointed pursuant to 5 U.S.C. 3105 (the Administrative Procedure Act) and assigned to the proceeding involved.

Judicial Officer means an official of the United States Department of Agriculture delegated authority by the Secretary, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–450g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. App. (1988)), to perform the function involved (§2.35(a) of this chapter), or the Secretary if he or she exercises the authority so delegated.

Respondent means the cooperative associations, or association, against whom a complaint has been issued.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8457, Feb. 14, 1995]

§ 1.162 Institution of proceedings.

(a) *Filing of information.* Any person having information that any agricultural association, as defined in the Capper-Volstead Act, is engaged in any practice which monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced by reason thereof, may submit such information to the Secretary. Such information shall be in writing and shall contain a complete statement of facts detailing the price enhancement and the practices alleged.

(b) *Consideration of information.* The Secretary shall consider all information filed under paragraph (a) of this section, and any other information which the Secretary may obtain relating to a violation of section 2 of the Act. If the Secretary finds that there is reason to believe that any association monopolizes or restrains trade in interstate or foreign commerce to such an extent that the price of any agricultural product is unduly enhanced thereby the Secretary shall cause a complaint to be filed, requiring the association to show cause why an order should not be made directing the association to cease and desist from such monopolization or restraint of trade. The complaint shall be filed with the Hearing Clerk, who shall assign to the proceeding a docket number and effect service upon respondent.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8457, Feb. 14, 1995]

§ 1.163 The complaint.

The complaint shall state briefly all allegations of fact which constitute a basis for the proceeding, and shall designate a time and place for the hearing in the matter, which shall be at least 30 days after the service of the complaint upon the respondent.

§ 1.164 Answer.

(a) *Filing and service.* Within 20 days after service of the complaint, or such other time as may be specified therein, the respondent shall file with the Hearing Clerk, an answer, signed by the respondent or the respondent's attorney. The answer shall be served upon the complainant by the Hearing Clerk.

(b) *Contents.* The answer shall clearly admit, deny, or offer an explanation in response to each of the allegations of the complaint, and shall clearly set forth any affirmative defense.

(c) *Default.* Failure to file an answer shall constitute an admission of the allegations in the complaint, and may be the basis for a decision upon the presentation of a *prima facie* case by the complainant.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8457, Feb. 14, 1995]

§ 1.165 Amendments.

Amendments to the complaint may be made prior to the filing of an answer in which case the time for filing the answer shall be extended 20 days or for other time agreed to by the parties. After the answer is filed, amendments to the complaint, or to the answer or other pleading, may be made by agreement of the parties or allowed at the discretion of the Judge. In case of an amendment which significantly changes the issues, the hearing shall, on the request of a party, be postponed or adjourned for a reasonable period, if the Judge determines that such action is necessary to avoid prejudice to the party.

§ 1.166 Consent order.

At any time, complainant and respondent may agree to the entry of a consent order. Such order shall be entered by the Judge (prior to a decision) or the Judicial Officer (after a decision by the Judge), and become effective on the date specified therein.

§ 1.167 Conference.

(a) *Purpose.* Upon motion of a party or upon the Judge's own motion, the Judge may direct the parties to attend a conference when the Judge finds that the proceeding would be expedited by discussions on matters of procedure and/or possible stipulations. The conference may include discussions regarding:

(1) Simplification of the issues;

(2) Limitation of expert or other witnesses;

(3) The orderly presentation of evidence; and

(4) Any other matters that may expedite and aid in the disposition of the proceeding.

(b) *Manner of the Conference.* (1) The conference shall be conducted by telephone or correspondence unless the Judge determines that conducting the conference by audio-visual telecommunication:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by telephone or correspondence. If the Judge determines that a conference conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the conference, the conference shall be conducted by personal attendance of any individual who is expected to participate in the conference, by telephone, or by correspondence.

(2) If the conference is not conducted by telephone or correspondence, the conference shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the conference by personal attendance of any individual who is expected to participate in the conference:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the conference; or

(iii) Would cost less than conducting the conference by audio-visual telecommunication.

[60 FR 8457, Feb. 14, 1995]

§ 1.168 Procedure for hearing.

(a) *Time and place.* The oral hearing shall be held at such time and place as specified in the complaint, and not less than 30 days after service thereof. The time and place of the hearing may be changed for good cause, by the Judge, upon motion of either complainant or respondent.

(b) *Manner of hearing.* (1) The Judge shall file with the Hearing Clerk a notice stating whether the hearing will be conducted by telephone, audio-visual telecommunication, or personal attendance of any individual expected to attend the hearing and the Judge's determination regarding the manner of hearing shall be made in accordance with paragraphs (b)(3) and (b)(4) of this section. If any change in the manner of the hearing is made, the Judge shall file with the Hearing Clerk a notice of the change, which notice shall be served on the parties, unless it is made during the course of an oral hearing and made part of the transcript or recording, or actual notice is given to the parties.

(2)(i) Any party may move that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing rather than by audio-visual telecommunication. Any motion that the hearing be conducted by telephone or personal attendance of any individual expected to attend the hearing must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than by audio-visual telecommunication.

(ii) Within 10 days after the Judge issues a notice stating the manner in which the hearing is to be conducted, any party may move that the Judge reconsider the manner in which the hearing is to be conducted. Any motion for

reconsideration must be accompanied by a memorandum in support of the motion stating the basis for the motion and the circumstances that require the hearing to be conducted other than in accordance with the Judges's notice.

(3) The hearing shall be conducted by audio-visual telecommunication unless the Judge determines that conducting the hearing by personal attendance of any individual who is expected to participate in the hearing:

(i) Is necessary to prevent prejudice to a party;

(ii) Is necessary because of a disability of any individual expected to participate in the hearing; or

(iii) Would cost less than conducting the hearing by audio-visual telecommunication. If the Judge determines that a hearing conducted by audio-visual telecommunication would measurably increase the United States Department of Agriculture's cost of conducting the hearing, the hearing shall be conducted by personal attendance of any individual who is expected to participate in the hearing or by telephone.

(4) The Judge may, in his or her sole discretion or in response to a motion by a party to the proceeding, conduct the hearing by telephone if the Judge finds that a hearing conducted by telephone:

(i) Would provide a full and fair evidentiary hearing;

(ii) Would not prejudice any party; and

(iii) Would cost less than conducting the hearing by audio-visual telecommunication or personal attendance of any individual who is expected to participate in the hearing.

(c) *Appearances.* The parties may appear in person or by counsel or by other representative. Persons who appear as counsel or in a representative capacity must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(d) *Order of proceeding.* Except as otherwise may be agreed by the parties and approved by the Judge, the complainant shall proceed first at the hearing.

(e) *Failure to appear.* If respondent, after being duly notified, fails to appear at the hearing, and no good cause for such failure is established, complainant shall present a *prime facie* case on the matters denied in the answer.

(f) *Written statements of direct testimony.* (1) Except as provided in paragraph (f)(2) of this section, each party must exchange with all other parties a written narrative verified statement of the oral direct testimony that the party will provide at any hearing to be conducted by telephone; the direct testimony of each employee or agent of the party that the party will call to provide oral direct testimony at any hearing to be conducted by telephone; and the direct testimony of each expert witness that the party will call to provide oral direct testimony at any hearing to be conducted by telephone. The written direct testimony of witnesses shall be exchanged by the parties at least 10 days prior to the hearing. The oral direct testimony provided by a witness at a hearing conducted by telephone will be limited to the presentation of the written direct testimony, unless the Judge finds that oral direct testimony which is supplemental to the written direct testimony would further the public interest and would not constitute surprise.

(2) The parties shall not be required to exchange testimony in accordance with this paragraph if the hearing is scheduled to begin less than 20 days after the Judge's notice stating the time of the hearing.

(g) *Evidence.* (1) The testimony of witnesses at the hearing shall be upon oath or affirmation, transcribed or recorded verbatim, and subject to cross-examination. Evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(2) *Objections.* If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination, the party shall briefly state the grounds of such objections, whereupon an automatic exception will follow if the objection is overruled by the Judge. The ruling of the Judge on any objection shall be part of the transcript or recording. Only objections made before the Judge

may subsequently be relied upon in the proceeding.

(3) *Official records or documents.* An official record or document, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be *prima facie* evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof, or by a copy certified by a person having legal authority to make such certification.

(4) *Exhibits.* Unless the Judge finds that the furnishing of multiple copies is impracticable, four copies of each exhibit shall be filed with the Judge unless the Judge finds that a greater or lesser number is desirable. A true copy of an exhibit may be substituted for the original.

(5) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the opposing party shall be given adequate opportunity to show that such facts are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is deleted from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript or recording. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript or recording in toto. In such event, it shall be considered a part of the transcript or recording and record if the Judicial Officer decides that the Judge's ruling in excluding the evidence was erroneous and prejudicial. The Judge shall not allow the insertion of such excluded evidence in toto if the taking of such evidence will consume considerable time at the hearing. In the latter event, if the Judicial Officer decides that the Judge's ruling excluding the evidence was both prejudicial and erroneous, the hearing may be reopened to permit the taking of such evidence.

(7) *Affidavits.* Affidavits may be submitted into evidence, in lieu of witness testimony, only to the extent, and in the manner agreed upon by the parties.

(h) *Transcript or recording.* (1) Hearings to be conducted by telephone shall be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or the personal attendance of any individual who is expected to participate in the hearing shall be transcribed, unless the Judge finds that recording the hearing verbatim would expedite the proceeding and the Judge orders the hearing to be recorded verbatim. The Judge shall certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(2) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the Judge determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the Judge shall order the verbatim transcription of the recording as requested by the party.

(3) Recordings or transcripts of hearings shall be made available to any person at actual cost of duplication.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8457, Feb. 14, 1995]

§ 1.169 Post-hearing procedure and decision.

(a) *Corrections to transcript or recording.* (1) At any time, but not later than the time fixed for filing proposed findings of fact, conclusions and order, or briefs, as the case may be, any party may file a motion proposing corrections to the transcript or recording.

(2) Unless a party files such a motion in the manner prescribed, the transcript or recording shall be presumed, except for obvious typographical errors, to be a true, correct, and complete transcript or recording of the testimony given at the hearing and to contain an accurate description or reference to all exhibits received in evidence and made part of the hearing record.

(3) At any time prior to the filing of the Judge's decision and after consideration of any objections filed as to the transcript or recording, the Judge may issue an order making any corrections

in the transcript or recording which the Judge finds are warranted, which corrections shall be entered onto the original transcript or recording by the Hearing Clerk (without obscurring the original text).

(b) *Proposed findings of fact, conclusions, order and briefs.* The parties may file with the Hearing Clerk proposed findings of fact, conclusions and orders based solely upon the record and on matters subject to official notice, and briefs in support thereof. The Judge shall announce at the hearing a definite period of time within which these documents may be filed.

(c) *Judge's decision.* The Judge, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions and order, and briefs in support thereof, shall prepare, upon the basis of the record and matters officially noticed, and shall file with the Hearing Clerk, the Judge's decision, a copy of which shall be served by the Hearing Clerk upon each of the parties. Such decision shall become final and effective without further proceedings 35 days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to §1.170: *Provided,* That no decision shall be final for purposes of a request for Judicial Review, as provided in §1.175(a), except a final decision of the Judicial Officer on appeal.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8458, Feb. 14, 1995]

§1.170 Appeal to the Judicial Officer.

(a) *Filing of petition.* Within 30 days after receiving service of the Judge's decision, a party who disagrees with the decision, or any part thereof, or any ruling by the Judge or any alleged deprivation of rights, may appeal such decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in §1.168(g)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other ruling made before the Judge may be relied upon in an appeal. Each issue set forth in the petition, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations to the record, statutes, regulations or authorities being relied upon in support thereof. A brief may be filed in support of the appeal simultaneously with the petition.

(b) *Response to appeal petition.* Within 20 days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: the pleadings; motions and requests filed and rulings thereon; the transcript or recording of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto as may have been filed in the proceeding.

(d) *Oral argument.* A party bringing an appeal may request, within the prescribed time for filing such appeal, an opportunity for oral arguments before the Judicial Officer. Within the time allowed for filing a response, appellee may file a request in writing for opportunity for such an oral argument. Failure to make such request in writing, within the prescribed time period, shall be deemed a waiver of oral argument. The Judicial Officer may grant, refuse, or limit any request for oral argument. Oral argument shall not be transcribed unless so ordered in advance by the Judicial Officer for good cause shown upon request of a party or upon the Judicial Officer's own motion.

(e) *Scope of argument.* Argument to be heard on appeal, whether oral or on brief, shall be limited to the issues raised in the appeal or in the response to the appeal, except that if the Judicial Officer determines that additional issues should be argued, the parties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

(f) *Notice of argument; Postponement.* The Hearing Clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the argument must be made by motion filed a reasonable amount of time in advance of the date fixed for argument.

(g) *Order of argument.* The appellant is entitled to open and conclude the argument.

(h) *Submission on briefs.* By agreement of the parties, an appeal may be submitted for decision on the briefs, but the Judicial Officer may direct that the appeal be argued orally.

(i) *Decision of the judicial officer on appeal.* As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal. If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by the respondent as final for purposes of a request for judicial review as provided in §1.175(a).

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8458, Feb. 14, 1995]

§ 1.171 Intervention.

Intervention under these rules shall not be allowed, except that, in the discretion of the Judicial Officer, or the Judge, any person showing a substantial interest in the outcome of the proceeding shall be permitted to participate in oral or written argument pursuant to §§1.169 and 1.170.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8458, Feb. 14, 1995]

§ 1.172 Motions and requests.

(a) *General.* All motions and requests shall be filed with the Hearing Clerk, and shall be served upon the parties, except those made on record during the oral hearing. The Judge shall rule upon all motions and requests filed or made prior to the filing of the certification of the transcript or recording. Thereafter, the Judicial Officer will rule on any motions or requests.

(b) *Motions entertained.* Any motion will be entertained except a motion to dismiss on the pleadings. All motions and requests concerning the complaint must be made within the time allowed for filing an answer.

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefor.

(d) *Response to motions in request.* Within ten days after service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge or the Judicial Officer the opposing party may file a response to the motion or request.

(e) *Certification to the judicial officer.* The submission or certification of any motion, request, objection, or other question to the Judicial Officer prior to the time when the Judge's certification of the transcript is filed with the Hearing Clerk, shall be made by and in the discretion of the Judge. The Judge may either rule upon or certify the motion, request, objection, or other question to the Judicial Officer, but not both.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8458, Feb. 14, 1995]

§ 1.173 Judges.

(a) *Assignment.* No Judge shall be assigned to serve in any proceeding who (1) has any pecuniary interest in any matter or business involved in the proceeding, (2) is related within the third degree by blood or marriage to any

party to the proceeding, or (3) has participated in the investigation preceding the institution of the proceeding or in determination that it should be instituted or in the preparation of the moving paper or in the development of the evidence to be introduced therein.

(b) *Disqualification of Judge.* (1) Any party to the proceeding may, by motion made to the Judge, request that the Judge disqualify himself or herself and withdraw from the proceeding. Such motion shall set forth with particularity the alleged disqualification. The Judge may then either rule upon or certify the motion to the Judicial Officer, but not both.

(2) A Judge will withdraw from any proceeding in which the Judge deems himself or herself disqualified for any reason.

(c) *Conduct.* At no stage of the proceeding between its institution and the issuance of the final decision shall the Judicial Officer or the Judge discuss *ex parte* the merits of the proceeding with any person who is connected with the proceeding as an advocate or in an investigative capacity, or with any representative of such person: *Provided,* That procedural matters shall not be included within the limitation: and *Provided further,* That the Judicial Officer of Judge may discuss the merits of the case with such a person if all parties to the proceeding, or their representatives, have been given an opportunity to be present. Any memorandum or other communication addressed to the Judicial Officer or a Judge, during the pendency of the proceeding, and relating to the merits thereof, by or on behalf of any party or any interested person, shall be filed with the Hearing Clerk. A copy thereof shall be served upon the parties to the proceeding, and, in the discretion of the Judge or the Judicial Officer, opportunity may be given to file a reply thereto within a specified period.

(d) *Powers.* Subject to review by the Judicial Officer as provided elsewhere in this part, the Judge, in any proceeding assigned to him or her shall have power to:

(1) Rule upon motions and requests;

(2) Set the time, place, and manner of any conference, set the manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;

(3) Administer oaths and affirmations;

(4) Examine witnesses and receive relevant evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law;

(7) Require each party to provide all other parties and the Judge with a copy of any exhibit that the party intends to introduce into evidence prior to any hearing to be conducted by telephone or audio-visual telecommunication;

(8) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the Judge are able to transmit and receive documents during the hearing;

(9) Do all acts and take all measures necessary for the orderly presentation of evidence, maintenance of order, and the efficient conduct of the proceeding.

(e) *Who may act in the absence of the Judge.* In case of the absence of the Judge or upon the Judge's inability to act, the powers and duties to be performed by the Judge under these Rules of Practice in connection with a proceeding assigned to the Judge may, without abatement of the proceeding, be assigned to any other Judge.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8458, Feb. 14, 1995]

§ 1.174 Filing; service; extensions of time; and computation of time.

(a) *Filing; Number of Copies.* Except as otherwise provided by the Judge or the Secretary, all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be filed in quadruplicate: *Provided,* That, where there are parties to the proceeding in addition to complainant and respondent, an additional copy shall be filed for each such additional party. Any document or paper, required or authorized under the rules in this part to be filed with the Hearing Clerk, shall, during the course of an oral hearing, be filed with the Judge.

(b) *Service; proof of service.* Copies of all such documents or papers required or authorized by the rules in this part

to be filed with the Hearing Clerk, shall be served upon the parties by the Hearing Clerk, or by some other employee of the Department, or by a U.S. Marshal or his Deputy. Service shall be made either (1) by delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served, or to the president, secretary, or other executive officer or any director of the corporation or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association; or (2) by leaving a copy of the document or paper at the principal office or place of business or residence of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record and mailing by regular mail another copy to each person at such address; or (3) by registering or certifying and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known residence or principal office or place of business: *Provided,* That if the registered or certified document or paper is returned undelivered because the addressee refused or failed to accept delivery, the document or paper shall be served by remailing it by regular mail. Proof of service hereunder shall be made by the certification of the person who actually made the service: *Provided,* That if the service be made by mail, as outlined in paragraph (b)(3) of this section proof of service shall be made by the return post office receipt, in the case of registered or certified mail, or by the certificate of the person who mailed the matter by regular mail. The certificate and post office receipt contemplated herein shall be filed with the Hearing Clerk, and the fact of filing thereof shall be noted in the record of the proceeding.

(c) *Extension of time.* The time for the filing of any document or paper required or authorized under the rules in this part to be filed may be extended by the Judge prior to the filing of the certification of the transcript or recording if there is good reason for the extension. In all instances in which time permits, notice of the request for extension of the time shall be given to the other party with opportunity to submit views concerning the request.

(d) *Effective date of filing.* Any document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed at the time when it reaches the Department of Agriculture in Washington, D.C.; or, if authorized to be filed with an officer or employee of the Department at any place outside the District of Columbia, it shall be deemed to be filed at the time when it reaches the office of such officer or employee.

(e) *Computation of time.* Saturdays, Sundays and Federal holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided,* That when such time expires on a Saturday, Sunday or Federal holiday, such period shall be extended to include the next following business day.

[45 FR 6587, Jan. 29, 1980, as amended at 60 FR 8459, Feb. 14, 1995]

§ 1.175 Procedure following entry of cease and desist order.

(a) *Request for judicial review.* An association subject to a cease and desist order may, within thirty days following the date of the order, request the Secretary to institute proceedings for judicial review of the order. Such request shall, to the extent practicable, identify findings of fact, conclusions of law, and any part of the order which the association claims are in error. The Secretary shall, thereupon, file in the district in the judicial district in which such association has its principal place of business, a certified copy of the order and of all records in the proceeding, including the request of the association, together with a petition asking that the order be affirmed and enforced.

(b) *Enforcement.* If an association subject to a cease and desist order fails or neglects, within thirty days of the date of the order, or at any time thereafter, to obey such order, and has not made a request for judicial review as provided above, the Secretary shall file in the district court in the judicial district in which such association has its principal place of business a certified copy

of the order and of all records in the proceeding, together with a petition asking that the order be enforced.

(c) *Notice.* The Secretary shall give notice of the filing of a petition for enforcement or review to the Attorney General, and to the association, by service of a copy of the petition.

Subpart J—Procedures Relating to Awards Under the Equal Access to Justice Act in Proceedings Before the Department

SOURCE: 67 FR 63237, Oct. 11, 2002, unless otherwise noted.

GENERAL PROVISIONS

§ 1.180 Definitions.

(a) The definitions contained in § 1.132 of this part are incorporated into and made applicable to this subpart.

(b) *Adjudicative Officer* means an administrative law judge, administrative judge, or other person assigned to conduct a proceeding covered by EAJA.

(c) *Agency* means an organizational unit of the Department whose head reports to an official in the Office of the Secretary.

(d) *Agency counsel* means the attorney from the Office of the General Counsel representing the agency of the Department administering the statute involved in the proceeding.

(e) *Days* means calendar days.

(f) *Department* means the United States Department of Agriculture.

§ 1.181 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called ''EAJA'' in this subpart), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before the Department. An eligible party may receive an award when it prevails over the Department unless the position of the Department was substantially justified or special circumstances make an award unjust. Alternatively, an eligible party may receive an award in connection with an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement where the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision under the facts and circumstances of the case. The rules in this subpart describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Department will use to make awards.

§ 1.182 When EAJA applies.

EAJA applies to any adversary adjudication pending or commenced before the Department on or after August 5, 1985, except with respect to a proceeding covered under § 1.183(a)(1)(iii) of this part, which is effective on or after October 21, 1986. In addition, the provisions of § 1.185(b) relating to award for excessive demand apply only to adversary adjudications commenced on or after March 29, 1996. Changes in maximum rates for attorney fees are effective as of October 11, 2002.

§ 1.183 Proceedings covered.

(a)(1) The rules in this subpart apply to adversary adjudications. These are:

(i) Adjudications required by statute to be conducted by the Department under 5 U.S.C. 554 in which the position of the Department or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding,

(ii) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Agriculture Board of Contract Appeals as provided in section 8 of that Act (41 U.S.C. 607), and

(iii) Any hearing conducted under chapter 38 of title 31, United States Code.

(2) Any proceeding in which the Department may prescribe a lawful present or future rate is not covered by EAJA. Proceedings to grant or renew licenses also are excluded, but proceedings to modify, suspend, or revoke

licenses are covered if they are otherwise ''adversary adjudications.'' The proceedings covered include adversary adjudications under the following statutory provisions.

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A))
Animal Health Protection Act, sections 10414 and 10415 (7 U.S.C. 8313 and 8314).
Animal Quarantine Laws (21 U.S.C. 104, 117, 122, 127, 134e, and 135a)
Animal Welfare Act (7 U.S.C. 2149)
Archaeological Resources Protection Act (16 U.S.C. 470ff)
Beef Research and Information Act (7 U.S.C. 2912)
Capper-Volstead Act (7 U.S.C. 292)
Cotton Research and Promotion Act (7 U.S.C. 2111)
Egg Products Inspection Act (21 U.S.C. 1047)
Egg Research and Consumer Information Act (7 U.S.C. 2713, 2714(b))
Endangered Species Act (16 U.S.C. 1540(a))
Federal Land Policy and Management Act (43 U.S.C. 1766)
Federal Meat Inspection Act (21 U.S.C. 604, 606, 607(e), 608, 671)
Federal Seed Act (7 U.S.C. 1599)
Horse Protection Act (15 U.S.C. 1823(c), 1825)
Packers and Stockyards Act (7 U.S.C. 193, 204, 213, 218d, 221)
Perishable Agricultural Commodities Act (7 U.S.C. 499c(c), 499d(d), 499f(c), 499h(a), 499h(b), 499h(c), 499i, 499m(a))
Plant Protection Act (7 U.S.C. 7734, 7735, and 7736)
Potato Research and Promotion Act (7 U.S.C. 2620)
Poultry Products Inspection Act (21 U.S.C. 455, 456, 457(d), 467)
Swine Health Protection Act (7 U.S.C. 3804(b), 3805(a))
Title V of the Agricultural Risk Protection Act of 2000, section 501(a) (7 U.S.C. 2279e).
U.S. Cotton Standards Act (7 U.S.C. 51b, 53)
U.S. Grain Standards Act (7 U.S.C. 79(g)(3), 85, 86)
U.S. Warehouse Act (7 U.S.C. 246, 253)
Virus-Serum-Toxin Act (21 U.S.C. 156)
Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409)

(b) The failure of the Department to identify a type of proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by EAJA; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by EAJA and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

[67 FR 63237, Oct. 11, 2002, as amended at 67 FR 70674, Nov. 26, 2002]

§ 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under EAJA, the applicant must meet one of the following conditions:

(1) The applicant must be a prevailing party to the adversary adjudication for which it seeks an award; or

(2) The applicant must be a party to an adversary adjudication arising from an agency action to enforce the party's compliance with a statutory or regulatory requirement in which the demand by the agency was substantially in excess of the decision of the adjudicative officer and the demand is unreasonable when compared with such decision under the facts and circumstances of the case.

(b) In addition to the criteria set out in paragraph (a) of this section, a party seeking an award must be one of the following:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (2 U.S.C. 1141j(a)) with not more than 500 employees;

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and nor more than 500 employees;

(6) For purposes only of paragraph (a)(2) of this section, a small entity as defined in 5 U.S.C. 601.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the adversary adjudication was initiated: Provided, that for purposes of eligibility in proceedings covered by §1.183(a)(1)(ii) of this part, the

net worth and number of employees of an applicant shall be determined as of the date the applicant filed its appeal under 41 U.S.C. 606.

(d) In interpreting the criteria set forth in paragraph (b) of this section, the following apply:

(1) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant prevails are related primarily to personal interests rather than to business interests.

(2) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(3) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this subpart, unless the adjudicative officer determines such treatment would be unjust and contrary to the purposes of EAJA in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(4) An applicant that participates in a proceeding primarily on behalf of one or more other person or entity that would be ineligible is not itself eligible for an award.

§ 1.185 Standards for awards.

(a) Prevailing party. (1) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, or in a significant and discrete substantive portion of the proceeding, unless the position of the Department was substantially justified. The position of the Department includes, in addition to the position taken by the Department in the adversary adjudication, the action or failure to act by the Department upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant because the position of the Department was substantially justified is on the agency.

(2) An award to a prevailing applicant will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

(b) Excessive demand. (1) If, in an adversary adjudication arising from an agency action to enforce a party's compliance with a statutory or regulatory requirement, the demand by the agency is substantially in excess of the decision of the adjudicative officer and is unreasonable when compared with such decision under the facts and circumstances of the case, the adjudicative officer shall award to the party the fees and other expenses related to defending against the excessive demand, unless the party has committed a willful violation of law or otherwise acted in bad faith, or special circumstances make an award unjust. Fees and expenses awarded under this paragraph shall be paid only as a consequence of appropriations provided in advance.

(2) ''Demand'' means the express demand of the agency which led to the adversary adjudication, but does not include a recitation by the agency of the maximum statutory penalty:

(i) In the administrative complaint, or

(ii) Elsewhere when accompanied by an express demand for a lesser amount.

§ 1.186 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at reduced rate to the applicant.

(b) In proceedings commenced on or after the effective date of this paragraph, no award for the fee of an attorney or agent under the rules in this subpart may exceed $150 per hour. No award to compensate an expert witness may exceed the highest rate at which the Department pays expert witnesses, which is set out at §1.150 of this part. However, an award also may include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate for similar services, and the study or other matter was necessary for preparation of the applicant's case.

[67 FR 63237, Oct. 11, 2002, as amended at 76 FR 11668, Mar. 3, 2011]

§ 1.187 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Department may adopt regulations providing that attorney fees may be awarded at a rate higher than $150 per hour in some or all of the types of proceedings covered by this part. The Department will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may file with the Department a petition for rulemaking to increase the maximum rate for attorney fees in accordance with §1.28 of this part. The petition should identify the rate the petitioner believes the Department should establish and the types of proceedings in which the rate should be used. It also should explain fully the reasons why the higher rate is warranted. The Department will respond to the petition within 60 days after it is filed, by initiating a rulemaking proceeding, denying the petition, or taking other appropriate action.

[67 FR 63237, Oct. 11, 2002, as amended at 76 FR 11668, Mar. 3, 2011]

§ 1.188 Awards against other agencies.

If an applicant is entitled to an award because it prevails over another agency of the United States that participates in a proceeding before the Department and takes a position that is not substantially justified, the award or an appropriate portion of the award shall be made against that agency.

§ 1.189 Delegations of authority.

(a) Except as provided in paragraph (b) of this section, the Secretary of Agriculture delegates to the Judicial Officer authority to take final action on matters pertaining to the Act in proceedings covered by these rules. The Secretary by order may delegate authority to take final action on matters pertaining to the Act in particular cases to other subordinate officials or bodies.

(b)(1) The Secretary of Agriculture delegates to the Director of the National Appeals Division authority to take final actions on matters pertaining to the Act for proceedings under 7 CFR part 11.

(2) With respect to proceedings covered under §1.183(b)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

[68 FR 27435, May 20, 2003]

INFORMATION REQUIRED FROM APPLICANTS

§ 1.190 Contents of application.

(a) An application for an award of fees and expenses under EAJA shall identify the applicant and the proceeding for which an award is sought. Unless the applicant is an individual, the application shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business. The application shall also:

(1) Show that the applicant has prevailed and identify the position of the Department that the applicant alleges was not substantially justified and shall briefly state the basis for such allegation; or

(2) Show that the demand by the Department in the proceeding was substantially in excess of, and was unreasonable when compared with, the decision in the proceeding.

(b) The application also shall, as appropriate, include a declaration that the applicant is a small entity as defined in 5 U.S.C. 601 or a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates). However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application also may include any other matters that the applicant wishes the Department to consider in determining whether, and in what amount, an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It also shall contain or be accompanied by a written verification under oath or affirmation under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

§ 1.191 Net worth exhibit.

(a) An applicant, except a qualified tax-exempt organization or cooperative association, must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in §1.184 of this part) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this subpart. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled ''Confidential Financial Information,'' accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9). The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the established procedures of the Department under the

Freedom of Information Act (§§1.1 through 1.23 of this part).

§ 1.192 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project, or similar matter, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing on behalf of the party, stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall state the services performed. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide information about two attorneys or agents with similar experience, who perform similar work, stating their hourly rate.

(c) The documentation also shall include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any fees or expenses claimed, pursuant to §1.199 of this part.

§ 1.193 Time for filing application.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after final disposition of the proceeding by the Department.

(b) For the purposes of this subpart, final disposition means the date on which a decision or order disposing of the merits of the proceeding or any other complete resolution of the proceeding, such as a settlement or voluntary dismissal, become final and unappealable, both within the Department and to the courts.

(c) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy. When the United States appeals the underlying merits of an adversary adjudication to a court, no decision on an application for fees and other expenses in connection with that adversary adjudication shall be made until a final and unreviewable decision is rendered by the court on the appeal or until the underlying merits of the case have been finally determined pursuant to the appeal.

Procedures for Considering Applications

§ 1.194 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding except as provided in §1.191 of this part for confidential financial information. The provisions relating to filing, service, extensions of time, and computation of time contained in §1.147 of this part are incorporated into and made applicable to this subpart, except that the statutory 30 day time limit on filing the application as set out in §1.193 of this part may not be extended.

§ 1.195 Answer to application.

(a) Within 30 days after service of an application, agency counsel may file an answer. If agency counsel fails to timely answer or settle the application, the adjudicative officer, upon a satisfactory showing of entitlement by the applicant, may make an award for the applicant's allowable fees and expenses.

(b) If agency counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of intent to negotiate a settlement. The filing of this

statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by agency counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of agency counsel's position. If the answer is based on any alleged facts not already in the record of the proceeding, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.196 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1.199 of this part.

§ 1.197 Comments by other parties.

Any party to a proceeding other than the applicant and agency counsel may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application, unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§ 1.198 Settlement.

The applicant and agency counsel may agree on a proposed settlement of the award before final action on the application, either in connection with a settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and agency counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 1.199 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or agency counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether the position of the Department was substantially justified shall be determined on the basis of the administrative record, as a whole, which is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall identify specifically the information sought or the disputed issues, and shall explain specifically why the additional proceedings are necessary to resolve the issues.

(c) In the event that an evidentiary hearing is held, it shall be conducted pursuant to §§ 1.130 through 1.151 of this part, except that any hearing in a proceeding covered by § 1.183(a)(1)(ii) of this part shall be conducted pursuant to Rules 17 through 25 of the Board of Contract Appeals contained in § 24.21 of this title.

§ 1.200 Decision.

The adjudicative officer or Board of Contract Appeals shall issue an initial decision on the application as expeditiously as possible after completion of proceedings on the application. Whenever possible, the decision shall be made by the same administrative judge or panel that decided the contract appeal for which fees are sought. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. This decision also shall include, if at issue, findings on whether the position of the Department was

substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against more than one agency, the decision shall allocate responsibility for payment of any award made among the agencies, and shall explain the reasons for the allocation made.

§ 1.201 Department review.

(a) Except with respect to a proceeding covered by §1.183(a)(1)(ii) of this part either the applicant or agency counsel may seek review of the initial decision on the fee application, in accordance with the provisions of §§1.145(a) and 1.146(a) of this part or in accordance with any delegation made pursuant to §1.189 of this part. If neither the applicant nor agency counsel seeks review, the initial decision on the fee application shall become a final decision of the Department 35 days after it is served upon the applicant. If review is taken, it will be in accord with the provisions of §§1.145(b) through (i) and 1.146(b) of this part, or

(b) With respect to a proceeding covered by §1.183(a)(1)(ii) of this part, either party may seek reconsideration of the decision on the fee application in accordance with Rule 29 of the Board of Contract Appeals contained in §24.21 of this title. In addition, either party may appeal a decision of the Board of Contract Appeals to the Court of Appeals for the Federal Circuit in accordance with 41 U.S.C. 607.

§ 1.202 Judicial review.

Judicial review of final agency decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 1.203 Payment of award.

An applicant seeking payment of an award shall submit to the head of the agency administering the statute involved in the proceeding a copy of the final decision of the Department granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. The agency will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

Subpart K—Production or Disclosure of Official Information in Legal Proceedings

SOURCE: 87 FR 10927, Feb. 28, 2022, unless otherwise noted.

GENERAL INFORMATION

§ 1.210 What does this subpart cover?

(a) This subpart sets forth the procedures to be followed with respect to demands seeking official information or employee testimony relating to official information for use in a legal proceeding.

(b) This subpart does not apply to:

(1) Congressional requests or subpoenas for official information or testimony relating to official information;

(2) Federal court civil proceedings in which the United States is a party;

(3) Federal administrative proceedings in which the Department is a party;

(4) The disclosure of official information or testimony relating to official information provided to other Federal agencies, including United States Department of Justice attorneys, in connection with a legal proceeding conducted on behalf of or in defense of the United States or a legal proceeding in which the United States has an interest; and

(5) Employees who testify, while on their own time or in approved leave status, as private citizens as to facts or events that are not related to the official business of the Department.

(c) Nothing in this subpart affects the rights, procedures, or Department regulations governing requests for, and release of, records under the Freedom of Information Act (FOIA, 5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a), or the Government in the Sunshine Act (5 U.S.C. 552b).

(d) Nothing in this subpart affects procedures governing requests for authentication or certified copies of records under §1.10.

(e) Nothing in this subpart permits the Department or employees to disclose official in-formation or give testimony relating to official information if the disclosure or testimony is protected or prohibited by statute or other applicable law.

(f) This subpart only provides guidance for the internal operations of the Department, and neither creates nor is intended to waive the sovereign immunity of the United States or create any enforceable right or benefit against the United States.

§ 1.211 Definitions that apply to this subpart.

For the purpose of this subpart:

(a) The term ''demand'' means any effort or attempt to obtain, for use in a legal proceeding, official information or testimony relating to official information, including any request, order, subpoena, or other command, as well as any informal or other attempt (by any method) to obtain official information, or testimony relating to official information, by an attorney, investigator, or others.

(b) The term ''Department'' means the United States Department of Agriculture, its constituent agencies, and Department officials authorized to decide whether to allow disclosures of official information or testimony relating to official information in response to demands.

(c) The term ''appropriate Department official'' means the head of a Department agency or office.

(d) The term ''employee'' means all employees or officers of the Department, including individuals who are or have been appointed by the Department, or who are or have been subject to the Department's supervision, jurisdiction, or control, including individuals hired through contractual agreements by or on behalf of the Department, or performing services under such agreements for the Department, such as consultants, contractors, subcontractors, and their employees or other personnel. Also included in the definition are former Department employees where the demand seeks testimony relating to official information acquired while the person was an employee of the Department.

(e) The term ''legal proceeding'' means all pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, grand juries, or other tribunals. This phrase includes all phases of discovery as well as formal or informal requests by attorneys or others involved in legal proceedings.

(f) The term ''Office of the General Counsel'' means the Office of the General Counsel of the Department.

(g) The term ''official information'' means all information of any kind, however stored, that is in the custody and control of the Department or relates to information in the custody and control of the Department, or information or knowledge acquired by a Department employee as part of the employee's official duties or because of the employee's official status with the Department.

(h) The term ''testimony'' means any written or oral statement by an employee, including personal appearances in court or at depositions, interviews, or informal inquiries in person or by telephone, responses to written interrogatories or other written statements such as reports, declarations, or affidavits, or any response involving more than the de-livery of documents.

(i) The term ''United States'' means the Federal Government, its departments, and its agencies.

§ 1.212 What is the Department's policy on providing official information or testimony relating to official information in response to a demand?

(a) It is the Department's general policy not to allow its employees to provide official information or testimony relating to official information in response to a demand. However, the Department will consider a demand submitted in accordance with this subpart and issue a decision to grant or deny the demand.

(b) No employee may provide official information or testimony relating to official information in response to a demand unless authorized by the Department in accordance with this subpart. *See United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951). An employee

who fails to comply with this regulation may be subject to disciplinary action up to and including removal.

RESPONSIBILITIES IF MAKING A DEMAND

§ 1.213 How can I obtain official information or testimony relating to official information in response to my demand?

You must submit a demand in accordance with this subpart (*see United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951)). The appropriate Department official, in consultation with the Office of the General Counsel, will consider your demand in accordance with this subpart. The Counsel to the Inspector General will consider and make any final determinations regarding all demands seeking official information or employee testimony from the Office of Inspector General.

§ 1.214 What information must I include with my demand?

Your demand must include the following information, if applicable:

(a) The caption of the legal proceeding underlying your demand, including the docket number and the name of the court or other authority involved;

(b) The parties to the legal proceeding underlying your demand and any known relationships they have to the Department's mission or programs;

(c) A copy of the complaint or equivalent document setting forth the assertions in the legal proceeding underlying your demand;

(d) The identity of the employee whose testimony is sought and an affidavit or declaration under 28 U.S.C. 1746 or, if such an affidavit or declaration is not feasible, a written statement by you or your attorney, setting forth a reasonably detailed summary of the testimony sought and its relevance to the legal proceeding underlying your demand. Any authorization the Department decides to grant for testimony by an employee shall be limited to testimony within the scope of the summary provided;

(e) If the demand seeks documents or other materials to be obtained or inspected, a de-scription of the official information and the relevance to the legal proceeding underlying your demand;

(f) A written description of all prior decisions, orders, or pending motions in the legal proceeding underlying your demand that bear on the relevance of the official information or testimony you seek;

(g) A showing that the desired official information or testimony is not reasonably available from any other source, including a showing that no document could be provided and used in lieu of testimony; and

(h) An explanation of how each of the Department's considerations set forth in §1.220(a) apply to your demand.

§ 1.215 How soon before I need the official information or testimony relating to official information should I submit my demand?

You must submit your demand, including all information identified in §1.214, at least 14 calendar days before the date when you need the official information or testimony relating to official information.

§ 1.216 If I serve a subpoena, must I also submit information in accordance with § 1.214?

Yes. A subpoena shall be served in accordance with the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or applicable state procedure, as appropriate. If you serve a subpoena, including a subpoena *duces tecum,* together with the subpoena you must also submit information in accordance with §1.214. If you serve a subpoena on the Department or a Department employee before submitting information in accordance with §1.214 of this subpart, the Department may oppose the subpoena on the grounds that you failed to follow the requirements of this subpart.

§ 1.217 Where must I send my demand?

(a) Except for subpoenas served in accordance with the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or applicable state procedure as appropriate, you must send your demand, including all information required by §1.214 of this subpart, to:

(1) The Office of the General Counsel at 1400 Independence Avenue SW, Washington, DC 20250, Attention: ''Touhy Demands,'' or by electronic mail to *OGC-Touhy-Demands@usda.gov* and

(2) The United States Department of Agriculture agency office from which the official information or testimony is sought.

(b) Notwithstanding paragraph (a) of this section, a demand for Office of Inspector General information or testimony must be sent to the Counsel to the Inspector General, United States Department of Agriculture, Attention: ''Touhy Demands,'' at 1400 Independence Avenue SW, Mail Stop 2308, Washington, DC 20250–2308; by facsimile to (202) 690–1528; or by electronic mail to *OIG.TOUHY-DEMANDS@oig.usda.gov*.

[84 FR 56100, Oct. 21, 2019, as amended at 87 FR 25571, May 2, 2022]

§ 1.218 How much will I be charged?

(a) In the event that a demand is granted, the Department may charge reasonable fees. The appropriate Department official will determine all fees, if any, associated with this subpart and shall timely notify you of the fees, particularly those that are to be paid in advance.

(b) When a demand is granted under this subchapter to permit an employee to testify, you must pay the witness the fee and expenses, including any travel related costs, prescribed for attendance by the applicable rule of court. If no such fees are prescribed, the local Federal district court rule relating to witness fees for the Federal district court closest to where the witness appears will apply.

(c) When a demand is granted under this subchapter to produce documents, blueprints, electronic tapes, or other official information, the fees to be charged and paid prior to production shall be calculated as provided in Department regulations implementing the fee provisions of the FOIA.

RESPONSIBILITIES OF THE DEPARTMENT

§ 1.219 How will the Department process my demand?

(a) The appropriate Department official, in consultation with the Office of the General Counsel, will consider your demand, and decide whether to grant or deny it. An Office of the General Counsel attorney or Department official may negotiate with you or your representative to refine or limit your demand. All demands for Office of Inspector General information or testimony will be processed by the Counsel to the Inspector General.

(b) Any decision in response to your demand will be limited to the scope of information requested in accordance with the requirements of this subpart.

(c) If you fail to follow the requirements of this subpart, the Department may decide not to grant your demand. If the Department determines that your demand is not complete, the Department may require that you provide additional information before your demand will be considered.

(d) If your demand is complete, the Department will consider it by applying the criteria under § 1.220.

§ 1.220 The Department's considerations in deciding whether to grant or deny a demand.

(a) In deciding whether to grant or deny a demand, the appropriate Department official should consider the following factors:

(1) Whether compliance with the demand would be unduly burdensome, disproportionate to the needs of the case, or otherwise inappropriate under the applicable rules of discovery or rules of procedure governing the legal proceeding underlying the demand;

(2) Whether compliance with the demand is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(3) The public interest;

(4) The need to conserve the time and expense of Department employees for the conduct of official business;

(5) The need to avoid spending the time and money of the United States for non-Federal government purposes;

(6) The need to maintain impartiality between private litigants in cases in which a substantial Department interest is not implicated;

(7) Whether compliance with the demand would have an adverse effect on the Department's mission and duties;

(8) The need to avoid involving the Department in issues not related to its mission; and

(9) Any other factor the Department determines to be relevant to the interests of the Department.

(b) A demand will not be granted if the disclosure of official information or employee testimony relating to official information:

(1) Would violate a statute or a rule of procedure;

(2) Would violate a regulation or executive order;

(3) Would reveal information properly classified in the interest of national security;

(4) Would reveal confidential commercial or financial information or trade secrets in the absence of the owner's consent;

(5) Would reveal the internal deliberative processes of the Executive Branch or other privileged information; or

(6) Would potentially impede or prejudice an on-going law enforcement investigation.

§ 1.221 In responding to my demand, what conditions or restrictions may the Department impose on the production of official information or testimony relating to official information?

In responding to a demand, the Department may, at its discretion, impose conditions or restrictions on the production of official information or testimony relating to official information. Such conditions or restrictions may include the following:

(a) A requirement that the parties to the legal proceeding underlying your demand obtain a protective order or execute a confidentiality agreement to limit access to, and limit any further disclosure of, official information or testimony provided;

(b) A limitation on the subject matter areas of the permitted testimony;

(c) A requirement that the manner, time, location, and duration of any testimony be prescribed by the Department;

(d) A requirement that the parties to the legal proceeding underlying your demand agree that a transcript of the permitted testimony be kept under seal or will only be used or only made available in the particular legal proceeding underlying the demand;

(e) A requirement that you purchase an extra copy of the transcript of the employee's testimony from the court reporter and provide the Department with a copy at your expense; or

(f) Any other condition or restriction deemed to be in the best interests of the United States.

§ 1.222 Delegation authority for deciding whether to grant or deny a demand.

(a) Except as provided in paragraphs (b), (c), or (d) of this section, the appropriate department official may delegate his or her responsibilities under this subpart to employees of his or her agency as follows:

(1) In the national office of the agency, to a level no lower than two levels below the agency head;

(2) In a field component of an agency, to a level no lower than the official who heads a state office.

(b) Notwithstanding paragraph (a) of this section, the Chief of the Forest Service may delegate his or her responsibilities under this subpart as follows:

(1) In the national office of the Forest Service, to a level no lower than a Deputy Chief of the Forest Service;

(2) In a field component of the Forest Service, to a level no lower than a Regional Forester or Station Director.

(c) Notwithstanding paragraph (a) of this section, the General Counsel may delegate his or her responsibilities under this subpart as follows:

(1) In the national office of the Office of the General Counsel, to a level no lower than an Assistant General Counsel;

(2) In the field component of the Office of the General Counsel, to Regional Attorneys who may redelegate their responsibilities to Associate Regional Attorneys and Assistant Regional Attorneys who report to them.

(d) Notwithstanding paragraph (a) of this section, the Counsel to the Inspector General may delegate his or her responsibility under this subpart to the Deputy Counsel or an Assistant Counsel.

RESPONSIBILITIES OF DEPARTMENT EMPLOYEES

§ 1.223 What must I, as an employee, do upon receiving a demand?

(a)(1) If you receive a demand, you must immediately notify your supervisor, who must in turn notify the appropriate Department official. Either your supervisor or the appropriate Department official must notify the Office of the General Counsel contact for your region or division for assistance with issuing the proper response.

(2) Demands for Office of Inspector General official information or testimony should be forwarded immediately to the Counsel to the Inspector General.

(b)(1) The appropriate Department official will decide whether to grant or deny the demand. Before a decision granting or denying a demand is made, the Office of the General Counsel contact for your region or division must be consulted for advice. All decisions granting or denying a demand must be in writing and must receive Office of the General Counsel concurrence prior to issuance. Absent Office of the General Counsel concurrence, a demand decision cannot be issued.

(2) The Counsel to the Inspector General will decide whether to grant or deny a demand for Office of Inspector General information and testimony.

(c) In the event that the appropriate Department official decides to deny the demand, the decision shall state that you are not authorized to provide official information or testimony and, if applicable, that you will not personally appear in response to the demand.

§ 1.224 What must I, as an employee, do upon becoming aware that a court or other authority has ordered compliance with a demand?

(a) If you become aware that a court or other authority has ordered compliance with a demand, you must promptly notify your supervisor, who must in turn notify the Office of the General Counsel for your region or division.

(b) In the case of compliance orders involving a demand for Office of Inspector General information and testimony, promptly forward them to your supervisor and the Counsel to the Inspector General.

Subpart L—Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986

AUTHORITY: 31 U.S.C. 3801–3812.

SOURCE: 56 FR 9582, Mar. 7, 1991, unless otherwise noted. Correctly designated at 57 FR 3909, Feb. 3, 1992.

§ 1.301 Basis, purpose and scope.

(a) *Basis.* This subpart implements the Program Fraud Civil Remedies Act of 1986, Public Law No. 99–509, Sections 6101–6104, 100 Stat. 1874 (1986). This statute added 31 U.S.C. 3801–3812. Section 3809 of Title 31, United States Code, requires the Secretary to promulgate regulations necessary to implement the provisions of the statute.

(b) *Purpose.* This subpart—

(1) Establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and

(2) Specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments.

(c) *Scope.* The procedures for imposing civil penalties and assessments established by this subpart are intended to enhance existing administrative enforcement efforts against fraud and to provide an additional remedy against false, fictitious, and fraudulent claims and statements in the programs administered by this Department.

§ 1.302 Definitions.

(a) *Agency* means a constituent organizational unit of the USDA.

(b) *Agency Fraud Claims Officer—(AFCO)* means an officer or employee of an agency who is designated by the head of that agency to receive the reports of the investigating official, evaluate evidence, and make a recommendation to the reviewing official with respect to the determination required under § 1.305 of this part.

(c) *ALJ* means an Administrative Law Judge in USDA appointed pursuant to 5 U.S.C. 3105 or detailed to the USDA pursuant to 5 U.S.C. 3344.

(d) *Authority* means the USDA.

(e) *Benefits* means, except as otherwise defined in this subpart, anything of value, including but not limited to any advantage, preference, privilege, license, permit, favorable decision, ruling, status, or loan guarantee.

(f) *Claim* means any request, demand, or submission—

(1) Made to USDA for property, services, or money (including money representing grants, loans, insurance, or benefits);

(2) Made to a recipient of property, services, or money from USDA or to a party to a contract with USDA—

(i) For property or services if the United States—

(A) Provided such property or services; or

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance, or benefits) if the United States—

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to USDA which has the effect of decreasing an obligation to pay or account for property, services, or money.

(g) *Complaint* means the written notice served by the reviewing official on the respondent under §1.307 of this part.

(h) *Days* means business days for all periods referred to in these regulations of 10 days or less and calendar days for all periods referred to in these regulations in excess of 10 days.

(i) *Family* means the individual's parents, spouse, siblings, children, and grandchildren with respect to an individual making a claim or statement for benefits.

(j) *Government* means the United States Government.

(k) *Household* means a family or one or more individuals occupying a single residence.

(l) *Individual* means a natural person.

(m) *Investigating official* means the Inspector General of USDA or an officer or employee of the Office of Inspector General designated by the Inspector General and serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(n) *Judicial officer* means an official of USDA delegated authority by the Secretary, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–450g) and Reorganization Plan No. 2 of 1953, 67 Stat. 633, as amended by Public Law No. 97–325 (7 U.S.C. 2201n.), to perform the adjudicating function for the Department under §2.35 of this title, or the Secretary if he exercises the authority so delegated.

(o) *Knows or has reason to know* means that a person, with respect to a claim or statement—

(1)(i) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(ii) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(iii) Acts in reckless disregard of the truth or falsity of the claim or statement; and

(2) No proof of specific intent to defraud is required.

(p) *Makes* means presents, submits, or causes to be made, presented, or submitted. As the context requires, ''making'' or ''made'' shall likewise include the corresponding forms of such terms.

(q) *Person* means any individual, partnership, corporation, association, or private organization, and includes the plural of that term.

(r) *Representative* means an attorney who is a member in good standing of the bar of any State, Territory, or possession of the United States or of the District of Columbia or the Commonwealth of Puerto Rico. This definition is not intended to foreclose *pro se* appearances. An individual may appear for himself or herself, and a corporation or other entity may appear by an

owner, officer, or employee of the corporation or entity.

(s) *Respondent* means any person alleged in a complaint issued under §1.308 of this part to be liable for a civil penalty or assessment under §1.303 of this part.

(t) *Reviewing official* means an officer or employee of USDA—

(1) Who is designated by the Secretary to make the determination required under §1.305 of this part;

(2) Who is serving in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule; and

(3) Who is—

(i) Not subject to supervision by, or required to report to, the investigating official; and

(ii) Not employed in the organizational unit of USDA in which the investigating official is employed.

(u) *Secretary* means the Secretary of Agriculture.

(v) *Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made—

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, USDA, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan, or benefit.

(w) *USDA* means the U.S. Department of Agriculture.

§1.303 Basis for civil penalties and assessments.

(a) *Claims.* (1) Except as provided in paragraph (c) of this section, any person who makes a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent;

(ii) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed,shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than the amount specified at §3.91(b)(11)(i) of this title for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, food coupons, or money constitutes a separate claim.

(3) A claim shall be considered made to the USDA, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the USDA, recipient, or party.

(4) Each claim for property, services, food coupons, or money is subject to a civil penalty regardless of whether such property, services, food coupons, or money is actually delivered or paid.

(5) If the Government has made payment (including transferred property or provided services) on a claim, a person subject to a civil penalty under paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. Such assessment shall be in lieu of damages sustained by the Government because of such claim.

(b) *Statements.* (1) Except as provided in paragraph (c) of this section, any person who makes a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making the statement had a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement, shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than the amount specified at §3.91(b)(11)(ii) of this title for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made to the USDA when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the USDA.

(c) *Benefits.* (1) In the case of any claim or statement made by any individual relating to any of the benefits listed in paragraph (c)(2) of this section received by such individual, such individual may be held liable for penalties and assessments under this section only if such claim or statement is made by such individual in making application for such benefits with respect to such individual's eligibility to receive such benefits.

(2) For purposes of this paragraph, the term *benefits* means—

(i) Benefits under the food stamp program established under the Food Stamp Act of 1977 which are intended as food assistance for the personal use of the individual who receives the benefits or for a member of the individual's family or household (as defined in section 3(h) of the Food Stamp Act of 1977);

(ii) Benefits under the National School Lunch Act;

(iii) Benefits under any housing assistance program for lower income families or elderly or handicapped persons which is administered by the Secretary or USDA;

(iv) Benefits under the special supplemental food program for women, infants, and children established under section 17 of the Child Nutrition Act of 1966 which are intended for the personal use of the individual who receives the benefits or for a member of the individual's family or household.

(d) *Intent.* No proof of specific intent to defraud is required to establish liability under this section.

(e) *More than one person liable.* In any case in which it is determined that more than one person is liable for making a claim or statement under this section, each person may be held liable for a civil penalty under this section.

(f) *Joint and several liability.* In any case in which it is determined that more than one person is liable for making a claim under this section on which the government has made payment (including transferred property or provided services), an assessment may be imposed against any such person or jointly and severally against any combination of such persons. The aggregate amount of the assessments collected with respect to such claim shall not exceed twice the portion of such claim determined to be in violation of paragraph (a)(1) of this section.

[56 FR 9582, Mar. 7, 1991, as amended at 57 FR 3909, Feb. 3, 1992; 75 FR 17556, Apr. 7, 2010]

§1.304 Investigation.

(a) The investigating official may investigate allegations that a person is liable under §1.303 of this part.

(b) If an investigating official concludes that a subpoena pursuant to the authority conferred by 31 U.S.C. 3804(a) is warranted, the investigating officer may issue a subpoena, which shall notify the person to whom it is addressed of the authority under which it is issued and shall identify the information, documents, reports, answers, records, accounts, papers, or data sought.

(c) The investigating official may designate a person to act on his behalf to receive the documents or other materials sought by a subpoena issued under paragraph (b) of this section.

(d) The person receiving such subpoena shall be required to tender to the investigating official or the person designated to receive the documents a certification that the documents or other materials sought have been produced, or that such documents or other materials are not available and the reasons therefore, or that such documents or other materials, suitably identified,

have been withheld based upon the assertion of an identified privilege.

(e) Each agency shall develop criteria for determining which allegations that a person is liable under §1.303 of this part are to be referred to the investigating official.

(f) If the investigating official concludes that an action under the Program Fraud Civil Remedies Act may be warranted, the investigating official shall submit a report containing findings and conclusions of such investigation to the reviewing official.

(g) Nothing in this section shall preclude or limit an investigating official's discretion to refer allegations directly to the Department of Justice for suit under the False Claims Act or other civil relief, nor preclude or limit such official's discretion to defer or postpone a report or referral to the reviewing official in order to avoid interference with a criminal investigation or prosecution.

(h) Nothing in this section modifies any responsibility of an investigating official to report violations of criminal law to the Attorney General.

§ 1.305 Review by the reviewing official.

(a) Upon receipt of the report of the investigating official, the reviewing official may refer the report to the appropriate agency fraud claims officer (AFCO) for a recommendation with respect to the determination required under this section.

(b) The AFCO shall evaluate the evidence and make a recommendation to the reviewing officer within 45 days of receipt of the report of the investigating official.

(c) The reviewing official is not bound by the recommendation of the AFCO, and may accept or reject it.

(d) If, based on the report of the investigating official under §1.304(f) of this part, the reviewing official determines that there is adequate evidence to believe that a person is liable under §1.303 of this part, the reviewing official shall transmit to the Attorney General a written notice of the reviewing official's intention to issue a complaint under §1.307 of this part.

(e) Such notice shall include—

(1) A statement of the reviewing official's reasons for issuing a complaint;

(2) A statement of the evidence that supports the allegations of liability;

(3) A description of the claims or statements upon which the allegations of liability are based;

(4) An estimate of the amount of money or the value of property, services, or other benefits requested or demanded in violation of §1.303 of this part;

(5) A statement of any exculpatory or mitigating circumstances that may relate to the claims or statements;

(6) A statement that there is a reasonable prospect of collecting the amount specified in §1.307(b)(2) of this part and the reasons supporting such statement.

§ 1.306 Prerequisites for issuing a complaint.

The reviewing official may issue a complaint under §1.307 of this part only if:

(a) The Attorney General or an Assistant Attorney General designated by the Attorney General approves the issuance of a complaint in a written statement as provided in 31 U.S.C. 3803(b)(1);

(b) In the case of allegations of liability under §1.303(a) of this part with respect to a claim, the reviewing official determines with respect to such claim, or a group of related claims submitted at the same time, that the amount of money or the value of property or services demanded or requested in violation of §1.303(a) of this part does not exceed $150,000; and

(c) For the purposes of this section, a group of related claims submitted at the same time shall include only those claims arising from the same transaction (e.g., a single grant, loan, application, or contract) that are submitted simultaneously as part of a single request, demand, or submission, regardless of the amount of money or the value of property or services demanded or requested.

(d) Nothing in this section shall be construed to limit the reviewing official's authority to join in a single complaint against a person claims that are unrelated or were not submitted simultaneously, regardless of the amount of

money or the value of property or services demanded or requested.

§ 1.307 Complaint.

(a) On or after the date the Department of Justice approves the issuance of a complaint in accordance with 31 U.S.C. 3803(b)(1), the reviewing official may serve a complaint on the respondent, as provided in § 1.308 of this part.

(b) The complaint shall state—

(1) The allegations of liability, including the statutory basis for liability, an identification of the claims or statements that are the basis for the alleged liability, and the reasons that liability allegedly arises from such claims or statements;

(2) The maximum amount of penalties and assessments for which the respondent may be held liable;

(3) Instructions for requesting a hearing, including a specific advice of the respondent's right to request a hearing and to be represented by a representative; and

(4) That failure to file an answer within 30 days of service of the complaint may result in the imposition of the penalty and assessment sought in the complaint without right to appeal.

(c) At the same time the reviewing official serves the complaint, he or she shall serve the respondent with a copy of these regulations.

§ 1.308 Service of complaint and notice of hearing.

(a) Service of a complaint or notice of hearing shall be made by certified or registered mail or by delivery in any manner authorized by Rule 4(d) of the Federal Rules of Civil Procedure.

(b) Proof of service, stating the name and address of the person on whom the notice was served, and the manner and date of service, shall be made by:

(1) Affidavit of the individual making service;

(2) An acknowledged United States Postal Service return receipt card; or

(3) Written acknowledgment by the respondent or his representative.

§ 1.309 Answer and request for hearing.

(a) Within 30 days of the date of receipt or refusal to accept service of the complaint, the respondent may file an answer with the reviewing official.

(b) In the answer, the respondent—

(1) Shall admit or deny each of the allegations of liability made in the complaint;

(2) Shall state any defense upon which the respondent intends to rely;

(3) Shall state the name, address, and telephone number of the person authorized to act as the respondent's representative, if any;

(4) May state any reasons why the respondent contends the penalty and assessment should be reduced or modified; and

(5) May request a hearing.

§ 1.310 Default upon failure to file an answer.

(a) If the respondent does not file an answer within the time prescribed in § 1.309(a) of this part, the reviewing official may refer the complaint together with proof of service to the ALJ and request that the ALJ issue an order of default imposing the penalties and assessments sought in the complaint. An answer must comply in all material respects with § 1.309(b) of this part in order to be considered filed within the time prescribed in § 1.310(a) of this part.

(b) Upon the referral of the complaint under paragraph (a) of this section, the ALJ shall promptly serve on the respondent, in the manner prescribed in § 1.308 of this part, a notice that a decision will be issued under this section.

(c) If the respondent fails to answer, the ALJ shall assume the facts alleged in the complaint to be true and, if such facts establish liability under § 1.303 of this part, the ALJ shall issue a decision imposing the penalties and assessments sought in the complaint, not to exceed the maximum amount allowed under the statute.

(d) A respondent who fails to file a timely answer waives any right to a review of the penalty and assessment, unless he can demonstrate extraordinary circumstances justifying the failure to file an answer.

§ 1.311 Referral of complaint and answer to the ALJ.

Upon receipt of an answer, the reviewing official shall send to the ALJ

copies of the complaint, proof of service, and the answer.

§ 1.312 Procedure where respondent does not request a hearing.

(a) If the respondent files an answer with the reviewing official within the time period prescribed in § 1.309(a) of this part but does not request a hearing, the ALJ, upon receipt of the complaint, proof of service, and answer, shall notify the respondent that a decision will be issued under this section and shall afford the parties 30 days in which to submit documentary evidence or other relevant written information, including briefs or other written arguments. At the end of that period, the ALJ shall issue a decision based upon the pleadings and the evidence submitted, or if no evidence has been submitted, upon the pleadings. The burden of proof shall be as set forth in § 1.329 of this part.

(b) When a decision is to be issued under this section, the ALJ shall have discretion to permit, allow, limit, or otherwise control discovery to the extent set forth under §§ 1.322 thru 1.324 of this part.

§ 1.313 Procedure where respondent requests a hearing; notice of hearing.

(a) When the ALJ receives the complaint, proof of service, and an answer requesting a hearing, the ALJ shall promptly serve, in accordance with § 1.308 of this part, a notice of hearing on all parties.

(b) Such notice shall include:

(1) The tentative time and place, and the nature of the hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The matters of fact and law to be asserted;

(4) A description of the procedures for the conduct of the hearing;

(5) The name, address, and telephone number of the representative for the USDA and the representative for the respondent, if any; and

(6) Such other matters as the ALJ deems appropriate.

§ 1.314 Parties to the hearing.

(a) The parties to the hearing shall be the respondent and USDA. The proceeding shall be brought in the name of the Secretary.

(b) Pursuant to 31 U.S.C. 3730(c)(5), a private party plaintiff under the False Claims Act may participate in proceedings under this subpart to the extent authorized by the provisions of that Act.

§ 1.315 Separation of functions.

(a) Neither the investigating official, the reviewing official, nor any employee or agent of the USDA who takes part in investigating, preparing, or presenting a particular case may, in such case or in a factually related case—

(1) Conduct the hearing in such case;

(2) Participate in or advise the ALJ in the decision in such case, or participate in or advise in the review of the decision in such case by the judicial officer, except as a witness or representative in public proceedings; or

(3) Make the collection of penalties and assessments under § 1.341 of this part.

(b) The ALJ shall not be responsible to or subject to the supervision or direction of the investigating official or the reviewing official.

(c) Except to the extent limited by paragraph (a) of this section, the representative for USDA may be employed in any constituent agency of USDA, including the offices of either the investigating official or the reviewing official.

§ 1.316 *Ex parte* contacts.

Except to the extent required for the disposition of *ex parte* matters as authorized by law, the ALJ shall not consult or be consulted by any person or party (except employees of the ALJ's office) on any matter in issue, unless on notice and opportunity for all parties to participate.

§ 1.317 Disqualification of reviewing official or ALJ.

(a) A reviewing official or ALJ in a particular case may disqualify himself or herself at any time.

(b) A party may file with the ALJ a motion for disqualification of a reviewing official or an ALJ. Such motion

shall be accompanied by an affidavit alleging personal bias or other reason for disqualification.

(c) Such motion and affidavit shall be filed promptly upon the party's discovery of reasons requiring disqualification, or such objections shall be deemed waived.

(d) Such affidavit shall state specific facts that support the party's belief that personal bias or other reason for disqualification exists and the time and circumstances of the party's discovery of such facts. It shall be accompanied by a certificate of the representative of record that it is made in good faith.

(e) Upon the filing of such a motion and affidavit, the ALJ shall proceed no further in the case until he or she resolves the matter of disqualification in accordance with paragraph (f).

(f)(1) If the ALJ determines that a reviewing official is disqualified, the ALJ shall dismiss the complaint without prejudice.

(2) If the ALJ disqualifies himself or herself, the case shall be reassigned promptly to another ALJ.

(3) If the ALJ denies a motion to disqualify, the authority head may determine the matter only as part of his or her review of the initial decision upon appeal, if any.

§ 1.318 Rights of parties.

All parties may:

(a) Be accompanied, represented, and advised by a representative;

(b) Participate in any prehearing or post-hearing conference held by the ALJ;

(c) Agree to stipulations of fact or law, which shall be made part of the record;

(d) Conduct discovery;

(e) Make opening and closing statements at the hearing;

(f) Present evidence relevant to the issues at the hearing;

(g) Cross examine witnesses;

(h) Present oral arguments at the hearings; and

(i) Submit written briefs, proposed findings of fact, and proposed conclusions of law after the hearing.

§ 1.319 Authority of the ALJ.

(a) The ALJ shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceedings is made.

(b) The ALJ may:

(1) Set and change the date, time, and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses and the production of documents at depositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of attorneys and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as is necessary to carry out the responsibilities of the ALJ under this subpart.

(c) The ALJ does not have the authority to decide upon the validity of Federal statutes, regulations, or legal opinions.

§ 1.320 Prehearing conferences.

(a) The ALJ may schedule a prehearing conference at a reasonable time in advance of the hearing and may schedule additional prehearing conferences as appropriate.

(b) The ALJ may conduct any prehearing conference in person or by telephone.

(c) The ALJ may use prehearing conferences to discuss the following matters:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations, admissions of fact or as to the contents and authenticity of documents;

(4) Whether the parties can agree to submission of the case on a stipulated record;

(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of other parties) and written argument.

(6) Limitation of the number of witnesses;

(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(8) Discovery;

(9) The time and place for the hearing; and

(10) Such other matters as may tend to expedite the fair and just disposition of the proceedings.

(d) The ALJ shall issue an order containing all matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 1.321 Disclosure of documents.

(a) Upon written request to the reviewing official, the respondent may review any relevant and material documents, transcripts, records, and other materials that relate to the allegations set out in the complaint and upon which the findings and conclusions of the investigating official under § 1.304(f) of this part are based unless such documents are privileged under Federal law. Upon payment of fees for duplication, the defendant may obtain copies of such documents.

(b) Upon written request to the reviewing official, the respondent also may obtain a copy of all exculpatory information in the possession of the reviewing official or investigating official relating to the allegations in the complaint, even if it is contained in a document that would otherwise be privileged. If the document would otherwise be privileged, only that portion containing exculpatory information must be disclosed.

(c) The notice sent to the Attorney General from the reviewing official as described in § 1.305 of this part is not discoverable under any circumstances.

(d) The respondent may file a motion to compel disclosure of the documents subject to the provisions of this section. Such a motion may be filed with the ALJ following the filing of the answer pursuant to § 1.309 of this part.

§ 1.322 Discovery.

(a) The following types of discovery are authorized:

(1) Requests for production, inspection and photocopying of documents;

(2) Requests for admission of the authenticity of any relevant document or the truth of any relevant fact;

(3) Written interrogatories; and

(4) Depositions.

(b) The ALJ shall set the schedule for discovery.

(c) Requests for production of documents and requests for admission.

(1) A party may serve requests for production of documents or requests for admission on another party.

(2) If a party served with such requests fails to respond timely, the requesting party may file a motion to compel production or deem admissions, as appropriate.

(3) A party served with such a request may file a motion for a protective order before the date on which a response to the discovery request is due, stating reasons why discovery should be limited or should not be required.

(4) Within 15 days of service of a motion to compel or to deem matter admitted or a motion for a protective order, the opposing party may file a response.

(5) The ALJ may grant a motion to compel production or deem matter admitted or may deny a motion for a protective order only if he finds that—

(i) The discovery sought is necessary for the expeditious, fair, and reasonable consideration of the issues;

(ii) It is not unduly costly or burdensome;

(iii) It will not unduly delay the proceeding; and

(iv) The information sought is not privileged.

(d) Depositions and written interrogatories. Depositions and written interrogatories are permitted only on the order of the ALJ.

(1) A party seeking to use depositions or written interrogatories may file a motion with the ALJ.

(2) A party and/or the potential deponent may file an opposition to the motion or a motion for a protective order within 10 days of service of the motion.

(3) The ALJ may grant a motion allowing the taking of a deposition or the use of interrogatories or may deny a motion for a protective order only if he finds that the moving party has satisfied the standards set forth in paragraph (c)(5) of this section and has shown that the information sought cannot be obtained by any other means.

(4) If the ALJ grants a motion permitting a deposition, he shall issue a subpoena, which may also require the witness to produce documents. The party seeking to depose shall serve the subpoena in the manner prescribed in §1.308 of this part.

(5) The party seeking to depose shall provide for the taking of a verbatim transcript of the deposition, which it shall make available to all other parties for inspection and copying.

(e) Costs. The costs of discovery shall be borne by the party seeking discovery.

(f) In issuing a protective order, the ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) That the discovery may be had only through a method of discovery other than that requested;

(4) That certain matters not be inquired into, or that the scope of discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the ALJ;

(6) That the contents of discovery or evidence be sealed;

(7) That a deposition after being sealed be opened only by order of the ALJ;

(8) That a trade secret or other confidential research, development, commercial information or facts pertaining to any criminal investigation, proceeding, or other administrative investigation not be disclosed or be disclosed only in a designated way; or

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the ALJ.

(g) Exchange of witness lists, statements, and exhibits. Witness lists, copies of prior statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements or depositions that a party intends to offer in lieu of live testimony in accordance with §1.331(b) of this part, shall be exchanged at least 15 days in advance of the hearing, or at such other time as may be set by the ALJ. A witness whose name does not appear on the witness list shall not be permitted to testify and no exhibit not provided to the opposing party as provided above shall be admitted into evidence at the hearing absent a showing of good cause.

§1.323 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony at the hearing of any individual may request that the ALJ issue a subpoena.

(b) A subpoena requiring the attendance and testimony of an individual may also require the individual to produce documents at such hearing.

(c) A party who desires the issuance of a subpoena shall file with the ALJ a written request not less than 15 days before the date fixed for the hearing unless otherwise allowed by the ALJ for good cause shown. Such request shall specify any documents to be produced and shall designate the witnesses whose attendance is sought to be required and describe their addresses and locations with sufficient particularity to permit such witnesses to be found. The subpoena shall specify the time and place at which the witness is to appear and any documents the witness is

to produce. Such a request may be made *ex parte*.

(d) When the ALJ issues a subpoena under this section, the party who requested such subpoena shall serve all other parties with notice of the names and addresses of the individuals subpoenaed and specify any documents required to be produced.

(e) A subpoena shall be served by delivery, or by registered mail or by certified mail in the manner prescribed in §1.308 of this part. A subpoena upon a party or upon an individual under the control of a party may be served by first class mail.

(f) A party or the individual to whom the subpoena is directed may file a motion to quash the subpoena within five days of service or on or before the time specified in the subpoena for compliance if it is less than five days after service.

§ 1.324 Fees.

The party requesting a subpoena shall pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage shall accompany the subpoena when served, except that when a subpoena is issued on behalf of USDA, a check for witness fees and mileage need not accompany the subpoena.

§ 1.325 Form, filing and service of papers.

(a) *Form.* (1) The original and two copies of all papers in a proceeding conducted under this subpart shall be filed with the ALJ assigned to the case.

(2) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the ALJ, and a designation of the paper (e.g., motion to quash subpoena).

(3) Every pleading and paper shall be signed by and shall contain the address and telephone number of the representative for the party or the person on whose behalf the paper was filed.

(4) Papers are considered filed when they are mailed. Date of mailing may be established by a certificate from the party or his representative or by proof that the document was sent by certified or registered mail.

(b) *Service.* A party filing a document with the ALJ shall, at the time of filing, serve a copy of such document on every other party. Service upon any party of any document other than the complaint or notice of hearing shall be made by delivering or mailing a copy to the party's last known address. When a party is represented by a representative, service shall be made upon such representative in lieu of the actual party.

(c) *Proof of service.* A certificate of the person serving the document by personal delivery or by mail, setting forth the manner of service, shall be proof of service.

§ 1.326 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the period of time allowed is ten or fewer calendar days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

(c) When a document has been served by mail, an additional five days will be added to the time permitted for any response.

§ 1.327 Motions.

(a) Motions shall state the relief sought, the authority relied upon, and the facts alleged, and shall be filed with the ALJ and served on all other parties.

(b) Except for motions made during a prehearing conference or at the hearing, all motions shall be in writing. The ALJ may require that oral motions be reduced to writing.

(c) The ALJ may require written motions to be accompanied by supporting memorandums.

(d) Within 15 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to such motion.

(e) The ALJ may not grant a written motion prior to expiration of the time for filing responses thereto, except upon consent of the parties or following a hearing, but may overrule or deny such motion without awaiting a response.

(f) The ALJ shall make every reasonable effort to dispose of all outstanding motions prior to the beginning of the hearing.

§ 1.328 Sanctions.

(a) The ALJ may sanction a person, including any party or representative for:

(1) Failing to comply with a lawful order, subpoena, or procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) When a party fails to comply with a subpoena or an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the ALJ may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) In the case of requests for admission, deem admitted each item as to which an admission is requested;

(3) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon testimony relating to the information sought;

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request; or

(5) Request that the Attorney General petition an appropriate district court for an order to enforce a subpoena.

(d) If a party fails to prosecute or defend an action under this subpart commenced by service of a complaint, the ALJ may dismiss the action or enter an initial decision imposing penalties and assessments.

(e) The ALJ may refuse to consider any motion or other action which is not filed in a timely fashion.

§ 1.329 The hearing and burden of proof.

(a) The ALJ shall conduct a hearing on the record in order to determine whether the respondent is liable for a civil penalty or assessment under §1.303 of this part, and if so, the appropriate amount of any such civil penalty or assessment considering any aggravating or mitigating factors.

(b) The USDA shall prove respondent's liability and any aggravating factors by a preponderance of the evidence.

(c) The respondent shall prove any affirmative defenses and any mitigating factors by a preponderance of the evidence.

(d) The hearing shall be open to the public unless otherwise ordered by the ALJ for good cause shown.

§ 1.330 Location of hearing.

(a) The hearing may be held—

(1) In any judicial district of the United States in which the respondent resides or transacts business;

(2) In any judicial district of the United States in which the claim or statement in issue was made; or

(3) In such other place as may be agreed upon by the respondent and the ALJ.

(b) Each party shall have the opportunity to present argument with respect to the location of the hearing.

(c) The ALJ shall issue an order to the parties designating the time and the place of the hearing.

§ 1.331 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing shall be given orally by witnesses under oath or affirmation.

(b) At the discretion of the ALJ, testimony may be admitted in the form of a written statement or deposition. Any such written statement must be provided to all other parties along with the last known address of such witness, in a manner which allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of

witnesses proposed to testify at the hearing and deposition transcripts shall be exchanged as provided in §1.322(g) of this part.

(c) The ALJ shall permit the parties to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(d) A witness may be cross-examined on any matter relevant to the proceeding without regard to the scope of his or her direct examination.

(e) Upon motion of any party, the ALJ shall order witnesses excluded so that they cannot hear the testimony of other witnesses. This rule does not authorize exclusion of—

(1) A party who is an individual;

(2) In the case of a party that is not an individual, an officer or employee of the party designated by the representative; or

(3) An individual whose presence is shown by a party to be essential to the presentation of its case, including an individual employed by the USDA engaged in assisting the representative for USDA.

§1.332 Evidence.

(a) The ALJ shall determine the admissibility of evidence.

(b) Except as provided herein, the Federal Rules of Evidence are not applicable to the hearing, except that the ALJ may in his discretion apply the Federal Rules of Evidence in order to assure production of credible evidence.

(c) The ALJ shall exclude irrelevant and immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) The ALJ shall permit the parties to introduce rebuttal witnesses and evidence.

(h) All documents and other evidence offered or taken for the record shall be open to examination by all parties unless otherwise ordered by the ALJ pursuant to §1.322 of this part.

§1.333 The record.

(a) The hearing will be recorded and transcribed. Transcripts may be obtained from the reporter by anyone at a cost not to exceed the actual cost of duplication.

(b) The transcript of testimony, exhibits and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for the decision by the ALJ and the judicial officer.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by anyone unless otherwise ordered by the ALJ.

§1.334 Post-hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ shall fix the time for filing such briefs, not to exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. Such briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§1.335 Determining the amount of penalties and assessments.

(a) In determining an appropriate amount of civil penalties and assessments, the ALJ and the judicial officer, upon appeal, should evaluate any circumstances that mitigate or aggravate the violation and should articulate in their opinions the reasons that support the penalties and assessments they impose. Because of the intangible costs of fraud, the expense of investigating such conduct, and the need to deter others who might be similarly tempted, ordinarily double damages and a significant civil penalty should be imposed.

(b) Although not exhaustive, the following factors are among those that may influence the ALJ and the judicial officer in determining the amount of penalties and assessments to impose with respect to the misconduct (*i.e.*, the false, fictitious, or fraudulent

claims or statements) charged in the complaint:

(1) The number of false, fictitious, or fraudulent claims or statements;

(2) The time period over which such claims or statements were made;

(3) The degree of the respondent's culpability with respect to the misconduct;

(4) The amount of money or the value of the property, services, or benefit falsely claimed;

(5) The value of the Government's actual loss as a result of the misconduct, including foreseeable consequential damages and the costs of investigation;

(6) The relationship of the amount imposed as civil penalties to the amount of the Government's loss;

(7) The potential or actual impact of the misconduct upon national defense, public health or safety, or public confidence in the management of Government programs and operations, including particularly the impact on the intended beneficiaries of such programs;

(8) Whether the respondent has engaged in a pattern of the same or similar misconduct;

(9) Whether the respondent attempted to conceal the misconduct;

(10) The degree to which the respondent has involved others in the misconduct or in concealing it;

(11) Where the misconduct of employees or agents is imputed to the respondent, the extent to which the respondent's practices fostered or attempted to preclude such misconduct;

(12) Whether the respondent cooperated in or obstructed an investigation of the misconduct;

(13) Whether the respondent assisted in identifying and prosecuting other wrongdoers;

(14) The complexity of the program or transaction, and the degree of the respondent's sophistication with respect to it, including the extent of the respondent's prior participation in the program or in similar transactions;

(15) Whether the respondent has been found, in any criminal, civil, or administrative proceeding to have engaged in similar misconduct or to have dealt dishonestly with the government of the United States or of a State, directly or indirectly; and

(16) The need to deter the respondent and others from any engaging in the same or similar misconduct.

(c) Nothing in this section shall be construed to limit the ALJ or the judicial officer from considering any other factors that in any given case may mitigate or aggravate the acts for which penalties and assessments are imposed.

§ 1.336 Initial decision of the ALJ.

(a) The ALJ shall issue an initial decision, which shall contain findings of fact, conclusions of law, and the amount of any penalties and assessments imposed.

(b) The findings of fact shall include a finding on each of the following issues for every claim or statement with respect to which a penalty or assessment was proposed:

(1) Whether any claim or statement identified in the complaint violates §1.303 of this part;

(2) If the respondent is liable for penalties or assessments, the appropriate amount of any such penalties or assessments considering any mitigating or aggravating factors described in §1.335 of this part.

(c) The ALJ shall serve the initial decision on all parties within 90 days after the time for submission of post-hearing briefs and reply briefs (if permitted) has expired. The ALJ shall include with the initial decision a statement describing the right of any respondent determined to be liable for a civil penalty or assessment to file notice of appeal with the judicial officer. The ALJ may extend the time period for serving the initial decision on the parties.

(d) Unless the initial decision of the ALJ is timely appealed to the judicial officer, or a motion for reconsideration of the initial decision is timely filed, the initial decision shall constitute the final decision of the Secretary and shall be final and binding on the parties 30 days after it is issued by the ALJ.

§ 1.337 Reconsideration of initial decision.

(a) Except as provided in paragraph (d) of this section, any party may file a

motion for reconsideration of the initial decision within 20 days of receipt of the initial decision. If service was made by mail, receipt will be presumed to be five days from the date of mailing in the absence of contrary proof.

(b) Every such motion must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such motion shall be accompanied by a supporting brief.

(c) Responses to such motions shall be allowed only upon request of the ALJ.

(d) No party may file a motion for reconsideration of an initial decision that has been revised in response to a previous motion for reconsideration.

(e) The ALJ may dispose of a motion for reconsideration by denying it or by issuing a revised initial decision.

(f) If the ALJ denies a motion for reconsideration, the initial decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after the ALJ denies the motion, unless the initial decision is timely appealed to the judicial officer in accordance with §1.338 of this part.

(g) If the ALJ issues a revised initial decision, that decision shall constitute the final decision of the authority head and shall be final and binding on the parties 30 days after it is issued, unless it is timely appealed to the judicial officer in accordance with §1.338 of this part.

§ 1.338 Appeal to the judicial officer.

(a) Any respondent who has filed a timely answer and who is determined in an initial decision to be liable for a civil penalty or assessment may appeal such decision to the Secretary by filing a notice of appeal with the judicial officer in accordance with this section. The judicial officer of USDA shall consider all appeals to the Secretary under this subpart and render a decision on behalf of the Secretary.

(b)(1) A notice of appeal may be filed at any time within 30 days after the ALJ issues an initial decision. However, if another party files a motion for reconsideration under §1.337 of this part, consideration of the appeal shall be stayed automatically pending resolution of the motion for reconsideration.

(2) If a motion for reconsideration is timely filed, a notice of appeal may be filed within 30 days after the ALJ denies the motion or issues a revised initial decision, whichever applies.

(c) The judicial officer may extend the initial 30-day period during which a notice of appeal may be filed for an additional 30 days if the respondent files a request for an extension within the initial 30-day period and shows good cause.

(d) If the respondent timely files a notice of appeal with the judicial officer and the time for filing motions for reconsideration under §1.337 of this part has expired, the ALJ will forward the record of the proceeding to the judicial officer.

(e) A notice of appeal shall be accompanied by a written brief specifying exceptions to the initial decision and reasons supporting the exceptions.

(f) The representative for USDA may file a brief in opposition to exceptions within 30 days of receiving the brief proposing exceptions.

(g) There is no right to appear personally before the judicial officer.

(h) There is no right to interlocutory appeal of rulings by the ALJ.

(i) The judicial officer, in reviewing the decision, shall not consider any objection that was not raised before the ALJ unless a demonstration is made that extraordinary circumstances caused the failure to raise the objection.

(j) If any party demonstrates to the satisfaction of the judicial officer that additional evidence not presented to the ALJ is material and that there were reasonable grounds for the failure to present such evidence to the ALJ, the judicial officer shall remand the matter to the ALJ for consideration of such additional evidence.

(k) The judicial officer may affirm, reduce, reverse, compromise, remand or settle any penalty or assessment determined by the ALJ.

(l) The judicial officer shall promptly serve each party to the appeal with a copy of the decision of the judicial officer and a statement describing the respondent's right to seek judicial review.

(m) Unless a petition for review is filed as provided in 31 U.S.C. 3805 after a respondent has exhausted all administrative remedies under this part and within 60 days after the date on which the judicial officer serves the respondent with a copy of the judicial officer's decision, a determination that a respondent is liable under §1.303 of this part is final and is not subject to judicial review.

§ 1.339 Stays ordered by the Department of Justice.

(a) If at any time the Attorney General or an Assistant Attorney General designated by the Attorney General transmits to the Secretary a written finding that continuation of the administrative process described in this subpart with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, the judicial officer shall stay the process immediately.

(b) If the judicial officer stays the administrative process in accordance with paragraph (a) of this section, the judicial officer may order the process resumed only upon receipt of the written authorization of the Attorney General.

§ 1.340 Stay pending appeal.

(a) A decision is stayed automatically pending disposition of a motion for reconsideration or of an appeal to the judicial officer.

(b) The respondent may file with the ALJ a request for stay of the effective date of a decision of the judicial officer pending judicial review. Such request shall state the grounds upon which respondent relies in requesting the stay, together with a copy of the notice(s) of appeal filed by respondent seeking review of a decision of the judicial officer. The filing of such a request shall automatically stay the effective date of the decision of the judicial officer until the ALJ rules upon the request.

(c) The representative for the USDA may file an opposition to respondent's request for a stay within 10 days of receipt of the request. If the representative for the USDA fails to file such an opposition within the allotted time, or indicates that the USDA has no objection to the request, the ALJ may grant the stay without requiring respondent to give a bond or other security.

(d) The ALJ may grant a contested request where justice so requires and to the extent necessary to prevent irreparable harm but only upon the respondent's giving of a bond or other adequate security. The ALJ shall rule promptly on a contested request for stay.

(e) A decision of the ALJ denying respondent's request for a stay shall constitute final agency action.

§ 1.341 Judicial review.

Section 3805 of title 31, United States Code, authorizes judicial review by an appropriate United States District Court of a final decision of the judicial officer imposing penalties or assessments under this part and specifies the procedures for such review.

§ 1.342 Collection of civil penalties and assessments.

Sections 3806 and 3808(b) of title 31, United States Code, authorize actions for collection of civil penalties and assessments imposed under this subpart and specify the procedures for such actions.

§ 1.343 Right to administrative offset.

The amount of any penalty or assessment which has become final, or for which a judgment has been entered under §1.341 or §1.342 of this part, or any amount agreed upon in a settlement under §1.345 of this part, may be collected by administrative offset under 31 U.S.C. 3716, except that an administrative offset may not be made under this subsection against a refund of an overpayment of Federal taxes then or later owing by the United States to the respondent.

§ 1.344 Deposit to Treasury of the United States.

All amounts collected pursuant to this subpart shall be deposited as miscellaneous receipts in the Treasury of the United States.

§ 1.345 Settlement.

(a) A respondent may make offers of compromise of settlement at any time.

(b) The reviewing official has the exclusive authority to compromise or settle a case under this subpart at any time after the date on which the reviewing official is permitted to issue a complaint and before the date on which the ALJ issues a decision.

(c) The judicial officer has exclusive authority to compromise or settle a case under this subpart at any time after the date on which the ALJ issues a decision, except during the pendency of any appeal under §1.341 of this part or during the pendency of any action to collect penalties and assessments under §1.342 of this part.

(d) The Attorney General has exclusive authority to compromise or settle a case under this subpart during the pendency of any appeal under §1.341 of this part, or any action to recover penalties and assessments under §1.342 of this part.

(e) The investigating official may recommend settlement terms to the reviewing official, the judicial officer, or the Attorney General, as appropriate. The reviewing official may recommend settlement terms to the judicial officer, or the Attorney General, as appropriate.

(f) Any settlement must be in writing.

§1.346 Limitation.

The complaint referred to in §1.307 of this part with respect to a claim or statement must be served in the manner specified in §1.308 of this part within 6 years after the date on which such claim or statement is made.

Subpart M—Rules of Practice Governing Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*)

AUTHORITY: 5 U.S.C. 556 and 16 U.S.C. 620 *et seq.*

SOURCE: 59 FR 8824, Feb. 24, 1994, unless otherwise noted.

§1.410 Meaning of words.

As used in these procedures, words in the singular form shall be deemed to import the plural, and vice versa, as the circumstance may require.

§1.411 Definitions.

As used in these procedures, the terms as defined in the Forest Resources Conservation and Shortage Relief Act of 1990, 16 U.S.C. 620 *et seq.* (Act) and in the regulations issued thereunder, shall apply with equal force and effect. In addition and except as may be provided otherwise in these procedures:

(a) *Applicant* or *Sourcing area applicant* means a person who submits a sourcing area application pursuant to these rules, or a person who sourcing area is subject to formal review pursuant to 36 CFR 223.191(e).

(b) *Decision* means:

(1) The Judge's initial decision made in accordance with the provisions of 5 U.S.C. 554, 556, 557, and 16 U.S.C. 620 *et seq.* and 36 CFR 223.190 and 223.191(e), which includes the Judge's findings and conclusions and the reasons or basis therefore on all material issues of fact, law or discretion, orders and rulings on proposed findings, conclusions and orders submitted by the parties; and

(2) The decision and order by the Judicial officer upon appeal of the Judge's decision.

(c) *Determination* is synonymous with *decision*.

(d) *Hearing* means that part of the proceeding which may be requested by a party of record, and which involves the submission of additional evidence before the Administrative Law Judge for the record in the proceeding.

(e) *Hearing Clerk* means the Office of the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250.

(f) *Judge* means any Administrative Law Judge Appointed pursuant to 5 U.S.C. 3105 and assigned to the proceeding involved.

(g) *Judicial Officer* means an official of the United States Department of Agriculture delegated authority by the Secretary of Agriculture, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–459g) and Reorganization Plan No. 2 of 1953 (5 U.S.C. 1988 ed., appendix, p.

1280), to perform the function involved (7 CFR 235(a)), or the Secretary of Agriculture, if the authority so delegated is exercised by the Secretary.

(h) *Party of record* or *Party* is a party to the proceeding to determine approval or disapproval of a sourcing area application, including the proceeding for formal review of a sourcing area. The sourcing area applicant and persons who submit written comments on the sourcing area application at issue during the 30 calendar day comment period, including the Regional Forester, are the parties of record. For purposes of a formal review of a sourcing area, the holder of the sourcing area that is the subject of the review and persons who submit written comments on the sourcing area application at issue during the 30 calendar day comment period after institution of the formal review, including the Regional Forester, are the parties of record.

(i) *Sourcing Area Application* means the application by which a person applies for a sourcing area or the application by which a sourcing area holder applies for a formal review of a sourcing area.

§ 1.412 Institution of proceedings.

(a) *Sourcing area applications.* The proceeding for determining sourcing areas shall be instituted by receipt of a sourcing area application by the Office of Administrative Law Judges, pursuant to 36 CFR 223.190.

(b) *Review of sourcing areas.* Informal review of a sourcing area precedes institution of a formal review as follows:

(1) *Request by Sourcing area holder.* A sourcing area holder who wishes to begin a review of a sourcing area shall send a written request for a review to the Regional Forester of the region in which the manufacturing facility being sourced is located. The request shall state the reason for the request.

(i) *Informal review.* The Regional Forester shall begin an informal review, pursuant to 36 CFR 223.191(e), based on the written request. If no agreement is reached in the informal review process, the Regional Forester of the region in which the manufacturing facility being sourced is located shall transmit to the Office of Administrative Law Judges any submissions received during the informal review process, within 5 working days of the meeting convened during the informal review (36 CFR 223.191)e)). Agreement is reached when all persons attending the meeting convened by the Regional Forester to resolve differences as to the proper sourcing area, including the Regional Forester, sign the document describing the sourcing area.

(ii) *Formal review.* Institution by a sourcing area holder of a formal review of the sourcing area occurs if the informal review process does not result in agreement among the parties, and the sourcing area holder submits a sourcing area application to the Office of the Administrative Law Judges, pursuant to 36 CFR 223.190, within 10 working days after the meeting convened by the Regional Forester as part of the informal process.

(2) *Initiation of review by agency.* If the Forest Service wishes to begin a review of a sourcing area, the Regional Forester of the region in which the manufacturing facility being sourced is located shall begin an informal review, pursuant to 36 CFR 223.191(e). If no agreement is reached in the informal review process, the Regional Forester of the region in which the manufacturing facility being sourced is located shall transmit to the Office of Administrative Law Judges any submissions received during the informal review process, within 5 working days of the meeting convened during the informal review (36 CFR 223.191(e)). Agreement is reached when all persons attending the meeting convened by the Regional Forester to resolve differences as to the proper sourcing area, including the Regional Forester, sign the document describing the sourcing area. Institution by the Forest Service of a formal review of a sourcing area occurs when the Office of Administrative Law Judges receives the papers and documents submitted during the informal review process.

§ 1.413 Submission of a sourcing area application.

A sourcing area applicant shall send the application to the Office of Administrative Law Judges and shall, simultaneously, send a copy of the sourcing

area application to the Forest Service Regional Forester of the region in which the manufacturing facility being sourced is located. Where the sourcing area application will cover purchases from more than one agency, application is to be made to the agency from which the applicant expects to purchase the preponderance of its Federal timber. The sourcing area applicant must also send a complete copy of the application to each agency concerned. The lead agency shall make the decision in consultation with, and upon cosignature of, the other agency(ies) concerned. Sourcing area applications must be signed by the persons making the request, or in the case of a corporation, by its chief executive officer, and must be notarized. The application shall be on company letterhead.

§ 1.414 Docket number.

Each proceeding, following its institution, shall be assigned a docket number by the Hearing Clerk, and thereafter the proceeding shall be referred to by such number. The Hearing Clerk shall notify the sourcing area applicant and the Regional Forester to whom the applicant submitted a copy of the application of the docket number and the name of the Judge to whom the case has been assigned. In a formal review of a sourcing area instituted by the Forest Service, the Hearing Clerk shall inform the sourcing area holder whose sourcing area is subject to the review and the Regional Forester who submitted the comments instituting the formal review of the docket number and the name of the Judge to whom the case has been assigned.

§ 1.415 Notification of proceedings.

The Regional Forester of the region in which the manufacturing facility being sourced is located shall notify prospective parties of the sourcing area application and/or the formal review of a sourcing area after receipt of the docket number and the name of the Judge to whom the proceeding has been assigned, pursuant to §1.414 of these rules. Notification will consist of publication of a notice in newspapers of general circulation in the area included in the sourcing area application. The Regional Forester shall promptly notify the Hearing Clerk of the date of the publication and the notice. Additional notification will be made through agency mailing lists. Notification shall include the docket number, the name of the Judge to whom the case has been assigned and the mailing address of the Judge. In the case of a sourcing area review, notification will also state the reason for the review.

§ 1.416 Comment period.

Written comments on a sourcing area application or on a formal review of a sourcing area shall include the docket number and may be submitted to the Judge for 30 calendar days following publication of the notice. Persons submitting comments shall send a copy of the comments to the Regional Forester of the region in which the manufacturing facility being sourced is located. All comments must be received by the Judge and by the Regional Forester by the 30th day of the comment period.

§ 1.417 Review period.

(a) *Review of comments.* The sourcing area applicant, the sourcing area holder whose sourcing area is the subject of a formal review and other parties who submitted written comments will be allowed 10 working days from the close of the comment period to review the written comments at the Regional Forester's office during regular business hours.

(b) *Recommendation to Judge to approve or disapprove a sourcing area application.* During the 10 working day review period, parties who have submitted written comments on an application or on a formal review of a sourcing area may submit a written recommendation to the Judge, including an analysis of the facts and law as to why the Judge should approve or disapprove that application. A sourcing area applicant whose sourcing area application is the subject of the proceeding, and a sourcing area holder whose sourcing area is the subject of a formal review, may also submit a written recommendation to the Judge. The recommendation must be postmarked no later than the 10th working day of the review period.

(c) *Request for a hearing.* The sourcing area applicant, the sourcing area holder whose sourcing area is the subject of a formal review and persons who submitted written comments, or the attorney of record for a party in the proceeding, may review the comments and request a hearing within 10 working days after the comment period, pursuant to 36 CFR 233.190(h)(2). The request must be postmarked no later than the 10th working day of the review period. An attorney may file an appearance of record prior to the scheduled hearing. The request for a hearing shall be filed with the Judge. The hearing is for the purpose of supplementing the written record submitted prior to the hearing. The written record submitted prior to the hearing consists of papers and documents submitted during the 30 calendar day comment period, the 10 working day review period, and any motions submitted before the hearing. For purposes of a formal review of a sourcing area, the written record also consists of the papers and documents submitted during the informal review.

(1) *Contents of the notice of hearing.* The Judge shall issue a notice of hearing regarding a particular sourcing area application or regarding formal review of a sourcing area application or regarding formal review of a sourcing area to all parties of record for that application or formal review. The notice of hearing shall contain a reference to the authority under which the sourcing area is proposed or formally reviewed; shall define the scope of the hearing; shall contain a reference to the sourcing area that is the subject of the hearing; and shall state the date, time and place of such hearing; and shall state the date, time and place of such hearing; which shall be set with due regard for the necessity and convenience of the parties of record or their representatives. The Judge shall schedule a hearing no later than 21 calendar days after the 10 working day period for reviewing written comments ends. The Judge may consolidate requests for a hearing regarding the same application.

(2) *Giving notice of hearing.* The notice of hearing shall be served upon the parties of record for the sourcing area application at issue by the Hearing Clerk.

§ 1.418 Procedure upon no request for hearing.

If no hearing is requested by a party of record, the Judge shall issue an initial decision based on the written record and without further procedure or hearing. If no hearing is requested, the written record consists of papers and documents submitted during the 30-day comment period, the 10-day review period, and includes motions submitted before the Judge issues an initial decision. For purposes of a formal review of a sourcing area, the written record also consists of the papers and documents submitted during the informal review. Copies of the decision shall be served by the Hearing Clerk upon each of the parties of record.

§ 1.419 Amendment of a sourcing area application.

The sourcing area applicant may move to amend the sourcing area application with clarifying and technical amendments at any time prior to the Judge's initial determination if there is no hearing, or prior to the close of the hearing if there is a hearing.

§ 1.420 Consent recommendation.

Any time before the Judge files the decision, the parties of record may enter a consent recommendation. Such consent recommendation shall be filed with the Hearing Clerk, signed by the parties with appropriate space for signature by the Judge. The consent recommendation shall contain an admission of the jurisdictional facts, the factual and legal basis for the recommended sourcing area, the consent to the issuance of the recommended decision as the final decision of the agency without further procedure and such other admissions or statements as may be recommended by the parties. The Judge shall review the recommendation to determine whether such recommendation conforms with the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*), 36 CFR 223.190, 36 CFR 223.191(e) and these procedures. If the recommendation conforms to the aforementioned Act, regulations, and procedures, the Judge may enter such decision without further procedure, unless an error is apparent on the face of the

document. If the Judge enters the decision, such decision shall have the same force and effect as a decision issued after full hearing and shall become final upon issuance to become effective in accordance with the terms of the decision.

§ 1.421 Prehearing conferences and procedures.

(a) *Purpose and scope.* (1) Upon motion of a party of record or upon the Judge's own motion, the Judge may direct the parties or their counsel to attend a conference at any reasonable time, prior to or during the course of the hearing, when the Judge finds that the proceeding would be expedited by a prehearing conference. Reasonable notice of the time and place of the conference shall be given. The Judge may order each of the parties to furnish at or subsequent to the conference any or all of the following:

(i) An outline of a party's position;

(ii) The facts upon which the party will rely;

(iii) The legal theories upon which the party will rely;

(iv) Copies of or a list of documents which the party anticipates introducing at the hearing; and

(v) A list of anticipated witnesses who will testify on behalf of the party. At the discretion of the party furnishing such list of witnesses, the names of the witnesses need not be furnished if they are otherwise identified in some meaningful way such as a short statement of the type of evidence they will offer.

(2) The Judge shall not order any of the foregoing procedures that a party can show is inappropriate or unwarranted under the circumstances of the particular determination.

(3) At the conference, the following matters shall be considered:

(i) The simplification of issues;

(ii) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(iii) The limitation of the number of expert or other witnesses;

(iv) Negotiation, compromise, or settlement of issues;

(v) The exchange of copies of proposed exhibits;

(vi) The identification of documents or matters of which official notice may be requested;

(vii) A schedule to be followed by the parties for completion of the actions decided at the conference; and

(viii) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A prehearing conference will not be stenographically reported unless so directed by the Judge.

(c) *Action in lieu of personal attendance at a conference.* In the event the Judge concludes that personal attendance by the Judge and the parties or counsel at a prehearing conference is unwarranted or impracticable, but determines that a conference would expedite the proceeding, the Judge may conduct such conference by telephone or correspondence.

(d) *Order.* Actions taken as a result of a conference shall be reduced to an appropriate written order, unless the Judge concludes that a stenographic report shall suffice, or if the Judge elects to make a statement on the record at the hearing summarizing the actions taken.

§ 1.422 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place fixed in the notice of hearing. If any change in the time or place of the hearing is made, the Judge shall file with the Hearing Clerk a notice of such change, which notice shall be served upon the parties, unless it is made during the course of an oral script, or actual notice is given to the parties.

(b) *Appearances.* The parties may appear in person or by attorney of record in the proceeding. Any party who desires to be heard in person shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through counsel, such person or such counsel shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names, addresses, and occupations of such person and such counsel. Any such person or such counsel shall give such

other information respecting his appearance as the Judge may request. Any person who appears as counsel must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(c) *Failure to appear.* A party of record who, after being duly notified, fails to appear at the hearing without good cause, shall be deemed to have waived the right to an oral hearing in the proceeding. Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's decision.

(d) *Order of proceeding.* The Judge shall determine the order in which the parties shall proceed.

(e) *Evidence*—(1) *In general.* (i) The testimony of witnesses at a hearing shall be on oath or affirmation and shall be subject to cross-examination. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts. The Judge may require that testimony on one issue raised by numerous parties be heard at one time.

(ii) Upon a finding of good cause, the Judge may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(iii) After a witness has testified on direct examination, any other party may request and obtain the production of any statement, or part thereof, of such witness in the possession of the party who called the witness, which relates to the subject matter as to which the witness has testified. Such production shall be made according to the procedures and subject to the definitions and limitations prescribed in the Jencks Act (18 U.S.C. 3500).

(iv) Evidence which is immaterial, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely, shall be excluded insofar as practicable.

(2) *Objections.* (i) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the Judge, the party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the Judge.

(ii) Only objections made before the Judge may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness shall be admitted in the manner provided in and subject to the provisions of §1.228 of these procedures.

(4) *Exhibits.* Unless the Judge finds that the furnishing of copies is impracticable, two copies of each exhibit shall be filed with the Judge. The party submitting the exhibit shall serve on every other party of record a copy of the exhibit, pursuant to §1.427(c) of these procedures. A true copy of an exhibit may be substituted for the original.

(5) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same, and shall be prima facie evidence of the relevant facts stated therein. Such record or document shall be evidenced by an official publication thereof or a copy certified by a person having legal authority to make such certification.

(6) *Official notice.* Official notice shall be taken of such matters as are judicially noted by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided,* That the parties shall be given adequate notice of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(7) *Offer of proof.* Whenever evidence is excluded by the Judge, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it shall be included in the transcript in toto. If the evidence consists of an exhibit, it shall be marked for identification and inserted in the hearing record.

(f) *Transcript.* Hearings shall be recorded and transcribed verbatim. Transcripts thereof shall be made available to any person, at actual cost of duplication (5 U.S.C. App. 2, section 11).

§ 1.423 Post-hearing procedure.

(a) *Corrections to transcript.* (1) Within the period of time fixed by the Judge, any party may file a motion proposing corrections to the transcript.

(2) Unless a party files such motion in the manner prescribed, the transcript shall be presumed, except for obvious typographical errors, to be complete.

(3) As soon as practicable after the close of the hearing and after consideration of any timely objections filed as to the transcript, the Judge shall issue an order making any corrections to the transcript which the Judge finds are warranted, which corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the origianl text).

(b) *Proposed findings of fact, conclusions, order, and brief.* Prior to the close of the hearing, each party may submit for consideration proposed findings of fact, conclusions, order, and brief in support thereof. A copy of each such document filed by a party shall be served upon each of the other parties.

(c) *Judge's decision.* (1) The Judge may, upon motion of any party or in his or her own discretion, issue a decision orally at the close of the hearing, or within 10 calendar days after the close of the hearing, or within 10 calendar days after submission of the record, if no hearing is requested.

(2) If the decision is announced orally, a copy thereof, excerpted from the transcript of the record, shall be furnished to the parties by the Hearing Clerk. Irrespective of the date such copy is mailed, the issuance date of the decision shall be the date the oral decision was announced.

(3) If the decision is in writing, it shall be filed with the Hearing Clerk and served upon the parties as provided in § 1.427.

(4) The Judge's decision shall become effective without further proceedings 21 calendar days after the issuance of the decision, if announced orally at the hearing, or if the decision is in writing, 21 calendar days after the date of service thereof upon the respondent, unless there is an appeal to the Judicial Officer by a party to the proceeding pursuant to § 1.426; *Provided, however,* that no decision shall be final for purposes of judicial review except a final decision of the Judicial Officer upon appeal.

(5) The Judicial Officer shall issue a decision within 10 calendar days of the receipt of the response to the appeal.

§ 1.424 Motions and requests.

(a) *General.* All motions and requests shall be filed with the Hearing Clerk, and served upon all the parties except motions and requests made on the record during the oral hearing.

(b) *Motions entertained.* No dispositive motions, including motions to dismiss on the pleadings and motions for summary judgment, shall be entertained unless specifically mentioned herein or allowed in the discretion of the Judge.

(c) *Contents.* All written motions and requests shall state the particular order, ruling, or action desired and the grounds therefore.

(d) *Response to motions and requests.* Within 5 days after service of any written motion or request, or within such shorter or longer period as may be fixed by the Judge, an opposing party may file a response to the motion or request. The other party shall have no right to reply to the response.

§ 1.425 Judges.

(a) *Assignment.* No Judge shall be assigned to serve in any proceeding who:

(1) Has any pecuniary interest in any matter or business involved in the proceeding;

(2) Is related within the third degree by blood or marriage to any party to the proceeding; or

(3) Has any conflict of interest which might impair the Judge's objectivity in the proceeding.

(b) *Disqualification of Judge.* (1) Any party to the proceeding may, by motion made to the Judge, request that the Judge withdraw from the proceeding because of an alleged disqualifying reason. Such motion shall set forth with particularity the grounds of alleged disqualification. The Judge may then either rule upon or certify the motion to the Secretary, but not both.

(2) A Judge shall withdraw from any proceeding for any reason deemed by the Judge to be disqualifying.

(c) *Powers.* Subject to review as provided elsewhere in this part, the Judge,

in any assigned proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Set the time and place of a prehearing conference and the hearing, adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations;

(4) Request the presence of and examine witnesses and receive relevant evidence at the hearing;

(5) Take or order the taking of depositions as authorized under these rules;

(6) Admit or exclude evidence;

(7) Hear oral argument on facts or law,

(8) Do all acts and take all measures necessary for the maintenance of order, including the exclusion of contumacious counsel or other persons;

(9) Request additional information from any party to aid in the Judge's determination; and

(10) Take all other actions authorized under these procedures.

(d) *Who may act in the absence of the Judge.* In case of the absence of the Judge or the Judge's inability to act, the powers and duties to be performed by the Judge under these rules of practice in connection with any assigned proceeding may, without abatement of the proceeding unless otherwise directed by the Chief Judge, be assigned to any other Judge.

§ 1.426 Appeal to Judicial Officer.

(a) *Filing of petition.* Within 10 calendar days after receiving service of the Judge's decision, a party who disagrees with the decision, or any part thereof, or any ruling by the Judge or any alleged deprivation of rights, may appeal such decision to the Judicial Officer by filing an appeal petition with the Hearing Clerk. As provided in §1.422(e)(2), objections regarding evidence or a limitation regarding examination or cross-examination or other rulings made before the Judge may be relied upon in an appeal. Each issue set forth in the petition, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations or authorities being relied upon in support thereof. A brief may be filed in support of the appeal simultaneously with the petition. A party filing a petition of appeal to the Judicial Officer, and any brief in support thereof, shall serve the other parties to the proceeding with a copy of the petition and supporting brief. The copies of the petition and supporting brief shall be served on the parties to the proceeding with a copy of the petition and supporting brief. The copies of the petition and supporting brief shall be served on the parties to the proceeding on the same day as the petition and supporting brief are filed with the Judicial Officer.

(b) *Response to appeal petition.* Within 10 calendar days after the service of a copy of an appeal petition and any brief in support thereof, filed by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to the appeal and in such response any relevant issue, not presented in the appeal petition, may be raised. A party filing a response to a petition of appeal to the Judicial Officer shall serve the other parties to the proceeding with a copy of the response. The copies of the response shall be served on the parties to the proceeding on the same day as the response is filed with the Judicial Officer.

(c) *Transmittal of record.* Whenever an appeal of a Judge's decision is filed and a response thereto has been filed or time for filing a response has expired, the Hearing Clerk shall transmit to the Judicial Officer the record of the proceeding. Such record shall include: The pleadings; motions and requests filed and rulings thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed in connection therewith; any documents or papers filed in connection with a prehearing conference; such proposed findings of fact, conclusions, and orders, and briefs in support thereof, as may have been filed in connection with the proceeding; the Judge's decision; such exceptions, statements of objections and briefs in support thereof as may have been filed in the proceeding; and the appeal petition, and such briefs in support thereof and responses thereto

as may have been filed in the proceeding.

(d) *Decision of the Judicial Officer on appeal.* The Judicial Officer, upon the basis of and after due consideration of the record and any matter of which official notice is taken, shall rule on the appeal within 4 months after the institution of the proceeding, pursuant to 16 U.S.C. 620b(c)(3). If the Judicial Officer decides that no change or modification of the Judge's decision is warranted, the Judicial Officer may adopt the Judge's decision as the final order in the proceeding, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum. A final order issued by the Judicial Officer shall be filed with the Hearing Clerk. Such order may be regarded by a party as final for purposes of judicial review.

§ 1.427 Filing; identification of parties of record; service; and computation of time.

(a) *Filing; number of copies.* Except as otherwise provided in this section, all documents or papers required or authorized by the rules in this part to be filed with the Hearing Clerk shall be filed in duplicate. Any document or paper required or authorized under the rules in this part to be filed with the Hearing Clerk shall, during the course of an oral hearing, be filed with the Judge.

(b) Parties of record shall receive a list from the Hearing Clerk of the names and addresses of all parties of record immediately after the close of the comment period.

(c) *Service; proof of service.* (1) Each party of record is responsible for serving on every other party and to the Judge all papers and documents submitted after the comment period. Service shall be made either:

(i) By delivering a copy of the document or paper to the individual to be served or to a member of the partnership to be served, or to the president, secretary, or other executive officer or a director of the corporation or association to be served, or to the attorney of record representing such individual, partnership, corporation, organization, or association; or

(ii) By leaving a copy of the document or paper at the principal office or place of business or residence of such individual, partnership, corporation, organization, or association, or of the attorney or agent of record and mailing by regular mail another copy to such person at such address; or

(iii) By registering or certifying and mailing a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to the attorney or agent of record, at the last known residence or principal office or place of business of such person: *Provided,* That if the registered or certified document or paper is returned undelivered because the addressee refused or failed to accept delivery, the document or paper shall be served by remailing it by regular mail; or

(iv) By mailing the document or paper by regular mail.

(2) Proof of service hereunder shall be made by the certificate of the person who actually made the service: *Provided,* that if the service is made by mail, as outlined in paragraph (b)(3) of this section, proof of service shall be made by the return post-office receipt, in the case of registered or certified mail, and if that service is made by regular mail, as outlined in paragraphs (b)(3) and (b)(4) of this section, proof of service shall be made by the certificate of the person who mailed the matter by regular mail. The certificate and post-office receipt contemplated herein shall be filed with the Hearing Clerk, and made a part of the record of the proceeding. The Judge and the Hearing Clerk shall follow the procedures outlined in (c) for service of papers or documents signed by the Judge and/or the Hearing Clerk.

(d) *Effective date of filing.* Any document or paper required or authorized under the rules in this part to be filed shall be deemed to be filed at the time when it reaches the Hearing Clerk; or, if authorized to be filed with another officer or employee of the Department it shall be deemed to be filed at the time when it reaches such officer or employee.

(e) *Computations of time.* Saturdays, Sundays and Federal holidays shall be

included in computing the time allowed for the filing of any document or paper except as provided in these rules; *Provided,* that, when such time expires on a Saturday, Sunday, or Federal holiday, such period shall be extended to include the next following business day.

§ 1.428 Depositions.

(a) *Motion for taking deposition.* Upon the motion of a party to the proceeding, the Judge may, at any time after the filing of the submission, order the taking of testimony by deposition. The Motion shall be in writing, shall be filed with the Hearing Clerk, and shall set forth:

(1) The name and address of the proposed deponent;

(2) The name and address of the person (referred to hereafter in this section as the ''officer'') qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made;

(3) The proposed time and place of the examination; and

(4) The reasons why such deposition should be taken, which shall be solely for the purpose of eliciting testimony which otherwise might not be available at the time of the hearing, for uses as provided in paragraph (g) of this section.

(b) *Judge's order for taking deposition.* (1) If the Judge finds that testimony may not be otherwise available at the hearing, the taking of the deposition may be ordered. The order shall be served upon the parties, and shall state:

(i) The time and place of the examination;

(ii) The name of the officer before whom the examination is to be made; and

(iii) The name of the deponent.

(2) The officer and the time and place need not be the same as those suggested in the motion.

(c) *Qualifications of officer.* The deposition shall be made before the Judge or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(d) *Procedure on examinations.* (1) The deponent shall be subject to cross-examination. Objections to questions or documents shall be in short form, stating the grounds of objections relied upon. The questions propounded, together with all objections made (but not including argument or debate), shall be recorded verbatim. In lieu of oral examination, parties may transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(2) The applicant shall arrange for the examination of the witness either by oral examination, or by written questions upon agreement of the parties or as directed by the Judge. If the examination is conducted by means of written questions, copies of the questions shall be served upon the other party to the proceeding and filed with the officer and the other party may serve cross questions and file them with the officer at any time prior to the time of the examination.

(e) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn and that the deposition is a true record of the deponent's testimony. The officer shall then securely seal the deposition, together with one copy thereof (unless there are more than two parties in the proceeding, in which case there should be another copy for each additional party), in an envelope and mail the same by registered or certified mail to the Hearing Clerk.

(f) *Corrections to the transcript.* (1) At any time prior to the hearing any party may file a motion proposing corrections to the transcript of the deposition.

(2) Unless a party files such a motion in the manner prescribed, the transcript shall be presumed, except for obvious typographical errors, to be a true, correct, and complete transcript of the testimony given in the deposition proceeding and to contain an accurate description or reference to all exhibits in connection therewith, and shall be deemed to be certified correct without further procedure.

(3) At any time prior to use of the deposition in accordance with paragraph (g) of this section and after consideration of any objections filed thereto, the Judge may issue an order making any corrections in the transcript which the Judge finds are warranted, which corrections shall be entered onto the original transcript by the Hearing Clerk (without obscuring the original text).

(g) *Use of deposition*. A deposition ordered and taken in accordance with the provisions of this section may be used in a proceeding under these rules if the Judge finds that the evidence is otherwise admissible and that the witness is dead; that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If the party upon whose motion the deposition was taken refuses to offer it in evidence, any other party may offer the deposition or any thereof in evidence. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which ought in fairness to be considered with the part introduced and any party may introduce any other parts.

§ 1.429 *Ex parte* communications.

(a) At no stage of the proceeding between its institution and issuance of the final decision shall an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding discuss *ex parte* the merits of the proceeding with any person having an interest in the proceeding, or with any representative of such person: *Provided*, That, procedural matters and status reports shall not be included within this limitation; and *Provided further*, That an employee of the Department who is or may be involved in the decisional process of the proceeding may discuss the merits of the proceeding if all parties of record have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record.

(b) No interested person shall make or knowingly cause to be made to the Judge an *ex parte* communication relevant to the merits of the proceeding.

(c) If the Judge reviews an *ex parte* communication in violation of this section, the one who receives the communication shall place in the public record of the proceeding:

(1) All such written communication;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Judge may, to the extent consistent with the interests of justice and the policy of the underlying statute, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(e) To the extent consistent with the interests of justice and the policy of the underlying statute, a violation of this section shall be sufficient grounds for a decision adverse to the party who knowingly commits a violation of this section or who knowingly causes such a violation to occur.

(f) For purposes of this section *ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or the proceeding.

Subpart N—Policy With Regard to Indemnification of Department of Agriculture Employees

AUTHORITY: 5 U.S.C. 301.

SOURCE: 69 FR 28042, May 18, 2004, unless otherwise noted.

§ 1.501 Policy on employee indemnification.

(a) Indemnification, under the context of this section, shall be the policy

whereby the Department of Agriculture compensates an employee for the legal consequences of conduct, taken within the scope of his or her employment, giving rise to a verdict, judgment, or other monetary award rendered against the employee.

(b) The Department of Agriculture may indemnify a Department employee (which for the purposes of this regulation shall include a former employee) for any verdict, judgment, or other monetary award rendered against such employee, provided the Secretary or the Secretary's designee determines, in his or her discretion, that the conduct giving rise to such verdict, judgment, or award was taken within the scope of his or her employment with the Department, and such indemnification is in the interest of the United States.

(c) The Department of Agriculture may pay for the settlement or compromise of a personal damage claim against a Department employee by the payment of available funds, at any time, provided that the Secretary or the Secretary's designee determines, in his or her discretion, that the alleged conduct giving rise to the personal damage claim was taken within the scope of the employee's employment, and such settlement or compromise is in the interest of the United States.

(d) Absent exceptional circumstances, as determined by the Secretary or his or her designee, the Department will not entertain a request to agree to indemnify or pay for a settlement of a personal damage claim before entry of an adverse judgment, verdict, or other monetary award.

(e) When a Department employee becomes aware that an action has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee should immediately notify his or her supervisor that such an action is pending. The supervisor shall promptly thereafter notify the Office of the General Counsel.

(f) A Department employee may request indemnification to satisfy a verdict, judgment, or monetary award entered against the employee or to satisfy the requirements of a settlement proposal. The employee shall submit a written request, with appropriate documentation that includes a copy of the verdict, judgment, award or settlement proposal, as appropriate, to the head of his or her employing component, who shall thereupon submit it to the General Counsel, in a timely manner, a recommended disposition of the request. The Office of the General Counsel shall seek the views of the Department of Justice. The Office of the General Counsel shall forward the employee's request, the employing component's recommendation, and the General Counsel's recommendation, along with the time frame in which a decision is needed, to the Secretary or his or her designee for decision. The Secretary or his or her designee will decide promptly whether to indemnify or pay for a settlement of a personal damage claim.

(g) Any payment under this section to indemnify a Department employee for a personal damage verdict, judgment, or award or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the employing component of the United States Department of Agriculture.

Subpart O—Conditions in FERC Hydropower Licenses

AUTHORITY: 16 U.S.C. 797(e), 811, 823d.

SOURCE: 80 FR 17181, Mar. 31, 2015, unless otherwise noted.

GENERAL PROVISIONS

§ 1.601 What is the purpose of this subpart, and to what license proceedings does it apply?

(a) *Hearing process.* (1) The regulations in §§1.601 through 1.660 contain rules of practice and procedure applicable to hearings on disputed issues of material fact with respect to mandatory conditions that the Department of Agriculture, Forest Service (Forest Service) may develop for inclusion in a hydropower license issued under subchapter I of the Federal Power Act (FPA), 16 U.S.C. 791 *et seq.* The authority to develop these conditions is granted by FPA section 4(e), 16 U.S.C. 797(e), which authorizes the Secretary of Agriculture to condition hydropower

licenses issued by the Federal Energy Regulatory Commission (FERC).

(2) The hearing process under this part does not apply to recommendations that the Forest Service may submit to FERC under FPA section 10(a), 16 U.S.C. 803(a).

(3) The FPA also grants the Department of Commerce and the Department of the Interior the authority to develop mandatory conditions and prescriptions for inclusion in a hydropower license. Where the Forest Service and either or both of these other Departments develop conditions or prescriptions to be included in the same hydropower license and where the Departments agree to consolidate the hearings under §1.623:

(i) A hearing conducted under this subpart will also address disputed issues of material fact with respect to any condition or prescription developed by one of the other Departments; or

(ii) A hearing requested under this subpart will be conducted by one of the other Departments, pursuant to 43 CFR 45.1 *et seq.* or 50 CFR 221.1 *et seq.*, as applicable.

(4) The regulations in §§1.601 through 1.660 will be construed and applied to each hearing process to achieve a just and speedy determination, consistent with adequate consideration of the issues involved and the provisions of §1.660(a).

(b) *Alternatives process.* The regulations in §§1.670 through 1.674 contain rules of procedure applicable to the submission and consideration of alternative conditions under FPA section 33, 16 U.S.C. 823d. That section allows any party to the license proceeding to propose an alternative to a condition deemed necessary by the Forest Service under section 4(e).

(c) *Reserved authority.* Where the Forest Service has notified or notifies FERC that it is reserving its authority to develop one or more conditions at a later time, the hearing and alternatives processes under this subpart for such conditions will be available if and when the Forest Service exercises its reserved authority.

(d) *Applicability.* (1) This subpart applies to any hydropower license proceeding for which the license had not been issued as of November 17, 2005, and for which one or more preliminary conditions have been or are filed with FERC before FERC issues the license.

(2) This subpart also applies to any exercise of the Forest Service's reserved authority under paragraph (c) of this section with respect to a hydropower license issued before or after November 17, 2005.

§1.602 What terms are used in this subpart?

As used in this subpart:

ALJ means an administrative law judge appointed under 5 U.S.C. 3105 and assigned to preside over the hearing process under this subpart.

Alternative means a condition that a license party other than the Forest Service or another Department develops as an alternative to a preliminary condition from the Forest Service or another Department, under FPA sec. 33, 16 U.S.C. 823d.

Condition means a condition under FPA sec. 4(e), 16 U.S.C. 797(e), for the adequate protection and utilization of a reservation.

Day means a calendar day.

Department means the Department of Agriculture, Department of Commerce, or Department of the Interior.

Discovery means a prehearing process for obtaining facts or information to assist a party in preparing or presenting its case.

Ex parte communication means an oral or written communication to the ALJ that is made without providing all parties reasonable notice and an opportunity to participate.

FERC means the Federal Energy Regulatory Commission.

Forest Service means the USDA Forest Service.

FPA means the Federal Power Act, 16 U.S.C. 791 *et seq.*

Hearing Clerk means the Hearing Clerk, OALJ, USDA, 1400 Independence Ave., SW., Washington, DC 20250; phone: 202–720–4443, facsimile: 202–720–9776.

Intervention means a process by which a person who did not request a hearing under §1.621 can participate as a party to the hearing under §1.622.

License party means a party to the license proceeding, as that term is defined at 18 CFR 385.102(c).

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR part 4 or 5.

Material fact means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

Modified condition or prescription means any modified condition or prescription filed by a Department with FERC for inclusion in a hydropower license.

NEPA document means an environmental document as defined at 40 CFR 1508.10 to include an environmental assessment, environmental impact statement (EIS), finding of no significant impact, and notice of intent to prepare an EIS. Such documents are issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq., and the CEQ Regulations Implementing the Procedural Requirements of NEPA (40 CFR parts 21500–1508)*.

NFS means the National Forest System and refers to:

(1) Federal land managed by the Forest Service; and

(2) The Deputy Chief of the National Forest System, located in the Forest Service's Washington, DC, office.

Office of Administrative Law Judges (OALJ) is the office within USDA in which ALJs conduct hearings under the regulations in this subpart.

Party means, with respect to USDA's hearing process:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 1.621; or

(ii) Either 43 CFR 45.21 or 50 CFR 221.21, with respect to a hearing process consolidated under § 1.623;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 1.622; or

(ii) Either 43 CFR 45.22 or 50 CFR 221.22, with respect to a hearing process consolidated under § 1.623;

(3) The Forest Service; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under § 1.623.

Person means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any Federal, State, Tribal, county, district, territorial, or local government or agency.

Preliminary condition or prescription means any preliminary condition or prescription filed by a Department with FERC for potential inclusion in a hydropower license.

Prescription means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

Representative means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under § 1.610.

Reservation has the same meaning as the term ''reservations'' in FPA sec. 3(2), 16 U.S.C. 796(2).

Secretary means the Secretary of Agriculture or his or her designee.

Senior Department employee has the same meaning as the term ''senior employee'' in 5 CFR 2637.211(a).

USDA means the United States Department of Agriculture.

You refers to a party other than a Department.

§ 1.603 How are time periods computed?

(a) *General.* Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or Federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or Federal holiday that falls within the period is not included.

(b) *Extensions of time.* (1) No extension of time can be granted to file a request for a hearing under § 1.621, a notice of intervention and response under § 1.622,

an answer under §1.625, or any document under §§1.670 through 1.674.

(2) An extension of time to file any other document under this subpart may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under §1.635 stating how much additional time is needed and the reasons for the request.

(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under §1.660.

§ 1.604 What deadlines apply to the trial-type hearing and alternatives processes?

(a) The following table summarizes the steps in the trial-type hearing process under this subpart and indicates the deadlines generally applicable to each step. If the deadlines in this table are in any way inconsistent with the deadlines as set by other sections of this subpart or by the ALJ, the deadlines as set by those other sections or by the ALJ control.

Process step	Process day	Must generally be completed	See section
(1) Forest Service files preliminary condition(s) with FERC.	0	.....	1.620.
(2) License party files request for hearing ..	30	Within 30 days after Forest Service files preliminary condition(s) with FERC.	1.621(a).
(3) Any other license party files notice of intervention and response.	50	Within 20 days after deadline for filing requests for hearing.	1.622(a).
(4) NFS refers case to ALJ office for hearing and issues referral notice to parties.	85	Within 55 days after deadline for filing requests for hearing.	1.626(a).
(5) Parties may meet and agree to discovery (optional step).	86–91	Before deadline for filing motions seeking discovery.	1.641(a).
(6) ALJ office sends docketing notice, and ALJ issues notice setting date for initial prehearing conference.	90	Within 5 days after effective date of referral notice.	1.630.
(7) Party files motion seeking discovery from another party.	92	Within 7 days after effective date of referral notice.	1.641(d).
(8) Other party files objections to discovery motion or specific portions of discovery requests.	99	Within 7 days after service of discovery motion.	1.641(e).
(9) Parties meet to discuss discovery and hearing schedule.	100–104	Before date set for initial prehearing conference.	1.640(d).
(10) ALJ conducts initial prehearing conference.	105	On or about 20th day after effective date of referral notice.	1.640(a).
(11) ALJ issues order following initial prehearing conference.	107	Within 2 days after initial prehearing conference.	1.640(g).
(12) Party responds to interrogatories from another party as authorized by ALJ.	120–22	Within 15 days after ALJ's order authorizing discovery during or following initial prehearing conference.	1.643(c).
(13) Party responds to requests for documents, etc., from another party as authorized by ALJ.	120–22	Within 15 days after ALJ's order authorizing discovery during or following initial prehearing conference.	1.645(c).
(14) Parties complete all discovery, including depositions, as authorized by ALJ.	130	Within 25 days after initial prehearing conference.	1.641(i).
(15) Parties file updated lists of witnesses and exhibits.	140	Within 10 days after deadline for completion of discovery.	1.642(b).
(16) Parties file written direct testimony	140	Within 10 days after deadline for completion of discovery.	1.652(a).
(17) Parties complete prehearing preparation and ALJ commences hearing.	155	Within 25 days after deadline for completion of discovery.	1.650(a).
(18) ALJ closes hearing record	160	When ALJ closes hearing	1.658.
(19) Parties file post-hearing briefs	175	Within 15 days after hearing closes	1.659(a).
(20) ALJ issues decision	190	Within 30 days after hearing closes	1.660(a).

(b) The following table summarizes the steps in the alternatives process under this subpart and indicates the deadlines generally applicable to each step. If the deadlines in this table are in any way inconsistent with the deadlines as set by other sections of this

subpart, the deadlines as set by those other sections control.

Process step	Process day	Must generally be completed	See section
(1) Forest Service files preliminary condition(s) with FERC.	0	.....	1.620.
(2) License party files alternative condition(s).	30	Within 30 days after Forest Service files preliminary condition(s) with FERC.	1.671(a).
(3) ALJ issues decision on any hearing request.	190	Within 30 days after hearing closes (see previous table).	1.660(a).
(4) License party files revised alternative condition(s) if authorized.	210	Within 20 days after ALJ issues decision	1.672(a).
(5) Forest Service files modified condition(s) with FERC.	300	Within 60 days after the deadline for filing comments on FERC's draft NEPA document.	1.673(a).

HEARING PROCESS

REPRESENTATIVES

§ 1.610 Who may represent a party, and what requirements apply to a representative?

(a) *Individuals.* A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.

(b) *Organizations.* A party that is an organization or other entity may authorize one of the following to represent it:

(1) An attorney;

(2) A partner, if the entity is a partnership;

(3) An officer or agent, if the entity is a corporation, association, or unincorporated organization;

(4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or

(5) An elected or appointed official or an employee, if the entity is a Federal, State, Tribal, county, district, territorial, or local government or component.

(c) *Appearance.* An individual representing himself or herself and any other representative must file a notice of appearance. The notice must:

(1) Meet the form and content requirements for documents under § 1.611;

(2) Include the name and address of the party on whose behalf the appearance is made;

(3) If the representative is an attorney, include a statement that he or she is a member in good standing of the bar of the highest court of a state, the District of Columbia, or any territory or commonwealth of the United States (identifying which one); and

(4) If the representative is not an attorney, include a statement explaining his or her authority to represent the entity.

(d) *Lead representative.* If a party has more than one representative, the ALJ may require the party to designate a lead representative for service of documents under § 1.613.

(e) *Disqualification.* The ALJ may disqualify any representative for misconduct or other good cause.

DOCUMENT FILING AND SERVICE

§ 1.611 What are the form and content requirements for documents under this subpart?

(a) *Form.* Each document filed in a case under §§ 1.610 through 1.660 must:

(1) Measure 8½ by 11 inches, except that a table, chart, diagram, or other attachment may be larger if folded to 8½ by 11 inches and attached to the document;

(2) Be printed on just one side of the page (except that service copies may be printed on both sides of the page);

(3) Be clearly typewritten, printed, or otherwise reproduced by a process that yields legible and permanent copies;

(4) Use 11 point font size or larger;

(5) Be double-spaced except for footnotes and long quotations, which may be single-spaced;

(6) Have margins of at least 1 inch; and

(7) Be bound on the left side, if bound.

(b) *Caption.* Each document filed under §§ 1.610 through 1.660 must begin with a caption that sets forth:

(1) The name of the case under §§ 1.610 through 1.660 and the docket number, if one has been assigned;

(2) The name and docket number of the license proceeding to which the case under §§ 1.610 through 1.660 relates; and

(3) A descriptive title for the document, indicating the party for whom it is filed and the nature of the document.

(c) *Signature.* The original of each document filed under §§ 1.610 through 1.660 must be signed by the representative of the person for whom the document is filed. The signature constitutes a certification by the representative that he or she has read the document; that to the best of his or her knowledge, information, and belief, the statements made in the document are true; and that the document is not being filed for the purpose of causing delay.

(d) *Contact information.* Below the representative's signature, the document must provide the representative's name, mailing address, street address (if different), telephone number, facsimile number (if any), and electronic mail address (if any).

§ 1.612 Where and how must documents be filed?

(a) *Place of filing.* Any documents relating to a case under §§ 1.610 through 1.660 must be filed with the appropriate office, as follows:

(1) Before NFS refers a case for docketing under § 1.626, any documents must be filed with NFS by directing them to the ''Deputy Chief, NFS.''

(i) For delivery by regular mail, address to USDA Forest Service, Attn: Lands Staff, Mail Stop 1124, 1400 Independence Ave. SW., Washington, DC 20250–1124.

(ii) For delivery by hand or private carrier, deliver to USDA Forest Service, Yates Bldg. (4 SO), 201 14th Street SW., Washington, DC (SW. corner of 14th Street and Independence Ave. SW.); phone (202) 205–1248; facsimile (703) 605–5117. Hand deliverers must obtain an official date-time-stamp from Lands Staff.

(2) The Forest Service will notify the parties of the date on which NFS refers a case for docketing under § 1.626. After that date, any documents must be filed with:

(i) The Hearing Clerk, if OALJ will be conducting the hearing. The Hearing Clerk's address, telephone number, and facsimile number are set forth in § 1.602; or

(ii) The hearings component of or used by another Department, if that Department will be conducting the hearing. The name, address, telephone number, and facsimile number of the appropriate hearings component will be provided in the referral notice from the Forest Service.

(b) *Method of filing.* (1) A document must be filed with the appropriate office under paragraph (a) of this section using one of the following methods:

(i) By hand delivery of the original document and two copies;

(ii) By sending the original document and two copies by express mail or courier service; or

(iii) By sending the document by facsimile if:

(A) The document is 20 pages or less, including all attachments;

(B) The sending facsimile machine confirms that the transmission was successful; and

(C) The original of the document and two copies are sent by regular mail on the same day.

(2) Parties are encouraged, and may be required by the ALJ, to supplement any filing by providing the appropriate office with an electronic copy of the document on compact disc or other suitable media. With respect to any supporting material accompanying a request for hearing, a notice of intervention and response, or an answer, the party may submit in lieu of an original and two hard copies:

(i) An original; and

(ii) One copy on a compact disc or other suitable media.

(c) *Date of filing.* A document under this subpart is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(d) *Nonconforming documents.* If any document submitted for filing under this subpart does not comply with the requirements of this subpart or any applicable order, it may be rejected.

§ 1.613 What are the requirements for service of documents?

(a) *Filed documents.* Any document related to a case under §§ 1.610 through 1.660 must be served at the same time the document is delivered or sent for filing. Copies must be served as follows:

(1) A complete copy of any request for a hearing under § 1.621 must be delivered or sent to FERC and each license party, using one of the methods of service in paragraph (c) of this section or under 18 CFR 385.2010(f)(3) for license parties that have agreed to receive electronic service.

(2) A complete copy of any notice of intervention and response under § 1.622 must be:

(i) Delivered or sent to FERC, the license applicant, any person who has filed a request for hearing under § 1.621, and the Forest Service office that submitted the preliminary conditions to FERC, using one of the methods of service in paragraph (c) of this section; and

(ii) Delivered or sent to any other license party using one of the methods of service in paragraph (c) of this section or under 18 CFR 385.2010(f)(3) for license parties that have agreed to receive electronic service, or by regular mail.

(3) A complete copy of any answer or notice under § 1.625 and any other document filed by any party to the hearing process must be delivered or sent to every other party to the hearing process, using one of the methods of service in paragraph (c) of this section.

(b) *Documents issued by the Hearing Clerk or ALJ.* A complete copy of any notice, order, decision, or other document issued by the Hearing Clerk or the ALJ under §§ 1.610 through 1.660 must be served on each party, using one of the methods of service in paragraph (c) of this section.

(c) *Method of service.* Unless otherwise agreed to by the parties and ordered by the ALJ, service must be accomplished by one of the following methods:

(1) By hand delivery of the document;

(2) By sending the document by express mail or courier service for delivery on the next business day;

(3) By sending the document by facsimile if:

(i) The document is 20 pages or less, including all attachments;

(ii) The sending facsimile machine confirms that the transmission was successful; and

(iii) The document is sent by regular mail on the same day; or

(4) By sending the document, including all attachments, by electronic means if the party to be served has consented to that means of service in writing. However, if the serving party learns that the document did not reach the party to be served, the serving party must re-serve the document by another method set forth in paragraph (c) of this section (including another electronic means, if the party to be served has consented to that means in writing).

(d) *Certificate of service.* A certificate of service must be attached to each document filed under §§ 1.610 through 1.660. The certificate must be signed by the party's representative and include the following information:

(1) The name, address, and other contact information of each party's representative on whom the document was served;

(2) The means of service, including information indicating compliance with paragraph (c)(3) or (c)(4) of this section, if applicable; and

(3) The date of service.

Initiation of Hearing Process

§ 1.620 What supporting information must the Forest Service provide with its preliminary conditions?

(a) *Supporting information.* (1) When the Forest Service files its preliminary conditions with FERC, it must include a rationale for each condition, explaining why the Forest Service deems the condition necessary for the adequate protection and utilization of the affected NFS lands, and an index to the Forest Service's administrative record that identifies all documents relied upon.

(2) If any of the documents relied upon are not already in the license proceeding record, the Forest Service must:

(i) File them with FERC at the time it files its preliminary conditions; and

(ii) Provide copies to the license applicant.

(b) *Service.* The Forest Service will serve copies of its preliminary conditions on each license party.

§ 1.621 How do I request a hearing?

(a) *General.* To request a hearing on disputed issues of material fact with respect to any preliminary condition filed by the Forest Service, you must:

(1) Be a license party; and

(2) File with NFS, at the appropriate address provided in §1.612(a)(1), a written request for a hearing:

(i) For a case under §1.601(d)(1), within 30 days after the Forest Service files a preliminary condition with FERC; or

(ii) For a case under §1.601(d)(2), within 60 days after the Forest Service files a preliminary condition with FERC.

(b) *Content.* Your hearing request must contain:

(1) A numbered list of the factual issues that you allege are in dispute, each stated in a single, concise sentence;

(2) The following information with respect to each issue:

(i) The specific factual statements made or relied upon by the Forest Service under §1.620(a) that you dispute;

(ii) The basis for your opinion that those factual statements are unfounded or erroneous; and

(iii) The basis for your opinion that any factual dispute is material.

(3) With respect to any scientific studies, literature, and other documented information supporting your opinions under paragraphs (b)(2)(ii) and (b)(2)(iii) of this section, specific citations to the information relied upon. If any such document is not already in the license proceeding record, you must provide a copy with the request; and

(4) A statement indicating whether or not you consent to service by electronic means under §1.613(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* Your hearing request must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(2) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 1.622 How do I file a notice of intervention and response?

(a) *General.* (1) To intervene as a party to the hearing process, you must:

(i) Be a license party; and

(ii) File with NFS, at the appropriate address provided in §1.612(a)(1), a notice of intervention and a written response to any request for a hearing within 20 days after the deadline in §1.621(a)(2).

(2) A notice of intervention and response must be limited to one or more of the issues of material fact raised in the hearing request and may not raise additional issues.

(b) *Content.* In your notice of intervention and response you must explain your position with respect to the issues of material fact raised in the hearing request under §1.621(b).

(1) If you agree with the information provided by the Forest Service under §1.620(a) or by the requester under §1.621(b), your response may refer to the Forest Service's explanation or the requester's hearing request for support.

(2) If you wish to rely on additional information or analysis, your response must provide the same level of detail with respect to the additional information or analysis as required under §1.621(b).

(3) Your notice of intervention and response must also indicate whether or not you consent to service by electronic means under §1.613(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* Your response and notice must also list the witnesses and exhibits that you intend to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, you must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony; and

(2) For each exhibit listed, you must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b) of this section (excluding citations to scientific studies, literature, and other documented information supporting your opinions) may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

§ 1.623 Will hearing requests be consolidated?

(a) *Initial Department coordination.* If NFS has received a copy of a hearing request, it must contact the other Departments and determine:

(1) Whether any of the other Departments has also filed a preliminary condition or prescription relating to the license with FERC; and

(2) If so, whether the other Department has also received a hearing request with respect to the preliminary condition or prescription.

(b) *Decision on consolidation.* Where more than one Department has received a hearing request, the Departments involved must decide jointly:

(1) Whether the cases should be consolidated for hearing under paragraphs (c)(3)(ii) through (iv) of this section; and

(2) If so, which Department will conduct the hearing on their behalf.

(c) *Criteria.* Cases will or may be consolidated as follows:

(1) All hearing requests with respect to any conditions from the same Department will be consolidated for hearing.

(2) All hearing requests with respect to any prescriptions from the same Department will be consolidated for hearing.

(3) All or any portion of the following may be consolidated for hearing, if the Departments involved determine that there are common issues of material fact or that consolidation is otherwise appropriate:

(i) Two or more hearing requests with respect to any condition and any prescription from the same Department;

(ii) Two or more hearing requests with respect to conditions from different Departments;

(iii) Two or more hearing requests with respect to prescriptions from different Departments; or

(iv) Two or more hearing requests with respect to any condition from one Department and any prescription from another Department.

§ 1.624 Can a hearing process be stayed to allow for settlement discussions?

(a) Prior to referral to the ALJ, the hearing requester and the Forest Service may by agreement stay the hearing process under this subpart for a period not to exceed 120 days to allow for settlement discussions, if the stay period and any subsequent hearing process (if required) can be accommodated within the time frame established for the license proceeding.

(b) Any stay of the hearing process will not affect the deadline for filing a notice of intervention and response, if any, pursuant to §1.622(a)(1)(ii).

§ 1.625 How will the Forest Service respond to any hearing requests?

(a) *General.* NFS will determine whether to answer any hearing request under §1.621 on behalf of the Forest Service.

(b) *Content.* If NFS answers a hearing request:

(1) For each of the numbered factual issues listed under §1.621(b)(1), NFS's answer must explain the Forest Service's position with respect to the issues of material fact raised by the requester, including one or more of the following statements as appropriate:

(i) That the Forest Service is willing to stipulate to the facts as alleged by the requester;

(ii) That the Forest Service believes the issue listed by the requester is not a factual issue, explaining the basis for such belief;

(iii) That the Forest Service believes the issue listed by the requester is not

material, explaining the basis for such belief; or

(iv) That the Forest Service agrees that the issue is factual, material, and in dispute.

(2) NFS's answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under §1.623 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact information for the appropriate Department hearings component.

(3) If the Forest Service plans to rely on any scientific studies, literature, and other documented information that are not already in the license proceeding record, a copy of each item must be provided with NFS's answer.

(4) NFS's answer must also indicate whether or not the Forest Service consents to service by electronic means under §1.613(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* NFS's answer must also contain a list of the Forest Service's witnesses and exhibits that the Forest Service intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, the Forest Service must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, the Forest Service must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(e) *Notice in lieu of answer.* If NFS elects not to answer a hearing request:

(1) The Forest Service is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) The Forest Service may file a list of witnesses and exhibits with respect to the request only as provided in §1.642(b); and

(3) NFS must include with its case referral under §1.623 a notice in lieu of answer containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under §1.623, and the statement required by paragraph (b)(4) of this section.

§ 1.626 What will the Forest Service do with any hearing requests?

(a) *Case referral.* Within 55 days after the deadline in §1.621(a)(2) or 35 days after the expiration of any stay period under §1.624, whichever is later, NFS will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by USDA, NFS will refer the case to the OALJ.

(2) If the hearing is to be conducted by another Department, NFS will refer the case to the hearings component used by that Department.

(b) *Content.* The case referral will consist of the following:

(1) Two copies of any preliminary condition under §1.620;

(2) The original and one copy of any hearing request under §1.621;

(3) The original and one copy of any notice of intervention and response under §1.622;

(4) The original and one copy of any answer or notice in lieu of answer under §1.625; and

(5) The original and one copy of a referral notice under paragraph (c) of this section.

(c) *Notice.* At the time NFS refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The effective date of the case referral to the appropriate Department hearings component.

(d) *Delivery and service.* (1) NFS must refer the case to the appropriate Department hearings component by one of the methods identified in §1.612(b)(1)(i) and (b)(1)(ii).

(2) The Forest Service must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in §1.613(c)(1) and (c)(2).

§ 1.627 What regulations apply to a case referred for a hearing?

(a) If NFS refers the case to the OALJ, these regulations will continue to apply to the hearing process.

(b) If NFS refers the case to the Department of Interior's Office of Hearing and Appeals, the regulations at 43 CFR 45.1 *et seq.* will apply from that point on.

(c) If NFS refers the case to the Department of Commerce's designated ALJ office, the regulations at 50 CFR 221.1 *et seq.* will apply from that point on.

General Provisions Related to Hearings

§ 1.630 What will OALJ do with a case referral?

Within 5 days after the effective date stated in the referral notice under §1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4):

(a) The Hearing Clerk must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under §1.640. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 1.631 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process relating to Forest Service's or other Department's condition or prescription that has been referred to the ALJ for hearing, including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas under §1.647;

(c) Shorten or enlarge time periods set forth in these regulations, except that the deadline in §1.660(a)(2) can be extended only if the ALJ must be replaced under §1.632 or 1.633;

(d) Rule on motions;

(e) Authorize discovery as provided for in §§1.641 through 1.647;

(f) Hold hearings and conferences;

(g) Regulate the course of hearings;

(h) Call and question witnesses;

(i) Exclude any person from a hearing or conference for misconduct or other good cause;

(j) Summarily dispose of any hearing request or issue as to which the ALJ determines there is no disputed issue of material fact;

(k) Issue a decision consistent with §1.660(b) regarding any disputed issue of material fact; and

(l) Take any other action authorized by law.

§ 1.632 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in §1.631, the Hearing Clerk will designate a successor.

(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 1.633 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.

(b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.

(2) The party must file with the motion an affidavit or declaration setting forth the facts or other reasons in detail.

(c) The ALJ must rule upon the motion, stating the grounds for the ruling.

(1) If the ALJ concludes that the motion is timely and meritorious, he or she must disqualify himself or herself and withdraw from the case.

(2) If the ALJ does not disqualify himself or herself and withdraw from the case, the ALJ must continue with the hearing process and issue a decision.

§ 1.634 What is the law governing ex parte communications?

(a) Ex parte communications with the ALJ or his or her staff are prohibited in accordance with 5 U.S.C. 554(d).

(b) This section does not prohibit ex parte inquiries concerning case status or procedural requirements, unless the inquiry involves an area of controversy in the hearing process.

§ 1.635 What are the requirements for motions?

(a) *General.* Any party may apply for an order or ruling on any matter related to the hearing process by presenting a motion to the ALJ. A motion may be presented any time after the Hearing Clerk issues a docketing notice under § 1.630.

(1) A motion made at a hearing may be stated orally on the record, unless the ALJ directs that it be reduced to writing.

(2) Any other motion must:

(i) Be in writing;

(ii) Comply with the requirements of §§ 1.610 through 1.613 with respect to form, content, filing, and service; and

(iii) Not exceed 15 pages, including all supporting arguments.

(b) *Content.* (1) Each motion must state clearly and concisely:

(i) Its purpose and the relief sought;

(ii) The facts constituting the grounds for the relief sought; and

(iii) Any applicable statutory or regulatory authority.

(2) A proposed order must accompany the motion.

(c) *Response.* Except as otherwise required by this part, any other party may file a response to a written motion within 10 days after service of the motion. The response may not exceed 15 pages, including all supporting arguments. When a party presents a motion at a hearing, any other party may present a response orally on the record.

(d) *Reply.* Unless the ALJ orders otherwise, no reply to a response may be filed.

(e) *Effect of filing.* Unless the ALJ orders otherwise, the filing of a motion does not stay the hearing process.

(f) *Ruling.* The ALJ will rule on the motion as soon as practicable, either orally on the record or in writing. He or she may summarily deny any dilatory, repetitive, or frivolous motion.

Prehearing Conferences and Discovery

§ 1.640 What are the requirements for prehearing conferences?

(a) *Initial prehearing conference.* The ALJ will conduct an initial prehearing conference with the parties at the time specified in the notice under § 1.630, on or about the 20th day after the effective date stated in the referral notice under § 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4).

(1) The initial prehearing conference will be used:

(i) To identify, narrow, and clarify the disputed issues of material fact and exclude issues that do not qualify for review as factual, material, and disputed;

(ii) To consider the parties' motions for discovery under § 1.641 and to set a deadline for the completion of discovery;

(iii) To discuss the evidence on which each party intends to rely at the hearing;

(iv) To set deadlines for submission of written testimony under § 1.652 and exchange of exhibits to be offered as evidence under § 1.654; and

(v) To set the date, time, and place of the hearing.

(2) The initial prehearing conference may also be used:

(i) To discuss limiting and grouping witnesses to avoid duplication;

(ii) To discuss stipulations of fact and of the content and authenticity of documents;

(iii) To consider requests that the ALJ take official notice of public records or other matters;

(iv) To discuss the submission of written testimony, briefs, or other documents in electronic form; and

(v) To consider any other matters that may aid in the disposition of the case.

(b) *Other conferences.* The ALJ may in his or her discretion direct the parties to attend one or more other prehearing conferences, if consistent with the need to complete the hearing process within 90 days. Any party may by motion request a conference.

(c) *Notice.* The ALJ must give the parties reasonable notice of the time and place of any conference. A conference will ordinarily be held by telephone, unless the ALJ orders otherwise.

(d) *Preparation.* (1) Each party's representative must be fully prepared to discuss all issues pertinent to that party that are properly before the conference, both procedural and substantive. The representative must be authorized to commit the party that he or she represents respecting those issues.

(2) Before the date set for the initial prehearing conference, the parties' representatives must make a good faith effort:

(i) To meet in person, by telephone, or by other appropriate means; and

(ii) To reach agreement on discovery and the schedule of remaining steps in the hearing process.

(e) *Failure to attend.* Unless the ALJ orders otherwise, a party that fails to attend or participate in a conference, after being served with reasonable notice of its time and place, waives all objections to any agreements reached in the conference and to any consequent orders or rulings.

(f) *Scope.* During a conference, the ALJ may dispose of any procedural matters related to the case.

(g) *Order.* Within 2 days after the conclusion of each conference, the ALJ must issue an order that recites any agreements reached at the conference and any rulings made by the ALJ during or as a result of the conference.

§ 1.641 How may parties obtain discovery of information needed for the case?

(a) *General.* By agreement of the parties or with the permission of the ALJ, a party may obtain discovery of information to assist the party in preparing or presenting its case. Available methods of discovery are:

(1) Written interrogatories as provided in § 1.643;

(2) Depositions of witnesses as provided in paragraph (h) of this section; and

(3) Requests for production of designated documents or tangible things or for entry on designated land for inspection or other purposes.

(b) *Criteria.* Discovery may occur only as agreed to by the parties or as authorized by the ALJ during a prehearing conference or in a written order under § 1.640(g). The ALJ may authorize discovery only if the party requesting discovery demonstrates:

(1) That the discovery will not unreasonably delay the hearing process;

(2) That the information sought:

(i) Will be admissible at the hearing or appears reasonably calculated to lead to the discovery of admissible evidence;

(ii) Is not already in the license proceeding record or otherwise obtainable by the party;

(iii) Is not cumulative or repetitious; and

(iv) Is not privileged or protected from disclosure by applicable law;

(3) That the scope of the discovery is not unduly burdensome;

(4) That the method to be used is the least burdensome method available;

(5) That any trade secrets or proprietary information can be adequately safeguarded; and

(6) That the standards for discovery under paragraphs (f) through (h) of this section have been met, if applicable.

(c) *Motions.* A party may initiate discovery:

(1) Pursuant to an agreement of the parties; or

(2) By filing a motion that:

(i) Briefly describes the proposed method(s), purpose, and scope of the discovery;

(ii) Explains how the discovery meets the criteria in paragraphs (b)(1) through (b)(6) of this section; and

(iii) Attaches a copy of any proposed discovery request (written interrogatories, notice of deposition, or request for production of designated documents or tangible things or for entry on designated land).

(d) *Timing of motions.* A party must file any discovery motion under paragraph (c)(2) of this section within 7 days after the effective date stated in the referral notice under § 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4).

(e) *Objections.* (1) A party must file any objections to a discovery motion or to specific portions of a proposed discovery request within 7 days after service of the motion.

(2) An objection must explain how, in the objecting party's view, the discovery sought does not meet the criteria in paragraphs (b)(1) through (6) of this section.

(f) *Materials prepared for hearing.* A party generally may not obtain discovery of documents and tangible things otherwise discoverable under paragraph (b) of this section if they were prepared in anticipation of or for the hearing by or for another party's representative (including the party's attorney, expert, or consultant).

(1) If a party wants to discover such materials, it must show:

(i) That it has substantial need of the materials in preparing its own case; and

(ii) That the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

(2) In ordering discovery of such materials when the required showing has been made, the ALJ must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney.

(g) *Experts.* Unless restricted by the ALJ, a party may discover any facts known or opinions held by an expert through the methods set out in paragraph (a) of this section concerning any relevant matters that are not privileged. Such discovery will be permitted only if:

(1) The expert is expected to be a witness at the hearing; or

(2) The expert is relied on by another expert who is expected to be a witness at the hearing, and the party shows:

(i) That it has a compelling need for the information; and

(ii) That it cannot practicably obtain the information by other means.

(h) *Limitations on depositions.* (1) A party may depose an expert or non-expert witness only if the party shows that the witness:

(i) Will be unable to attend the hearing because of age, illness, or other incapacity; or

(ii) Is unwilling to attend the hearing voluntarily, and the party is unable to compel the witness's attendance at the hearing by subpoena.

(2) Paragraph (h)(1)(ii) of this section does not apply to any person employed by or under contract with the party seeking the deposition.

(3) A party may depose a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the deposition would not significantly interfere with the employee's ability to perform his or her government duties.

(4) Unless otherwise stipulated to by the parties or authorized by the ALJ upon a showing of extraordinary circumstances, a deposition is limited to 1 day of 7 hours.

(i) *Completion of discovery.* All discovery must be completed within 25 days after the initial prehearing conference.

§ 1.642 When must a party supplement or amend information it has previously provided?

(a) *Discovery.* A party must promptly supplement or amend any prior response to a discovery request if it learns that the response:

(1) Was incomplete or incorrect when made; or

(2) Though complete and correct when made, is now incomplete or incorrect in any material respect.

(b) *Witnesses and exhibits.* (1) Within 10 days after the date set for completion of discovery, each party must file

an updated version of the list of witnesses and exhibits required under §1.621(c), §1.622(c), or §1.625(c).

(2) If a party wishes to include any new witness or exhibit on its updated list, it must provide an explanation of why it was not feasible for the party to include the witness or exhibit on its list under §1.621(c), §1.622(c), or §1.625(c).

(c) *Failure to disclose.* (1) A party will not be permitted to introduce as evidence at the hearing testimony from a witness or other information that it failed to disclose under §1.621(c), §1.622(c), or §1.625(c), or paragraph (a) or (b) of this section.

(2) Paragraph (c)(1) of this section does not apply if the failure to disclose was substantially justified or is harmless.

(3) A party may object to the admission of evidence under paragraph (c)(1) of this section before or during the hearing.

(4) The ALJ will consider the following in determining whether to exclude evidence under paragraphs (c)(1) through (3) of this section:

(i) The prejudice to the objecting party;

(ii) The ability of the objecting party to cure any prejudice;

(iii) The extent to which presentation of the evidence would disrupt the orderly and efficient hearing of the case;

(iv) The importance of the evidence; and

(v) The reason for the failure to disclose, including any bad faith or willfulness regarding the failure.

§ 1.643 What are the requirements for written interrogatories?

(a) *Motion; limitation.* Except upon agreement of the parties:

(1) A party wishing to propound interrogatories must file a motion under §1.641(c); and

(2) A party may propound no more than 25 interrogatories, counting discrete subparts as separate interrogatories, unless the ALJ approves a higher number upon a showing of good cause.

(b) *ALJ order.* The ALJ will issue an order under §1.641(b) with respect to any discovery motion requesting the use of written interrogatories. The order will:

(1) Grant the motion and approve the use of some or all of the proposed interrogatories; or

(2) Deny the motion.

(c) *Answers to interrogatories.* Except upon agreement of the parties, the party to whom the proposed interrogatories are directed must file its answers to any interrogatories approved by the ALJ within 15 days after issuance of the order under paragraph (b) of this section.

(1) Each approved interrogatory must be answered separately and fully in writing.

(2) The party or its representative must sign the answers to interrogatories under oath or affirmation.

(d) *Access to records.* A party's answer to an interrogatory is sufficient when:

(1) The information may be obtained from an examination of records, or from a compilation, abstract, or summary based on such records;

(2) The burden of obtaining the information from the records is substantially the same for all parties;

(3) The answering party specifically identifies the individual records from which the requesting party may obtain the information and where the records are located; and

(4) The answering party provides the requesting party with reasonable opportunity to examine the records and make a copy, compilation, abstract, or summary.

§ 1.644 What are the requirements for depositions?

(a) *Motion and notice.* Except upon agreement of the parties, a party wishing to take a deposition must file a motion under §1.641(c). Any notice of deposition filed with the motion must state:

(1) The time and place that the deposition is to be taken;

(2) The name and address of the person before whom the deposition is to be taken;

(3) The name and address of the witness whose deposition is to be taken; and

(4) Any documents or materials that the witness is to produce.

(b) *ALJ order*. The ALJ will issue an order under §1.641(b) with respect to any discovery motion requesting the taking of a deposition. The order will:

(1) Grant the motion and approve the taking of the deposition, subject to any conditions or restrictions the ALJ may impose; or

(2) Deny the motion.

(c) *Arrangements*. If the parties agree to or the ALJ approves the taking of the deposition, the party requesting the deposition must make appropriate arrangements for necessary facilities and personnel.

(1) The deposition will be taken at the time and place agreed to by the parties or indicated in the ALJ's order.

(2) The deposition may be taken before any disinterested person authorized to administer oaths in the place where the deposition is to be taken.

(3) Any party that objects to the taking of a deposition because of the disqualification of the person before whom it is to be taken must do so:

(i) Before the deposition begins; or

(ii) As soon as the disqualification becomes known or could have been discovered with reasonable diligence.

(4) A deposition may be taken by telephone conference call, if agreed to by the parties or approved in the ALJ's order.

(d) *Testimony*. Each witness deposed must be placed under oath or affirmation, and the other parties must be given an opportunity for cross-examination.

(e) *Representation of witness*. The witness being deposed may have counsel or another representative present during the deposition.

(f) *Recording and transcript*. Except as provided in paragraph (g) of this section, the deposition must be stenographically recorded and transcribed at the expense of the party that requested the deposition.

(1) Any other party may obtain a copy of the transcript at its own expense.

(2) Unless waived by the deponent, the deponent will have 3 days after receiving the transcript to read and sign it.

(3) The person before whom the deposition was taken must certify the transcript following receipt of the signed transcript from the deponent or expiration of the 3-day review period, whichever occurs first.

(g) *Video recording*. The testimony at a deposition may be recorded on videotape, subject to any conditions or restrictions that the parties may agree to or the ALJ may impose, at the expense of the party requesting the recording.

(1) The video recording may be in conjunction with an oral examination by telephone conference held under paragraph (c)(4) of this section.

(2) After the deposition has been taken, the person recording the deposition must:

(i) Provide a copy of the videotape to any party that requests it, at the requesting party's expense; and

(ii) Attach to the videotape a statement identifying the case and the deponent and certifying the authenticity of the video recording.

(h) *Use of deposition*. A deposition may be used at the hearing as provided in §1.653.

§1.645 What are the requirements for requests for documents or tangible things or entry on land?

(a) *Motion*. Except upon agreement of the parties, a party wishing to request the production of designated documents or tangible things or entry on designated land must file a motion under §1.641(c). A request may include any of the following that are in the possession, custody, or control of another party:

(1) The production of designated documents for inspection and copying, other than documents that are already in the license proceeding record;

(2) The production of designated tangible things for inspection, copying, testing, or sampling; or

(3) Entry on designated land or other property for inspection and measuring, surveying, photographing, testing, or sampling either the property or any designated object or operation on the property.

(b) *ALJ order*. The ALJ will issue an order under §1.641(b) with respect to any discovery motion requesting the production of documents or tangible things or entry on land for inspection,

copying, or other purposes. The order will:

(1) Grant the motion and approve the use of some or all of the proposed requests; or

(2) Deny the motion.

(c) *Compliance with order.* Except upon agreement of the parties, the party to whom any approved request for production is directed must permit the approved inspection and other activities within 15 days after issuance of the order under paragraph (a) of this section.

§ 1.646 What sanctions may the ALJ impose for failure to comply with discovery?

(a) Upon motion of a party, the ALJ may impose sanctions under paragraph (b) of this section if any party:

(1) Fails to comply with an order approving discovery; or

(2) Fails to supplement or amend a response to discovery under § 1.642(a).

(b) The ALJ may impose one or more of the following sanctions:

(1) Infer that the information, testimony, document, or other evidence withheld would have been adverse to the party;

(2) Order that, for the purposes of the hearing, designated facts are established;

(3) Order that the party not introduce into evidence, or otherwise rely on to support its case, any information, testimony, document, or other evidence:

(i) That the party improperly withheld; or

(ii) That the party obtained from another party in discovery;

(4) Allow another party to use secondary evidence to show what the information, testimony, document, or other evidence withheld would have shown; or

(5) Take other appropriate action to remedy the party's failure to comply.

§ 1.647 What are the requirements for subpoenas and witness fees?

(a) *Request for subpoena.* (1) Except as provided in paragraph (a)(2) of this section, any party may request by written motion that the ALJ issue a subpoena to the extent authorized by law for the attendance of a person, the giving of testimony, or the production of documents or other relevant evidence during discovery or for the hearing.

(2) A party may request a subpoena for a senior Department employee only if the party shows:

(i) That the employee's testimony is necessary in order to provide significant, unprivileged information that is not available from any other source or by less burdensome means; and

(ii) That the employee's attendance would not significantly interfere with the ability to perform his or her government duties.

(b) *Service.* (1) A subpoena may be served by any person who is not a party and is 18 years of age or older.

(2) Service must be made by hand delivering a copy of the subpoena to the person named therein.

(3) The person serving the subpoena must:

(i) Prepare a certificate of service setting forth:

(A) The date, time, and manner of service; or

(B) The reason for any failure of service; and

(ii) Swear to or affirm the certificate, attach it to a copy of the subpoena, and return it to the party on whose behalf the subpoena was served.

(c) *Witness fees.* (1) A party who subpoenas a witness who is not a party must pay him or her the same fees and mileage expenses that are paid witnesses in the district courts of the United States.

(2) A witness who is not a party and who attends a deposition or hearing at the request of any party without having been subpoenaed is entitled to the same fees and mileage expenses as if he or she had been subpoenaed. However, this paragraph does not apply to Federal employees who are called as witnesses by the Forest Service or another Department.

(d) *Motion to quash.* (1) A person to whom a subpoena is directed may request by motion that the ALJ quash or modify the subpoena.

(2) The motion must be filed:

(i) Within 5 days after service of the subpoena; or

(ii) At or before the time specified in the subpoena for compliance, if that is less than 5 days after service of the subpoena.

(3) The ALJ may quash or modify the subpoena if it:

(i) Is unreasonable;

(ii) Requires production of information during discovery that is not discoverable; or

(iii) Requires disclosure of irrelevant, privileged, or otherwise protected information.

(e) *Enforcement.* For good cause shown, the ALJ may apply to the appropriate United States District Court for the issuance of an order compelling the appearance and testimony of a witness or the production of evidence as set forth in a subpoena that has been duly issued and served.

Hearing, Briefing, and Decision

§ 1.650 When and where will the hearing be held?

(a) Except as provided in paragraph (b) of this section, the hearing will be held at the time and place set at the initial prehearing conference under § 1.640, generally within 25 days after the date set for completion of discovery.

(b) On motion by a party or on the ALJ's initiative, the ALJ may change the date, time, or place of the hearing if he or she finds:

(1) That there is good cause for the change; and

(2) That the change will not unduly prejudice the parties and witnesses.

§ 1.651 What are the parties' rights during the hearing?

Each party has the following rights during the hearing, as necessary to assure full and accurate disclosure of the facts:

(a) To present testimony and exhibits, consistent with the requirements in §§ 1.621(c), 1.622(c), 1.625(c), 1.642(b), and 1.652;

(b) To make objections, motions, and arguments; and

(c) To cross-examine witnesses and to conduct re-direct and re-cross examination as permitted by the ALJ.

§ 1.652 What are the requirements for presenting testimony?

(a) *Written direct testimony.* Unless otherwise ordered by the ALJ, all direct hearing testimony for each party's initial case must be prepared and submitted in written form. The ALJ will determine whether rebuttal testimony, if allowed, must be submitted in written form.

(1) Prepared written testimony must:

(i) Have line numbers inserted in the left-hand margin of each page;

(ii) Be authenticated by an affidavit or declaration of the witness;

(iii) Be filed within 10 days after the date set for completion of discovery; and

(iv) Be offered as an exhibit during the hearing.

(2) Any witness submitting written testimony must be available for cross-examination at the hearing.

(b) *Oral testimony.* Oral examination of a witness in a hearing, including on cross-examination or redirect, must be conducted under oath and in the presence of the ALJ, with an opportunity for all parties to question the witness.

(c) *Telephonic testimony.* The ALJ may by order allow a witness to testify by telephonic conference call.

(1) The arrangements for the call must let each party listen to and speak to the witness and each other within the hearing of the ALJ.

(2) The ALJ will ensure the full identification of each speaker so the reporter can create a proper record.

(3) The ALJ may issue a subpoena under § 1.647 directing a witness to testify by telephonic conference call.

§ 1.653 How may a party use a deposition in the hearing?

(a) *In general.* Subject to the provisions of this section, a party may use in the hearing any part or all of a deposition taken under § 1.644 against any party who:

(1) Was present or represented at the taking of the deposition; or

(2) Had reasonable notice of the taking of the deposition.

(b) *Admissibility.* (1) No part of a deposition will be included in the hearing record, unless received in evidence by the ALJ.

(2) The ALJ will exclude from evidence any question and response to which an objection:

(i) Was noted at the taking of the deposition; and

(ii) Would have been sustained if the witness had been personally present and testifying at a hearing.

(3) If a party offers only part of a deposition in evidence:

(i) An adverse party may require the party to introduce any other part that ought in fairness to be considered with the part introduced; and

(ii) Any other party may introduce any other parts.

(c) *Videotaped deposition.* If the deposition was recorded on videotape and is admitted into evidence, relevant portions will be played during the hearing and transcribed into the record by the reporter.

§ 1.654 What are the requirements for exhibits, official notice, and stipulations?

(a) *General.* (1) Except as provided in paragraphs (b) through (d) of this section, any material offered in evidence, other than oral testimony, must be offered in the form of an exhibit.

(2) Each exhibit offered by a party must be marked for identification.

(3) Any party who seeks to have an exhibit admitted into evidence must provide:

(i) The original of the exhibit to the reporter, unless the ALJ permits the substitution of a copy; and

(ii) A copy of the exhibit to the ALJ.

(b) *Material not offered.* If a document offered as an exhibit contains material not offered as evidence:

(1) The party offering the exhibit must:

(i) Designate the matter offered as evidence;

(ii) Segregate and exclude the material not offered in evidence, to the extent practicable; and

(iii) Provide copies of the entire document to the other parties appearing at the hearing.

(2) The ALJ must give the other parties an opportunity to inspect the entire document and offer in evidence any other portions of the document.

(c) *Official notice.* (1) At the request of any party at the hearing, the ALJ may take official notice of any matter of which the courts of the United States may take judicial notice, including the public records of any Department party.

(2) The ALJ must give the other parties appearing at the hearing an opportunity to show the contrary of an officially noticed fact.

(3) Any party requesting official notice of a fact after the conclusion of the hearing must show good cause for its failure to request official notice during the hearing.

(d) *Stipulations.* (1) The parties may stipulate to any relevant facts or to the authenticity of any relevant documents.

(2) If received in evidence at the hearing, a stipulation is binding on the stipulating parties.

(3) A stipulation may be written or made orally at the hearing.

§ 1.655 What evidence is admissible at the hearing?

(a) *General.* (1) Subject to the provisions of §1.642(b), the ALJ may admit any written, oral, documentary, or demonstrative evidence that is:

(i) Relevant, reliable, and probative; and

(ii) Not privileged or unduly repetitious or cumulative.

(2) The ALJ may exclude evidence if its probative value is substantially outweighed by the risk of undue prejudice, confusion of the issues, or delay.

(3) Hearsay evidence is admissible. The ALJ may consider the fact that evidence is hearsay when determining its probative value.

(4) The Federal Rules of Evidence do not directly apply to the hearing, but may be used as guidance by the ALJ and the parties in interpreting and applying the provisions of this section.

(b) *Objections.* Any party objecting to the admission or exclusion of evidence must concisely state the grounds. A ruling on every objection must appear in the record.

§ 1.656 What are the requirements for transcription of the hearing?

(a) *Transcript and reporter's fees.* The hearing will be transcribed verbatim.

(1) The Forest Service will secure the services of a reporter and pay the reporter's fees to provide an original transcript to the OALJ on an expedited basis.

(2) Each party must pay the reporter for any copies of the transcript obtained by that party.

(b) *Transcript corrections.* (1) Any party may file a motion proposing corrections to the transcript. The motion must be filed within 5 days after receipt of the transcript, unless the ALJ sets a different deadline.

(2) Unless a party files a timely motion under paragraph (b)(1) of this section, the transcript will be presumed to be correct and complete, except for obvious typographical errors.

(3) As soon as practicable after the close of the hearing and after consideration of any motions filed under paragraph (b)(1) of this section, the ALJ will issue an order making any corrections to the transcript that the ALJ finds are warranted.

§ 1.657 Who has the burden of persuasion, and what standard of proof applies?

(a) Any party who has filed a request for a hearing has the burden of persuasion with respect to the issues of material fact raised by that party.

(b) The standard of proof is a preponderance of the evidence.

§ 1.658 When will the hearing record close?

(a) The hearing record will close when the ALJ closes the hearing, unless he or she directs otherwise.

(b) Evidence may not be added after the hearing record is closed, but the transcript may be corrected under § 1.656(b).

§ 1.659 What are the requirements for post-hearing briefs?

(a) *General.* (1) Each party may file a post-hearing brief within 15 days after the close of the hearing.

(2) A party may file a reply brief only if requested by the ALJ. The deadline for filing a reply brief, if any, will be set by the ALJ.

(3) The ALJ may limit the length of the briefs to be filed under this section.

(b) *Content.* (1) An initial brief must include:

(i) A concise statement of the case;

(ii) A separate section containing proposed findings regarding the issues of material fact, with supporting citations to the hearing record;

(iii) Arguments in support of the party's position; and

(iv) Any other matter required by the ALJ.

(2) A reply brief, if requested by the ALJ, must be limited to any issues identified by the ALJ.

(c) *Form.* (1) An exhibit admitted in evidence or marked for identification in the record may not be reproduced in the brief.

(i) Such an exhibit may be reproduced, within reasonable limits, in an appendix to the brief.

(ii) Any pertinent analysis of an exhibit may be included in a brief.

(2) If a brief exceeds 20 pages, it must contain:

(i) A table of contents and of points made, with page references; and

(ii) An alphabetical list of citations to legal authority, with page references.

§ 1.660 What are the requirements for the ALJ's decision?

(a) *Timing.* The ALJ must issue a decision within the shorter of the following time periods:

(1) 30 days after the close of the hearing under § 1.658; or

(2) 120 days after the effective date stated in the referral notice under § 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4).

(b) *Content.* (1) The decision must contain:

(i) Findings of fact on all disputed issues of material fact;

(ii) Conclusions of law necessary to make the findings of fact (such as rulings on materiality and on the admissibility of evidence); and

(iii) Reasons for the findings and conclusions.

(2) The ALJ may adopt any of the findings of fact proposed by one or more of the parties.

(3) The decision will not contain conclusions as to whether any preliminary condition or prescription should be adopted, modified, or rejected, or whether any proposed alternative should be accepted or rejected.

(c) *Service.* Promptly after issuing his or her decision, the ALJ must:

(1) Serve the decision on each party to the hearing;

(2) Prepare a list of all documents that constitute the complete record for the hearing process (including the decision) and certify that the list is complete; and

(3) Forward to FERC the complete record for the hearing process, along with the certified list prepared under paragraph (c)(2) of this section, for inclusion in the record for the license proceeding. Materials received in electronic form, *e.g.*, as attachments to electronic mail, should be transmitted to FERC in electronic form. However, for cases in which a settlement was reached prior to a decision, the entire record need not be transmitted to FERC. In such situations, only the initial pleadings (hearing requests with attachments, any notices of intervention and response, answers, and referral notice) and any dismissal order of the ALJ need be transmitted.

(d) *Finality*. The ALJ's decision under this section with respect to the disputed issues of material fact will not be subject to further administrative review. To the extent the ALJ's decision forms the basis for any condition or prescription subsequently included in the license, it may be subject to judicial review under 16 U.S.C. 825*l*(b).

ALTERNATIVES PROCESS

§ 1.670 How must documents be filed and served under this subpart?

(a) *Filing*. (1) A document under this subpart must be filed using one of the methods set forth in § 1.612(b).

(2) A document is considered filed on the date it is received. However, any document received after 5 p.m. at the place where the filing is due is considered filed on the next regular business day.

(b) *Service*. (1) Any document filed under this subpart must be served at the same time the document is delivered or sent for filing. A complete copy of the document must be delivered or sent to each license party and FERC, using:

(i) One of the methods of service in § 1.613(c); or

(ii) Regular mail.

(2) The provisions of § 1.613(d) regarding a certificate of service apply to service under this subpart.

§ 1.671 How do I propose an alternative?

(a) *General*. To propose an alternative condition, you must:

(1) Be a license party; and

(2) File a written proposal with NFS, at the appropriate address provided in § 1.612(a)(1):

(i) For a case under § 1.601(d)(1), within 30 days after the Forest Service files its preliminary conditions with FERC; or

(ii) For a case under § 1.601(d)(2), within 60 days after the Forest Service files its proposed conditions with FERC.

(b) *Content*. Your proposal must include:

(1) A description of the alternative, in an equivalent level of detail to the Forest Service's preliminary condition;

(2) An explanation of how the alternative will provide for the adequate protection and utilization of the reservation;

(3) An explanation of how the alternative, as compared to the preliminary condition, will:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production;

(4) An explanation of how the alternative will affect:

(i) Energy supply, distribution, cost, and use;

(ii) Flood control;

(iii) Navigation;

(iv) Water supply;

(v) Air quality; and

(vi) Other aspects of environmental quality; and

(5) Specific citations to any scientific studies, literature, and other documented information relied on to support your proposal, including any assumptions you are making (*e.g.*, regarding the cost of energy or the rate of inflation). If any such document is not already in the license proceeding record, you must provide a copy with the proposal.

§ 1.672 May I file a revised proposed alternative?

(a) Within 20 days after issuance of the ALJ's decision under §1.660, you may file with NFS, at the appropriate address provided in §1.612(a)(1), a revised proposed alternative condition if:

(1) You previously filed a proposed alternative that met the requirements of §1.671; and

(2) Your revised proposed alternative is designed to respond to one or more findings of fact by the ALJ.

(b) Your revised proposed alternative must:

(1) Satisfy the content requirements for a proposed alternative under §1.671(b); and

(2) Identify the specific ALJ finding(s) to which the revised proposed alternative is designed to respond and how the revised proposed alternative differs from the original alternative.

(c) Filing a revised proposed alternative will constitute a withdrawal of the previously filed proposed alternative.

§ 1.673 When will the Forest Service file its modified condition?

(a) Except as provided in paragraph (b) of this section, if any license party proposes an alternative to a preliminary condition or prescription under §1.671,the Forest Service will do the following within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c):

(1) Analyze under §1.674 any alternative condition proposed under §1.671 or 1.672; and

(2) File with FERC:

(i) Any condition the Forest Service adopts as its modified condition; and

(ii) The Forest Service's analysis of the modified condition and any proposed alternative.

(b) If the Forest Service needs additional time to complete the steps set forth in paragraphs (a)(1) and (2) of this section, it will so inform FERC within 60 days after the deadline for filing comments on FERC's draft NEPA document under 18 CFR 5.25(c).

§ 1.674 How will the Forest Service analyze a proposed alternative and formulate its modified condition?

(a) In deciding whether to accept an alternative proposed under §1.671 or §1.672, the Forest Service must consider evidence and supporting material provided by any license party or otherwise reasonably available to the Forest Service, including:

(1) Any evidence on the implementation costs or operational impacts for electricity production of the proposed alternative;

(2) Any comments received on the Forest Service's preliminary condition;

(3) Any ALJ decision on disputed issues of material fact issued under §1.660 with respect to the preliminary condition;

(4) Comments received on any draft or final NEPA documents; and

(5) The license party's proposal under §1.671 or §1.672.

(b) The Forest Service must accept a proposed alternative if the Forest Service determines, based on substantial evidence provided by any license party or otherwise available to the Forest Service, that the alternative:

(1) Will, as compared to the Forest Service's preliminary condition:

(i) Cost significantly less to implement; or

(ii) Result in improved operation of the project works for electricity production; and

(2) Will provide for the adequate protection and utilization of the reservation.

(c) For purposes of paragraphs (a) and (b) of this section, the Forest Service will consider evidence and supporting material provided by any license party by the deadline for filing comments on FERC's NEPA document under 18 CFR 5.25(c).

(d) When the Forest Service files with FERC the condition that the Forest Service adopts as its modified condition under §1.673(a)(2), it must also file:

(1) A written statement explaining:

(i) The basis for the adopted condition;

(ii) If the Forest Service is not accepting any pending alternative, its reasons for not doing so; and

(iii) If any alternative submitted under §1.671 was subsequently withdrawn by the license party, that the alternative was withdrawn; and

(2) Any study, data, and other factual information relied on that is not already part of the licensing proceeding record.

(e) The written statement under paragraph (d)(1) of this section must demonstrate that the Forest Service gave equal consideration to the effects of the condition adopted and any alternative not accepted on:

(1) Energy supply, distribution, cost, and use;

(2) Flood control;

(3) Navigation;

(4) Water supply;

(5) Air quality; and

(6) Preservation of other aspects of environmental quality.

§ 1.675 Has OMB approved the information collection provisions of this subpart?

Yes. This subpart contains provisions in §§1.670 through 1.674 that would collect information from the public. It therefore requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA). According to the PRA, a Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number that indicates OMB approval. OMB has reviewed the information collection in this rule and approved it under OMB control number 1094–0001.

Subpart P—Rules of Practice and Procedure Governing Formal Rulemaking Proceedings Instituted by the Secretary

AUTHORITY: 5 U.S.C. 301.

SOURCE: 82 FR 51149, Nov. 3, 2017, unless otherwise noted.

§ 1.800 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the context may require.

§ 1.801 Scope and applicability of this subpart.

Except for proceedings covered by 7 CFR part 900, and by 7 CFR part 1200, the rules of practice and procedure in this subpart shall be applicable to all formal rulemaking proceedings.

§ 1.802 Definitions.

As used in this subpart:

Administrator means the Administrator of the Agency administering the statute involved, or any officer or employee of the Agency to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Administrator.

Department means the U.S. Department of Agriculture.

FEDERAL REGISTER means the publication provided for by the Federal Register Act, approved July 26, 1935 (44 U.S.C. 1501–1511), and acts supplementing and amending it.

Hearing means that part of the proceeding that involves the submission of evidence.

Hearing clerk means the Hearing Clerk, U.S. Department of Agriculture, Washington, DC

Judge means any administrative law Judge appointed pursuant to 5 U.S.C. 3105 or any presiding official appointed by the Secretary, and assigned to conduct the proceeding.

Party means:

(1) Any employee or contractor of the Department acting in an official capacity; or

(2) A person who intends to cross examine a witness at the hearing and has notified the person named in the notice of hearing by specified dates of his or her intent to participate in the hearing as a ''party'' pursuant to §1.804.

Proceeding means a proceeding before the Secretary arising under a statute in which the Secretary uses formal rulemaking procedures as set forth in this subpart.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act for the Secretary.

Witness means any person who:

(1) Has notified the person named in the notice of hearing by the specified date of his or her intent to participate in the hearing as a witness pursuant to §1.804; and

(2) Who submits written direct testimony on the proposed regulations pursuant to §1.807; and

(3) Testifies orally at the hearing.

[82 FR 51149, Nov. 3, 2017, as amended at 84 FR 51939, Oct. 1, 2019]

§1.803 Institution of proceedings.

(a) *Filing and contents of the notice of hearing.* A proceeding under this subpart shall be instituted by the Secretary or designee through filing the notice of hearing with the hearing clerk.The notice of hearing shall state:

(1) The legal authority under which the rule is proposed.

(2) The scope and nature of the hearing, including witness instructions for testifying, including the means and timing of the submission of pre-hearing documents, and scheduling, as necessary.

(3) The terms or substance of the proposed rule or a description of the subjects and issues involved.

(4) The time and place of such hearing.

(5) The final date for notification of intent to participate as a party or witness in the hearing pursuant to §1.804.

(6) The person to whom notification of intent to participate as a party or witness is to be provided pursuant to §1.804, and the means by which such notifications are to be provided.

(7) Any alternative procedures established pursuant to paragraph (d) of this section.

(b) *Giving notice of hearing.* (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER.

(ii) By posting of the notice of hearing to the USDA Web site.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section.

(c) *Record of notice.* A copy of the notice of hearing published in the FEDERAL REGISTER pursuant to paragraph (b)(1)(i) of this section shall be filed with the hearing clerk and submitted to the Judge at the hearing.

(d) *Alternative procedures.* The Administrator may establish alternative procedures for the proceeding that are in addition to or in lieu of one or more procedures in this subpart, provided that the procedures are consistent with 5 U.S.C. 556 and 557. The alternative procedures must be described in the notice of hearing, as required in paragraph (a)(7) of this section.

§1.804 Notification by interested persons.

(a) Any person desiring to participate as a party or witness at the hearing shall notify the person named in the notice of hearing, as prescribed in the notice of hearing, on or before the date specified in the notice of hearing. A person may be both a party and a witness.

(b) The notification must clearly state whether the interested person is participating at the hearing as a party, witness, or both.

(c) If a party or witness will be participating with or through a representative or counsel, the notification must so state and provide the name of the representative or counsel.

(d) Persons who fail to comply with this section and any specified instructions in the notice of hearing shall be deemed to have waived their right to participate in the hearing. Failure to comply with this section shall result in the exclusion of any filed written testimony.

§1.805 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§1.806 Judge.

(a) *Assignment.* No Judge who has any pecuniary interest in the outcome of a proceeding shall serve as Judge in such proceeding.

(b) *Power of Judge.* Subject to review by the Secretary, as provided elsewhere in this subpart, the Judge in any proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearings, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of the Judge.* In case of the absence of the Judge or that Judge's inability to act, the powers and duties to be performed by the Judge under this subpart in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other Judge.

(d) *Disqualification of Judge.* The Judge may at any time withdraw as Judge in a proceeding if such Judge deems himself or herself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a Judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Secretary may deem appropriate in the circumstances.

§ 1.807 Direct testimony submitted as written documents.

Any person desiring to participate as a witness at the hearing shall submit direct testimony as written documents as prescribed by the following:

(a) Direct testimony by a witness, including accompanying exhibits, must be submitted as specified in the notice of the hearing pursuant to §1.803. Exhibits constituting part of such direct testimony, referred to in the direct testimony and made a part thereof must be attached to the direct testimony. Direct testimony submitted with exhibits must state the issue(s) to which the exhibit relates; if no such statement is made, the Judge, at the hearing, shall determine the relevance of the exhibit to the issues published in the FEDERAL REGISTER.

(b) The direct testimony submitted shall contain:

(1) A concise statement of the witness' interest in the proceeding and his or her position regarding the issues presented. If the direct testimony is presented by a witness who is not a party, the witness shall state the witness' relationship to the party on behalf of whom the testimony is proffered; and

(2) Facts that are relevant and material.

(c) Copies of all direct testimony, including accompanying exhibits, must be submitted as prescribed by the notice of hearing.

(d) Upon receipt, direct testimony shall be assigned a number and stamped with that number and the docket number.

§ 1.808 Motions and requests.

(a) *General.* (1) Parties shall file all motions and requests with the hearing clerk except that those made during the course of the hearing may be filed with the Judge or may be stated orally and made a part of the transcript.

(2) Except as provided in §1.816(b), such motions and requests shall be addressed to, and ruled on by, the Judge if made prior to certification of the transcript pursuant to §1.811 or by the Secretary if made thereafter.

(b) *Certification to Secretary.* The Judge may, in his or her discretion, submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the Judge.

§ 1.809 Conduct of the hearing.

(a) *Time and place.* The hearing shall be held at the time and place established in the notice of hearing. If the Judge subsequently changes the time or place, the Judge shall file a notice of such changes with the hearing clerk, and the Administrator shall give or cause to be given notice in the FEDERAL REGISTER in the same manner as provided in §1.803. If the change in time or place of hearing is made less than five days prior to the date previously established for the hearing, the Judge, either in addition to, or in lieu of, causing the notice of the change to be given, shall announce the change at

the time and place previously established for the hearing.

(b) *Appearances*—(1) *Right to appear.* Any interested person shall be given an opportunity to appear, as a witness, with or without, authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding, provided that such interested person complies with §§ 1.804, 1.807, and any alternative procedures included in the hearing notice pursuant to § 1.803. In addition to compliance with any witness instructions set forth in the notice of hearing, any witness who desires to be heard in person at any hearing shall, before proceeding to testify do so under oath or affirmation.

(2) *Appearance with or through counsel or representative.* (i) A witness may appear with counsel or a representative if the witness identifies the counsel or representative in the notification submitted pursuant to § 1.804.

(ii) The counsel or representative shall, before proceeding with the witness testimony, state for the record the authority to act as such counsel or representative, and the names, addresses, and occupations of such counsel or representative.

(iii) The witness or his or her counsel or representative shall give such other information respecting the witness' appearance as the Judge may request.

(3) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before the Judge, such Judge finds that a person, acting as counsel or representative for any party or witness, is guilty of unethical or unprofessional conduct, the Judge may order that such person be precluded from further acting as counsel or representative in such proceeding.

(ii) Except as provided in paragraph (b)(3)(iii) of this section, an appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal.

(iii) In case the Judge has ordered that a person be precluded from further action as counsel or representative in the proceeding, the Judge within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(4) *Failure to appear.* If any interested person, who complied with §§ 1.804, 1.807, fails to appear at the hearing, that person shall be deemed to have waived the right to be heard in the proceeding and such failure to appear shall result in the exclusion of that person's written testimony.

(c) *Order of procedure.* (1) The Judge shall, at the opening of the hearing prior to the taking of testimony, note as part of the record the notice of hearing as published in the FEDERAL REGISTER.

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the Judge shall announce.

(d) *Evidence*—(1) *General.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make an affirmation.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the Judge may:

(A) Limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(B) Limit cross examination of a witness by time, scope, or as appropriate, provided that the Judge announces the time limit at the beginning of the hearing, prior to the taking of testimony.

(iii) The Judge shall exclude from the record evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the Judge during the hearing, such party shall state briefly the grounds of such

objection, whereupon an automatic exception will follow if the objection is overruled by the Judge. The ruling of the Judge on any objection shall be a part of the transcript. Only objections made before the Judge may subsequently be relied upon in the proceeding.

(3) Upon proper motion, the Judge may accept direct testimony submitted pursuant to §1.807 into evidence without a witness reading the direct testimony into evidence. Such direct testimony shall become a part of the record subject to exclusion of irrelevant and immaterial parts thereof. A party shall be deemed to have waived the right to introduce pre-hearing written direct testimony and documents if such party fails to present a witness to introduce those documents. The witness introducing direct testimony and documents shall do so under oath or affirmation and shall:

(i) State his or her name, address and occupation.

(ii) State qualifications for introducing the direct testimony. If an expert, the witness shall briefly state the scientific or technical training which qualifies the witness as an expert.

(iii) Identify the direct testimony and documents previously submitted pursuant to §1.807 of this subpart.

(iv) Submit to direct and cross examination determined to be necessary and appropriate by the Judge.

(4) *Cross examination.* For purposes of this section, the Administrator's or his or her representative's interest shall be considered adverse to all parties. The Judge may:

(i) Require the cross-examiner to outline the intended scope of the cross examination, which shall generally be limited to the scope of the direct testimony.

(ii) Prohibit parties from cross-examining witnesses unless the Judge has determined that the cross-examiner has an adverse interest on the facts at issue to the party or witness.

(iii) Limit the number of times any party or parties having a common interest may cross-examine an adverse witness on the same matter.

(5) *Proof and authentication of official records or documents.* An official record or document, when admissible for any purpose, shall be admissible as evidence without the presence of the person who made or prepared the same. The Judge shall exercise discretion in determining whether an official publication of such record or document shall be necessary, or whether a copy would be permissible. If permissible such a copy shall be attested to by the person having legal custody of it, and accompanied by a certificate that such person has the custody.

(6) *Exhibits.* (i) All written statements, documents, charts, tabulations, or data offered into evidence at the hearing shall, after identification by the witness or his or her counsel or representative and upon satisfactory showing of authenticity, relevancy, and materiality, be numbered as exhibits and received in evidence and made a part of the record.

(ii) Such exhibits shall be submitted in quadruplicate and in documentary form.

(7) *Official notice.* (i) Subject to paragraph (d)(7)(ii) of this section, official notice at the hearing may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character.

(ii) Interested persons shall be given an adequate period of time, at the hearing or subsequent to it, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(8) *Offer of proof.* (i) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript.

(ii) The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement, it shall be inserted into the transcript; if the evidence consists of an exhibit(s), it shall be inserted into the record for the purpose of an offer of proof. In such event, it shall be considered a part of the record if the Secretary determines that the Judge's ruling in excluding the evidence was erroneous.

(iii) The Judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a

considerable length of time at the hearing. In such event, if the Secretary determines that the Judge erred in excluding the evidence, and that such error was substantial, the hearing may be reopened to permit the taking of such evidence.

§ 1.810 Oral and written arguments.

(a) *Oral argument before the Judge.* Oral argument before the Judge shall be in the discretion of the Judge. Such argument, when permitted, may be limited by the Judge to any extent that the Judge finds necessary for the expeditious disposition of the proceeding and shall be made part of the transcript.

(b) *Briefs, proposed findings, and conclusions.* (1) The Judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears.

(2) Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the rule.

(3) If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the Judge, as provided in §1.809(d), that person shall include in the brief a concise statement concerning each such objection, referring, where practicable, to the pertinent pages of the transcript.

§ 1.811 Certification of the transcript.

(a) The Judge shall notify the hearing clerk of the close of a hearing and of the time for filing transcript corrections, written arguments, briefs, proposed findings, and proposed conclusions.

(b)(1) After the hearing, the Administrator, shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file with the hearing clerk.

(2) The Judge shall attach to the original transcript of the testimony a certificate stating that, to the best of the Judge's knowledge and belief, the transcript is a true transcript of the testimony given at the hearing, except in such particulars as the Judge shall specify, and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as the Judge shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony.

(3) In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies of the transcript, each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the Judge.

(4) The hearing clerk shall obtain and file certifications to the effect that such corrections have been effectuated in copies other than the official record copy.

§ 1.812 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file with the hearing clerk where it shall be available for examination during official hours of business. Thereafter the transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) A copy of the transcripts of the hearing shall be made available to any person at actual cost of duplication.

§ 1.813 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include:

(1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law and proposed findings and conclusions about such issues, including the reasons or basis for such proposed findings.

(2) A ruling upon proposed findings or conclusions submitted by interested persons.

(3) An appropriate proposed rule effectuating the Administrator's recommendations.

(c) *Exceptions to recommended decision.* (1) Immediately following the filing of the recommended decision, the Administrator shall give notice thereof and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER.

(2) Within the period of time specified in such notice, any interested person may file with the hearing clerk exceptions to the Administrator's proposed rule and a brief in support of such exceptions.

(3) Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript, and may suggest appropriate changes in the proposed rule.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of the Secretary's functions imperatively and unavoidably requires such omission.

§ 1.814 Submission to Secretary.

(a) Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding.

(b) Such record shall include:

(1) All motions and requests filed with the hearing clerk and rulings thereon.

(2) The certified transcript.

(3) Any proposed findings or conclusions or written arguments or briefs that may have been filed.

(4) The Administrator's recommended decision, if any.

(5) Filed exceptions.

§ 1.815 Decision by the Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include:

(a) A statement of findings and conclusions, including the reasons or basis for such findings, upon all the material issues of fact or law presented on the record.

(b) A ruling upon proposed findings and proposed conclusions not previously ruled upon in the record.

(c) A ruling upon exceptions filed by interested persons.

(d) Either a denial of the proposal to issue a rule, or, if the findings upon the record so warrant, a rule, the provisions of which shall be set forth and such rule shall be complete.

§ 1.816 Filing, extension of time, effective date of filing, and computation of time.

(a) *Number of copies.* Except as provided otherwise, all documents or papers required or authorized by the foregoing provisions hereof to be filed with the hearing clerk shall be filed in quadruplicate. Any documents or papers so required or authorized to be filed with the hearing clerk shall be filed with the Judge during the course of an oral hearing.

(b) *Extension of time.* (1) The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the Judge (before the record is so certified by the Judge) or by the Administrator (after the record is so certified by the Judge but before it is transmitted to the Secretary), or by the Secretary (after the record is transmitted to the secretary) upon request filed, and if, in the judgment of the Judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension.

(2) All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing.* Any document or paper required or authorized in this subpart to be filed shall be deemed to be filed at the time it is received by the Hearing Clerk.

(d) *Computation of time.* (1) Each day, including Saturdays, Sundays, and

legal public holidays, shall be included in computing the time allowed for filing any document or paper.

(2) That when the time for filing a document or paper expires on a Saturday, Sunday, or legal public holiday, the time allowed for filing the document or paper shall be extended to include the following business day.

§ 1.817 Ex parte communications.

(a) For the purposes of this section, ex parte communication means any oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on a proceeding.

(b) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision thereon shall an employee of the Department who is or may reasonably be expected to be involved in the decision process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person. This prohibition does not include communications about:

(1) Procedural matters and status reports.

(2) The merits of the proceeding if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(c) No interested person outside the Department shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding, an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(d) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes or knowingly causes to be made a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda, stating the substance of all oral responses thereto.

(e) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(f) This section does not constitute authority to withhold information from Congress.

§ 1.818 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any order and which the Secretary is required to issue or to approve.

§ 1.819 Hearing before Secretary.

(a) The Secretary may act in the place and stead of a Judge in any proceeding herein. When the Secretary so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions, and orders, and the Secretary shall then, after due consideration of the record, issue the final decision in the proceeding.

(b) The Secretary may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart Q—Implementation of the HAVANA Act of 2021

SOURCE: 89 FR 91531, Nov. 20, 2024, unless otherwise noted.

§ 1.900 Authority.

(a) Under section 3 of the HAVANA Act of 2021 (22 U.S.C. 2680b), the Secretary of Agriculture or other agency heads may provide a payment for a qualifying injury to the brain to a covered employee or covered dependent who incurred a qualifying injury to the brain on or after January 1, 2016. The authority to provide such payments is at the sole discretion of the Secretary or the Secretary's designee.

(b) The regulations in this part are issued in accordance with 22 U.S.C. 2680b(i)(4) and also apply to former covered employees of the Department of Agriculture and their covered dependents.

§ 1.901 Definitions.

(a) *Covered employee.* (1) An employee of the Department of Agriculture who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain.

(2) The following are considered employees of the Department of Agriculture for the purposes of this part: Department of Agriculture employees in the Foreign Service and Department of Agriculture employees who meet the definition of ''employee'' set forth in 5 U.S.C. 2105(a), including students providing volunteer service under 5 U.S.C. 3111.

(3) The following are not considered employees of the Department of Agriculture for purposes of this part: Employees or retired employees of other agencies.

(b) *Covered dependent.* A family member of a Department of Agriculture current or former employee who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain while the dependent's sponsor was an employee of the Department of Agriculture as specified in paragraph (a)(2) of this section.

(c) *Covered individual.* A former employee of the Department of Agriculture who, on or after January 1, 2016, becomes injured by reason of a qualifying injury to the brain while they were an employee of the Department of Agriculture as specified in paragraph (a)(2) of this section.

(d) *Family member.* For purposes of determining ''covered dependent,'' a family member is defined as follows:

(1) Children who are unmarried and under 21 years of age at the time of the qualifying injury or, regardless of age, are unmarried and due to mental and/or physical limitations are incapable of self-support. The term ''children'' must include natural offspring, step-children, adopted children, and those under permanent legal guardianship (at least until age 18), or comparable permanent custody arrangement, of the employee or spouse or domestic partner when dependent upon and normally residing with the guardian or custodial party, and U.S. citizen children placed for adoption if a U.S. court grants temporary guardianship of the child to the employee and specifically authorizes the child to reside with the employee in the country of assignment before the adoption is finalized;

(2) Parents (including stepparents and legally adoptive parents) of the employee, or of the spouse or of the domestic partner, as these terms are defined in 5 CFR 875.101;

(3) Sisters and brothers (including stepsisters or stepbrothers, or adoptive sisters or brothers) of the employee, or of the spouse when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are physically and/or mentally incapable of self-support; and

(4) Spouse or domestic partner at the time of injury.

(e) *Qualifying injury to the brain.* (1) The injury must have occurred in connection with war, insurgency, hostile act, terrorist activity, or other incidents designated by the Secretary of State or the Secretary of Agriculture, as permitted by law, and was not the result of the willful misconduct of the individual; and

(2) The individual must have:

(i) An acute injury to the brain such as, but not limited to, a concussion, penetrating injury, or as the consequence of an event that leads to permanent alterations in brain function as

demonstrated by confirming correlative findings on imaging studies (to include computed tomography scan (CT), or magnetic resonance imaging scan (MRI)), or electroencephalogram (EEG); or

(ii) A medical diagnosis of a traumatic brain injury (TBI) that required active medical treatment for 12 months or more; or

(iii) Acute onset of new persistent, disabling neurologic symptoms as demonstrated by confirming correlative findings on imaging studies (to include CT or MRI), or EEG, or physical exam, or other appropriate testing, and that required active medical treatment for 12 months or more.

(f) *Other incident.* A new onset of physical manifestations that cannot otherwise be readily explained.

(g) *Requestor.* A requestor is a covered employee, a covered individual, or a covered dependent who applies for payment under this subpart.

§ 1.902 Eligibility for payments by the Department of Agriculture.

(a) The Department of Agriculture may provide a payment to covered individuals, as defined in this §1.901, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the American Board of Psychiatry and Neurology (ABPN), the American Osteopathic Board of Neurology and Psychiatry (AOBNP), the American Board of Physical Medicine and Rehabilitation (ABPMR), or the American Board of Physical Medicine and Rehabilitation (AOBPMR); and occurred on or after January 1, 2016, and while the individual was a covered employee of the Department of Agriculture.

(b) The Department of Agriculture may provide a payment to covered employees, as defined in this section, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from ABPN, AOBNP, ABPMR, or AOBPMR; and occurred on or after January 1, 2016, and while the employee was a covered employee of the Department.

(c) The Department of Agriculture may provide a payment to a covered dependent, if the qualifying injury to the brain was assessed and diagnosed in person by a currently board-certified physician from the ABPN, AOBNP, ABPMR, or AOBMR; and occurred on or after January 1, 2016, and while the dependent was a family member of the covered employee of the Department.

(d) Payment for a qualifying injury to the brain will be a non-taxable, one-time lump sum payment.

(e) The Department will determine the amount paid to each eligible person based on the following factors:

(1) The responses on Form CD–350, ''Eligibility Questionnaire for HAVANA Act Payments''; and

(2) Whether the Department of Labor has determined that the requestor has no reemployment potential, or the Social Security Administration has approved the requestor for Social Security Disability Insurance or Supplemental Security Insurance (SSI) benefits; or the requestor's ABPN, AOBPN, ABPMR, or AOBPMR-certified physician has certified that the individual requires a full-time caregiver for activities of daily living, as defined by the Katz Index of Independence of Daily Living.

(3) The award thresholds are based on the Level III of the Executive Schedule: Base payment will be 75 percent of Level III pay, and Base Plus payment will be 100 percent of Level III pay. If the requestor meets any of the criteria listed in paragraph (e)(2) of this section, the requestor will be eligible to receive a Base Plus payment. Requestors who are otherwise eligible for payment for a qualifying injury to the brain (defined in §3.2(e)) but do not meet any of the criteria listed in paragraph (e)(2) of this section will be eligible to receive a Base payment. If a requestor who received a Base payment later meets any of the criteria listed in paragraph (e)(2) of this section, the requestor may apply for an additional payment that will be the difference between the Base and Base Plus payment.

(f) The Director, Office of Human Resources Management may approve payments under this section. The Office of Human Resources Management will notify individuals of the decision in writing.

(g) An appeal of a decision made by the Director, Office of Human Resources Management may be directed to the Deputy Assistant Secretary for Administration in writing. The Deputy Assistant Secretary for Administration is the final appeal authority. The Office of Human Resources Management will notify individuals of the decision in writing.

§ 1.903 Consultation with other agencies.

The Department may consult with the appropriate officials in other Federal agencies to identify their current and former covered employees, and current and former dependents who reported an anomalous health incident. The Department will not process payment for employees, former employees, or dependents of current or former employees of other agencies.

PART 1a—LAW ENFORCEMENT AUTHORITIES

Sec.
1a.1 General statement.
1a.2 Authorization.
1a.3 Persons authorized.
1a.4 Limitations.
1a.5 Responsibility of the Inspector General.

AUTHORITY: Sec. 1337, Pub. L. 97–98; 5 U.S.C. 301; 5 U.S.C. App. I.

SOURCE: 47 FR 2073, Jan. 14, 1982, unless otherwise noted.

§ 1a.1 General statement.

This part sets forth the rules issued by the Secretary of Agriculture to implement section 1337 of Public Law 97–98 relating to:

(a) Arrests without warrant for certain criminal felony violations;

(b) Execution of warrants for arrests, searches of premises and seizures of evidence; and

(c) The carrying of firearms by designated officials of the Office of Inspector General.

§ 1a.2 Authorization.

Any official of the Office of Inspector General who is designated by the Inspector General according to §§ 1a.3 and 1a.5 of this part and who is engaged in the performance of his/her official duties under the authority provided in section 6, or described in section 9, of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized to—

(a) Make an arrest without a warrant for any criminal felony violation subject to § 1a.4, if such violation is committed, or if the official has probable cause to believe that such violation is being committed, in his/her presence;

(b) Execute and serve a warrant for an arrest, for the search of premises, or the seizure of evidence if such warrant is issued under authority of the United States upon probable cause to believe that any criminal felony violation, subject to § 1a.4, has been committed; and

(c) Carry a firearm.

[50 FR 13759, Apr. 8, 1985]

§ 1a.3 Persons authorized.

Any person who is employed in the Office of Inspector General and who is designated by the Inspector General in accordance with and subject to § 1a.5 and who conducts investigations of alleged or suspected felony criminal violations of statutes administered by the Secretary of Agriculture or any agency of the Department of Agriculture may exercise the authorities listed in and pursuant to § 1a.2.

§ 1a.4 Limitations.

The powers granted by §§ 1a.2(a) and 1a.2(b) shall be exercised only when a designated official is engaged in an investigation of alleged or suspected felony violations of statutes administered by the Secretary of Agriculture or any agency of the Department.

[50 FR 13759, Apr. 8, 1985]

§ 1a.5 Responsibility of the Inspector General.

The Inspector General shall:

(a) Issue directives conforming to this part governing the exercise of the authorities granted by this part. These directives should contain the policies and procedures by which the authorities will be exercised by designated officials of the Office of Inspector General;

(b) Establish criteria for qualification by officials of the Office of Inspector General who are designated to exercise the authorities granted in this part;

(c) Monitor the implementation and exercise of the authorities granted by this part;

(d) Designate, pursuant to §§ 1a.2, 1a.3 and 1a.4, and the directives issued under paragraph (a) of this section, and the criteria established under paragraph (b) of this section, employees who have satisfied all the qualifications set by the Inspector General to exercise the authorities granted by § 1a.2; and

(e) Submit to the Attorney General of the United States the name of any employee of the Office of Inspector General designated pursuant to paragraph (d) of this section. Any designation not specifically disapproved by the Attorney General within 30 days after the date of submission shall be deemed approved.

PART 1b—NATIONAL ENVIRONMENT POLICY ACT

Sec.

1b.1 Purpose.
1b.2 Policy.
1b.3 Categorical exclusions and findings of applicability and no extraordinary circumstance.
1b.4 Categorical exclusion of USDA subcomponents and actions.
1b.5 Environmental assessments.
1b.6 Finding of no significant impact.
1b.7 Environmental impact statements.
1b.8 Records of decision.
1b.9 Efficient and effective environmental reviews.
1b.10 Documentation prepared by applicant or third party.
1b.11 Definitions and acronyms.
1b.12 Severability.

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 4321 *et seq.*; E.O. 11514, 3 CFR, 1966–1970 Comp., p. 902, as amended by E.O. 11991, 3 CFR, 1978 Comp., p. 123; E.O. 12114, 3 CFR, 1980 Comp., p. 356; 40 CFR 1507.3.

SOURCE: 90 FR 29646, July 3, 2025, unless otherwise noted.

§ 1b.1 Purpose.

(a) *Purpose*. The purpose of this part is to outline the procedures by which the U.S. Department of Agriculture (hereinafter USDA or the Department) will integrate the National Environmental Policy Act (NEPA) into decision-making processes. Specifically, this part: describes the process by which USDA determines what actions are subject to NEPA's procedural requirements and the applicable level of NEPA review; ensures that relevant environmental information is identified and considered early in the process in order to ensure informed decision making; enables USDA to conduct coordinated, consistent, predictable and timely environmental reviews; reduces unnecessary burdens and delays; and implements NEPA's mandates regarding lead and cooperating agency roles, page and time limits, and sponsor preparation of environmental assessments and environmental impact statements.

(b) *Procedural and interpretive rule*. This part sets forth USDA's procedures and practices for implementing NEPA. It further explains USDA's interpretation of certain key terms in NEPA. It does not, nor does it intend to, govern the rights and obligations of any party outside the Federal government. It does, however, establish the procedures under which USDA will typically fulfill its requirements under NEPA.

(c) *Applicability*. This part is applicable to all mission areas, agencies and general offices (hereinafter USDA subcomponent or subcomponent) of the U.S. Department of Agriculture.

(d) *Authority*. NEPA imposes certain procedural requirements on the exercise of USDA's existing legal authority in relevant circumstances. Nothing contained in these procedures is intended, nor should be construed to limit, USDA's other authorities or legal responsibilities.

§ 1b.2 Policy.

(a) *USDA compliance with NEPA*. It is the policy of USDA that all USDA subcomponents' policies and programs shall be planned, developed, and implemented to comply with Congress' directives in NEPA, as amended by the Fiscal Responsibility Act of 2023, with the understanding that NEPA is a purely procedural statute that imposes no substantive environmental obligations or restrictions.

(1) The Under Secretary of Natural Resources and Environment (NRE) is

responsible for ensuring that these USDA NEPA regulations are consistent with NEPA and will coordinate compliance for the Department.

(2) The Under Secretary of NRE may engage the Agricultural Council on Environmental Quality (7 U.S.C. 5401, Pub. L. 101–624) when developing, revising, or amending the necessary processes to be used by the Office of the Secretary in reviewing, implementing, and planning its NEPA activities, determinations, and policies.

(3) The Under Secretary of NRE will consult with the Council on Environmental Quality (CEQ) while developing or revising the USDA NEPA regulations, as established in this part, in accordance with NEPA section 102(2)(B), 42 U.S.C. 4332(B).

(b) *Managing NEPA compliance.* Within USDA, the Under Secretary of NRE shall perform all of the duties and exercise all of the powers and functions of the senior agency official to ensure compliance with NEPA and the Department's policies for NEPA, including resolving implementation issues.

(1) The senior agency official shall:

(i) Administer the implementation of NEPA for USDA, to include USDA subcomponent adherence to this part and approving all revisions to this part;

(ii) Centralize information technology and databases regarding documentation and analyses required by NEPA and this part; and

(iii) Compile and submit the annual report to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate that identifies any environmental assessment and environmental impact statement that such lead agency did not complete by the deadline described in NEPA section 107(g), 42 U.S.C. 4336a(g) and provides an explanation for any failure to meet such deadline.

(2) The senior agency official may delegate authority to another mission area Under Secretary, or other USDA official for a subcomponent with NEPA responsibilities, to perform the duties of the senior agency official for the following:

(i) Ensuring that subcomponent staff have the resources and competencies necessary to produce timely, concise, and effective environmental documents;

(ii) Reviewing and approving the adoption or modification of any subcomponent-specific NEPA guidance (as permitted in paragraph (c) of this section);

(iii) Determining that an environmental impact statement is of extraordinary complexity and therefore, pursuant to NEPA section 107(e)(1)(B), 42 U.S.C. 4336a(e)(1)(B), may exceed 150 pages but not exceed 300 pages;

(iv) Reviewing and determining whether to authorize any deviation from the time limit for preparation of environmental assessments and environmental impacts statements, as established by NEPA section 107(g), 42 U.S.C. 4336a(g);

(v) Resolving implementation issues concerning documentation prepared by applicants and third parties (*e.g.*, contractors), as well as ensuring NEPA analyses for proposals of private applicants or other non-Federal entities commence at the earliest reasonable time;

(vi) Establishing subcomponent procedures for appropriate bonding or other security;

(vii) Approving, or identifying a designee to approve, alternative arrangements for complying with NEPA for emergency actions when a reasonably foreseeable significant impact is not anticipated, as described in §1b.9(w)(1);

(viii) Receiving or responding to written requests that a lead agency be designated when requests are received from any Federal agency, or any State, Tribal, or local agency, or private person substantially affected by the absence of lead agency designation; and

(ix) Facilitating interagency disagreements concerning designation of a lead or joint agency or disagreements over proposed major Federal actions that might cause reasonably foreseeable significant impacts and determining whether the disagreement needs elevated to the Council on Environmental Quality.

(c) *Subcomponent-specific NEPA guidance.* It is the policy of USDA that USDA subcomponents may establish subcomponent-specific NEPA guidance

when necessary to refine NEPA processes and practices to address subcomponent-specific laws and program efficiency. Additional subcomponent-specific guidance shall avoid creating unnecessary process and should not repeat the requirements, definitions, or other matters that are set forth in this part or the Act itself.

(d) *Annual report to Congress.* NEPA section 107(h)(1)(A) and (B), 42 U.S.C. 4336a(h)(1)(A) and (B), requires the head of each lead agency to annually submit to the Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that identifies any environmental assessment and environmental impact statement that such lead agency did not complete by the deadline described in NEPA section 107(g), 42 U.S.C. 4336a(g) and provides an explanation for any failure to meet such deadline.

(1) The USDA Senior Agency Official (or their designee) shall coordinate USDA subcomponent responses for the annual report to Congress and consolidate these into one response that will be provided to Congress to ensure departmental awareness and oversight of environmental assessments and environmental impact statements not completed within the required deadlines established in NEPA section 107(g), 42 U.S.C. 4336a(g).

(2) Each USDA mission area that contains subcomponents with NEPA responsibilities will submit a report to the USDA Senior Agency Official, or their designee, following guidance provided by the Department on an annual basis.

(i) For those USDA mission areas with more than one subcomponent contributing to the report, subcomponent responses shall be consolidated and one response provided for the mission area.

(ii) The USDA Senior Agency Official, or their designee, shall ensure the final report meets the requirements of NEPA section 107(h), 42 U.S.C. 4336a(h).

(e) *Determining when NEPA applies.* Threshold determinations of whether NEPA applies may be made on a case-by-case or programmatic basis and record keeping of the justifications for these determinations is advisable. In determining whether NEPA applies, USDA will consider only the proposed action or a project at hand. NEPA does not apply to a proposal when:

(1) The proposal is not a ''major Federal action.'' The terms ''major'' and ''Federal action,'' each have independent force. NEPA applies only when both of these two criteria are met. Such a determination is inherently bound up in the facts and circumstances of each individual situation, and is thus reserved to the judgment of USDA in each instance;

(2) The proposal or decision is exempted from NEPA by law;

(3) The proposal or decision do not result in final Federal agency action under the Administrative Procedure Act, see 5 U.S.C. 704, or other relevant statute that also includes a finality requirement;

(4) In circumstances where Congress, by statute, has prescribed decisional criteria with sufficient completeness and precision such that a Federal agency retains no residual discretion to alter its action based on the consideration of environmental factors, then that function of USDA is nondiscretionary within the meaning of NEPA section 106(a)(4) and/or section 111(10)(B)(vii) (42 U.S.C. 4336(a)(4) and 4336e(10)(B)(vii), respectively), and NEPA does not apply to the action in question;

(5) Compliance with NEPA would clearly and fundamentally conflict with the requirements of another provision of law; or

(6) The proposal is an action for which another statute's requirements serve the function of the Federal agency's compliance with the Act.

(f) *Determining the appropriate level of NEPA review.* At all steps in the following process, USDA subcomponents will consider the nature of the proposal or project at hand, the potentially affected environment, and the anticipated degree of effect:

(1) In accordance with NEPA section 106(b)(3), 42 U.S.C. 4336(b)(3), when making a determination on the level of review needed, a USDA subcomponent:

(i) May make use of any reliable data source; and

(ii) Is not required to undertake new scientific or technical research unless the new scientific or technical research

is essential to a reasoned choice among alternatives, and the overall costs and time frame of obtaining it are not unreasonable.

(2) If a USDA subcomponent determines under §1b.2(e) that NEPA applies to a proposal or decision, the subcomponent will then determine the appropriate level of NEPA review in the following sequence and manner:

(i) If the subcomponent has established, or adopted pursuant to NEPA section 109, 42 U.S.C. 336c, a categorical exclusion that covers the proposed action, the subcomponent will analyze whether to apply the categorical exclusion to the proposed action and apply the categorical exclusion, if appropriate, pursuant to §1b.3(f) and (g).

(ii) If another agency has already established a categorical exclusion that covers the proposed action, the subcomponent will consider whether to adopt that exclusion pursuant to §1b.3(c) so that it can be applied to the proposed action at issue, and to future activities or decisions of that type.

(iii) If the proposed action warrants the establishment of a new categorical exclusion, or the revision of an existing categorical exclusion, pursuant to §1b.3(b), the subcomponent will consider whether to establish, or revise, and then apply the categorical exclusion to the proposed action pursuant to §1b.3(f) and (g).

(iv) If a USDA subcomponent cannot apply a categorical exclusion to the proposed action consistent with paragraph (f)(2)(i) through (iii) of this section, the subcomponent will consider the proposed action's reasonably foreseeable significant impacts consistent with paragraph (f)(3) of this section, and then will:

(A) if the proposed action is not likely to have reasonably foreseeable significant impacts or the significance of the impacts is unknown, develop an environmental assessment, as described in §1b.5; or

(B) if the proposed action is likely to have reasonably foreseeable significant impacts, develop an environmental impact statement, as described in §1b.7.

(3) When considering whether the reasonably foreseeable impacts of an action are significant, USDA subcomponents will consider and analyze the potentially affected environment and degree of the effects of the action.

(i) Potentially affected environment means the condition of the physical, biological, social, and economic factors that may be impacted by an action.

(ii) In considering the degree of effects, USDA subcomponents should consider the following, as appropriate to the specific action and in the context of the potentially affected environment:

(A) Both short- and long-term effects.

(B) Both beneficial and adverse effects.

(C) Effects on public health and safety.

(D) Economic effects.

(E) Effects on the quality of life of the American people.

(iii) In providing rationale for whether the degree of effect is significant, responsible officials shall consider:

(A) How the unavoidable short- and long-term adverse impacts of implementing the action compares to the short- and long-term adverse or beneficial consequences of not implementing the action; and

(B) How the irreversible or irretrievable commitment of a resource, as part of the action, contributes to a loss of long-term productivity for the human environment.

(g) *Integrated environmental review and compliance.* It is the policy of USDA that, to the fullest extent possible, USDA subcomponents should conduct NEPA reviews concurrent and integrated with other environmental effects analyses and related surveys and studies required by all other Federal environmental review laws and Executive orders applicable to the proposal, including the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), the National Historic Preservation Act of 1966 (54 U.S.C. 300101–306108), the Endangered Species Act of 1973 (16 U.S.C. 1531–1544), and the Clean Water Act of 1972 (33 U.S.C. 1251 *et seq.*).

(h) *Limitations on actions during the NEPA process.* It is the policy of USDA that, except as provided in §1b.9(v) and (w), while a NEPA review is ongoing a USDA subcomponent will take no action concerning a proposal that would have an adverse environmental effect

or limit the choice of reasonable alternatives when alternatives are necessary.

(1) For proposals that are initially developed by applicants or other non-Federal entities, USDA subcomponents will:

(i) Coordinate with the non-Federal entity at the earliest reasonable time in the planning process to inform the entity what information a USDA subcomponent might need to comply with NEPA, as well as any other applicable environmental review processes, and establish a schedule for completing steps in the NEPA review process consistent with NEPA's statutory deadlines and any internal subcomponent NEPA schedule requirements; and

(ii) Begin the NEPA process by determining whether NEPA applies, as described in paragraph (e) of this section, and if it does, determine the appropriate level of NEPA review, as described in paragraph (f) of this section, as soon as practicable after receiving the complete application.

(2) If USDA is considering an application from a non-Federal entity and becomes aware that the applicant is about to take an action within USDA's jurisdiction that would meet either of the criteria in §1b.2.h, USDA will promptly notify the applicant that USDA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. This section does not preclude development by applicants of plans or designs or performance of other activities necessary to support an application for Federal, State, Tribal, or local permits or assistance. When considering a proposed action for Federal funding, USDA may authorize such activities, including, but not limited to, acquisition of interests in land (*e.g.*, fee simple, rights-of-way, and conservation easements), purchase of long lead-time equipment, and purchase options made by applicants.

(3) When agencies under the Rural Development mission area are obligating funds, the environmental review process must be concluded before the obligation of funds except for infrastructure projects where the assurance that funds will be available for community health, safety, or economic development has been determined as necessary by the Agency Administrator. At the discretion of the Agency Administrator, funds may be obligated contingent upon the conclusion of the environmental review process prior to any action that would have an adverse effect on the environment or limit the choices of any reasonable alternatives. Funds so obligated shall be rescinded if the agency cannot conclude the environmental review process before the end of the fiscal year after the year in which the funds were obligated, or if the agency determines that it cannot proceed with approval based on findings in the environmental review process. For the purposes of this section, infrastructure projects shall include projects such as broadband, telecommunications, electric, energy efficiency, smart grid, water, sewer, transportation, and energy capital investments in physical plant and equipment, but not investments authorized in the Housing Act of 1949.

(4) *Adjudication*. An adjudication may be a multi-member commission that employs staff recommendations as described here. For adjudication, the environmental document will normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances, the document may follow preliminary hearings designed to gather information for use in the statements.

§ 1b.3 Categorical exclusions and findings of applicability and no extraordinary circumstance.

(a) *Generally*. This section describes the process USDA uses for establishing and revising categorical exclusions (CEs), for adopting other agencies' CEs, for removing CEs, for applying CEs to a proposed action, for considering extraordinary circumstances, and for relying on another Federal agency's CE determination. USDA categorical exclusions, including CEs USDA established and substantiated consistent with CEQ's previous NEPA procedures, are listed at §1b.4. Notification of CEs adopted by a USDA subcomponent from other agencies will be in accordance with paragraph (c) of this section

and tracked by USDA's Natural Resources and Environment mission area for use by any other USDA agency.

(b) *Establishing and revising categorical exclusions.* To establish or revise a categorical exclusion, USDA subcomponents will determine that the category of actions normally does not have reasonably foreseeable significant impacts that affect the quality of the human environment. In making this determination, subcomponents will:

(1) Develop a written record containing information to substantiate its determination;

(2) Consult with CEQ on its proposed categorical exclusion, including the written record, for a period not to exceed 30 days prior to providing public notice as described in paragraph (b)(3) of this section; and

(3) Provide public notice of USDA's establishment or revision of the categorical exclusion and the written justification in the FEDERAL REGISTER.

(c) *Adopting categorical exclusions from other Federal agencies.* Consistent with NEPA section 109, 42 U.S.C. 4336c, USDA subcomponents may adopt a categorical exclusion listed in another agency's NEPA procedures. When adopting a categorical exclusion, USDA subcomponents will:

(1) Identify the categorical exclusion listed in another agency's NEPA procedures that covers its category of proposed or related actions;

(2) Consult with the agency that established the categorical exclusion to ensure that the proposed adoption of the categorical exclusion is appropriate; and

(3) Provide public notification of the categorical exclusion that USDA is adopting, including a brief description of the proposed action or category of proposed actions to which USDA intends to apply the adopted categorical exclusion.

(i) Public notification will be provided on a USDA website and the adoption of the category will be tracked by USDA's Natural Resources and Environment mission area. Once a categorical exclusion is adopted by one USDA subcomponent, it will be available for use to all other USDA subcomponents.

(ii) Non-USDA categories that were already adopted by a USDA subcomponent prior to the 2025 revision of this part are tracked by USDA's Natural Resources and Environment mission area and may be used by any other USDA subcomponent on proposed actions that fit the categorically excluded actions. Adopted categories will be listed on a USDA website.

(d) *Removal of categorical exclusions.* To remove a categorical exclusion from §1b.4 of this part, a USDA subcomponent will:

(1) Develop a written justification for the removal;

(2) Consult with CEQ on its proposed removal of the categorical exclusion, including the written justification, for a period not to exceed 30 days prior to providing public notice as described in subparagraph (3) below; and

(3) Provide public notice of USDA's removal of the categorical exclusion and the written justification in the FEDERAL REGISTER.

(e) *Applying categorical exclusions.* If a USDA subcomponent determines that one or more categorical exclusions applies to a proposed action, the subcomponent will evaluate the action for extraordinary circumstances. USDA subcomponents may apply any of the categorical exclusions listed at §1b.4. If a USDA subcomponent determines that a categorical exclusion established through legislation, or a categorical exclusion that Congress through legislation has directed USDA to establish, covers a proposed agency action, USDA will conclude review consistent with applicable law. If appropriate, USDA may examine extraordinary circumstances, modify the proposed action, or document the determination that the legislative categorical exclusion applies, consistent with paragraph (g) of this section and the legal authority for the establishment of the legislative categorical exclusion.

(f) *Extraordinary circumstances.* When applying categorical exclusions, USDA subcomponents shall consider relevant resources in the potentially affected environment for which an extraordinary circumstance may exist that would require the action to instead be documented in an environmental assessment (when there is uncertainty regarding the degree of effect) or an environmental impact statement (if it is

determined there is a reasonably foreseeable significant impact). Resources for consideration for extraordinary circumstances will be determined at the responsible official's sole discretion and shall be based on the nature of the actions proposed and in the context of the potentially affected environment.

(1) The resources to screen for in the potentially affected environment when considering extraordinary circumstances may include, but are not limited to:

(i) Federally listed threatened or endangered species or designated critical habitat or species proposed for Federal listing or proposed critical habitat;

(ii) Flood plains, wetlands, or other such sensitive areas;

(iii) Special sources of water, such as sole-source aquifers, wellhead protection areas, municipal watersheds, or other water sources that are vital in a region;

(iv) Areas having formal Federal or state designations, such as wilderness areas, parks, or wildlife refuges; wild and scenic rivers; marine sanctuaries; national natural landmarks; inventoried roadless areas; or national recreation areas;

(v) Specially managed areas, such as designated research or experimental areas, coral reefs, coastal barrier resources, or, unless exempt, coastal zone management areas;

(vi) Important or prime agricultural, forest, or range lands; or

(vii) Property (*e.g.*, sites, buildings, structures, and objects) of historic, archeological, or architectural significance, as designated by Federal, Tribal, State, or local governments, or property eligible for listing on the National Register of Historic Places.

(2) The mere presence of one or more of the resources listed in paragraph (f)(1) of this section, or as otherwise identified at the sole discretion of the responsible official, does not mean an extraordinary circumstance exists. If there is a cause-effect relationship (impact) between the proposed actions and the resource considered, an extraordinary circumstance exists only when there is reasonable uncertainty whether the degree of the effect is significant or certainty that the degree of effect is significant.

(3) If an extraordinary circumstance exists, the responsible official may modify the proposed action, or take other steps, such that certainty is created regarding the degree of effect and it is determined the degree of effect is not a reasonably foreseeable significant impact for the resource(s) considered that initially led to the existence of an extraordinary circumstance. With this outcome, the extraordinary circumstance will be considered to no longer exist and use of the categorical exclusion may proceed.

(4) When effects analysis is completed to demonstrate compliance with other applicable environmental laws, regulations, or executive orders (*e.g.*, analysis completed for Endangered Species Act, National Historic Preservation Act, Clean Water Act, etc.) and already addresses one of the resources in paragraph (f)(1) of this section or as identified at the sole discretion of the responsible official, and it is clear from that analysis and compliance discussion that no extraordinary circumstance exists for the resource considered, the responsible official may rely on that analysis to inform their finding of no extraordinary circumstance.

(g) *Findings of applicability and no extraordinary circumstances (FANEC).* To apply a categorical exclusion, a responsible official must determine that one or more categorical exclusions apply to a proposed action and that no extraordinary circumstance exists. For those categories that require NEPA documentation, as specified in §1b.4(d), responsible officials shall document these determinations as outlined in paragraphs (g)(1) and (2) of this section.

(1) A USDA subcomponent shall document a finding of applicability and no extraordinary circumstance (FANEC) if the subcomponent determines, based on the NEPA review, that:

(i) An action is categorically excluded from documentation in an environmental assessment or environmental impact statement;

(ii) No extraordinary circumstance exists; and

(iii) The category requires NEPA documentation in accordance with statute, §1b.4(d), or as required by the Federal agency regulations or procedures from which a category was adopted.

(2) USDA subcomponents may apply any format they choose to document the finding of applicability and no extraordinary circumstance, but shall address the following elements at a minimum:

(i) Incorporate by reference any other relevant documentation developed as part of the environmental review process and contained in the proposal record, such as documentation of compliance with other applicable laws or regulations as deemed necessary by the responsible official;

(ii) State the category or categories being used. If a category being used is adopted from another non-USDA agency, specify that it was adopted;

(iii) Describe the proposed action and certify the category or categories used are applicable to the actions;

(iv) State the resources that the responsible official considered in determining whether an extraordinary circumstance exists;

(v) State that no extraordinary circumstances exist, as informed by the interdisciplinary review; and

(vi) Include the date issued and signature of the responsible official.

(h) *Reliance on categorical exclusion determinations of other agencies.* Responsible officials may also rely on another agency's determination that a categorical exclusion applies, and no extraordinary circumstance exists, for a particular proposed action if the agency action covered by those determinations and the USDA subcomponent's proposed actions and potentially affected environment are substantially the same. The responsible official will document their reliance on another agency's categorical exclusion determination and include this in the proposal record.

(i) *Other documentation considerations.* If use of a categorical exclusion requires documentation in addition to those items listed in paragraph (g)(2) of this section, as specified in statute or regulation, USDA subcomponents may add them to the documentation for the finding of applicability and no extraordinary circumstance as needed.

(j) *Timing of action.* Once the responsible official has signed the documentation for the finding of applicability and no extraordinary circumstance, and unless other statutes or regulations require otherwise, the USDA subcomponent or applicant may begin implementing the action. When NEPA documentation is not required for a categorical exclusion, once the responsible official has determined one or more categorical exclusions applies to a proposed action and no extraordinary circumstance exists and has completed any other necessary environmental review documentation, and unless other statutes or regulations require otherwise, the USDA subcomponent or applicant may begin implementing the action.

§1b.4 Categorical exclusion of USDA subcomponents and actions.

(a) The USDA subcomponents listed in paragraphs (a)(1) through (9) of this section conduct programs and activities that do not normally result in reasonably foreseeable significant impacts on the natural or physical environment. As such, these subcomponents' actions are excluded from the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Programs and activities of the USDA subcomponents listed in this paragraph may utilize categorical exclusions, as described in this part, but do not require the preparation of an EA or EIS unless the subcomponent determines that an extraordinary circumstance exists for an individual action and obtains the concurrence of the USDA Senior Agency Official (Undersecretary of Natural Resources and Environment) (or their designee):

(1) Agricultural Marketing Service

(2) Economic Research Service

(3) Federal Crop Insurance Corporation

(4) Food and Nutrition Service

(5) Food Safety and Inspection Service

(6) Foreign Agricultural Service

(7) National Agricultural Library

(8) National Agricultural Statistics Service

(9) The following general offices of the Department: Office of the Chief Economist, Office of the Chief Financial Officer, Office of the Chief Information Officer, Office of the General Counsel, Office of the Inspector General, National Appeals Division, Office of Budget and Program Analysis, Office of Communications, Office of Partnerships and Public Engagement, Office of Tribal Relations, and Office of Small and Disadvantaged Business Utilization.

(b) The categories in paragraphs (c) and (d) of this section are for activities which have been determined by USDA to not have a reasonably foreseeable significant impact on the human environment and are excluded from the preparation of an environmental assessment or environmental impact statement. Categories have been assigned unique numbers for ease of reference. The following acronyms at the end of the number sequence indicate the USDA subcomponent that originally promulgated the category. These acronyms are used in the numbering sequence for USDA subcomponent tracking and continuity purposes and do not imply that the subcomponent indicated is the only USDA subcomponent that may use the category:

(1) OSEC (Office of the Secretary)

(2) APHIS (Animal and Plant Health Inspection Service)

(3) FSA (Farm Service Agency)

(4) NRCS (Natural Resources Conservation Service)

(5) RD (Rural Development)

(6) USFS (U.S. Forest Service)

(c) The following categorical exclusions do not require NEPA documentation.

(1) (USDA–01c–OSEC) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions. Examples include, but are not limited to:

(i) Issuing minor technical corrections to regulations, handbooks, and internal guidance, as well as amendments to them;

(ii) Personnel actions, reduction-in-force, or employee transfers; and

(iii) Procurement actions for goods and services conducted in accordance with applicable laws, regulations, and executive orders.

(2) (USDA–02c–OSEC) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds.

(3) (USDA–03c–OSEC) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity. Examples include, but are not limited to:

(i) Identifications, inspections, surveys, sampling, testing, and monitoring that does not cause physical alteration of the environment;

(ii) Laboratory research involving the evaluation and use of chemicals in a manner not specifically listed on the product label pursuant to applicable Federal authorizations;

(iii) Research evaluating wildlife management products or tools, such as animal repellents, frightening devices, or fencing, that is carried out in a manner and area designed to eliminate the potential for harmful environmental effects and in accordance with applicable regulatory requirements;

(iv) Research operations conducted within any laboratory, greenhouse or other contained facility where research practices and safeguards prevent environment impacts, such as the release of hazardous materials into the environment;

(v) Testing outside of the laboratory, such as in small, isolated field plots, which involves the routine use of familiar chemicals or biological materials and does not involve the use of control agents requiring containment or a special license or a permit from a regulatory agency.

(vi) Soil surveys;

(vii) Snow surveys and water supply forecasts;

(viii) Plant materials for conservation;

(ix) Inventory and monitoring;

(x) River Basin Studies under section 6 of Pub. L. 83–566, as amended.

(4) (USDA–04c–OSEC) Educational and informational programs and activities.

(5) (USDA–05c–OSEC) Civil and criminal law enforcement and investigative activities.

(6) (USDA–06c–OSEC) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counselling and representation.

(7) (USDA–07c–OSEC) Activities related to trade representation and market development activities abroad.

(8) (USDA–08c–APHIS) Routine measures, such as, seizures, quarantines, removals, sanitizing, inoculations, and control employed by agency programs to pursue their missions and functions.

(i) Such measures may include the use—according to any label instructions or other lawful requirements and consistent with standard, published program practices and precautions—of chemicals, pesticides, or other potentially hazardous or harmful substances, materials, and target-specific devices or remedies, provided that such use meets all of the following criteria (insofar as they may pertain to a particular action):

(A) The use is localized or contained in areas where humans are not likely to be exposed, and is limited in terms of quantity, *i.e.,* individualized dosages and remedies;

(B) The use will not cause contaminants to enter water bodies, including wetlands;

(C) The use does not adversely affect any federally protected species or critical habitat; and

(D) The use does not cause bioaccumulation.

(ii) Examples of routine measures include, but are not limited to:

(A) Inoculation or treatment of discrete herds of livestock or wildlife undertaken in contained areas (such as a barn or corral, a zoo, an exhibition, or an aviary);

(B) Use of vaccinations or inoculations including new vaccines (*e.g.,* genetically engineered vaccines) and applications of existing vaccines to new species provided that the project is conducted in a controlled and limited manner, and the impacts of the vaccine can be predicted; and

(C) Isolated (*e.g.,* along a highway) weed control efforts.

(9) (USDA–09c–APHIS) Research and development activities limited in magnitude, frequency, and scope that occur in laboratories, facilities, pens, or field sites. Examples include, but are not limited to:

(i) Vaccination trials that occur on groups of animals in areas designed to limit interaction with similar animals, or include other controls needed to mitigate potential risk.

(ii) The development and/or production (including formulation, packaging or repackaging, movement, and distribution) of articles such as program materials, devices, reagents, and biologics that were approved and/or licensed in accordance with existing regulations, or that are for evaluation in confined animal, plant, or insect populations under conditions that prevent exposure to the general population.

(iii) Development, production, and release of sterile insects.

(10) (USDA–10c–APHIS) Licensing and permitting.

(i) Issuance of a license, permit, authorization, or approval to ship or field test previously unlicensed veterinary biologics, including veterinary biologics containing genetically engineered organisms (such as vector-based vaccines and nucleic acid-based vaccines);

(ii) Issuance of a license, permit, authorization, or approval for movement or uses of pure cultures of organisms (relatively free of extraneous micro-organisms and extraneous material) that are not strains of quarantine concern and occur, or are likely to occur, in a State's environment;

(iii) Permitting for confined field releases of genetically engineered organisms and products; or

(iv) Permitting of:

(A) Importation of nonindigenous species into containment facilities,

(B) Interstate movement of nonindigenous species between containment facilities, or

(C) Releases into a State's environment of pure cultures of organisms that are either native or are established introductions.

(11) (USDA–11c–APHIS) Minor renovation, improvement, and maintenance of facilities. Examples include, but are not limited to:

(i) Renovation of existing laboratories and other facilities.

(ii) Functional replacement of parts and equipment.

(iii) Minor additions to existing facilities.

(iv) Minor excavations of land and repairs to properties.

(12) (USDA–12c–FSA) Minor management, construction, or repair actions.

(i) Minor construction, such as a small addition;

(ii) Drain tile replacement;

(iii) Erosion control measures;

(iv) Grading, leveling, shaping, and filling;

(v) Grassed waterway establishment;

(vi) Hillside ditches;

(vii) Land-clearing operations of no more than 15 acres, provided any amount of land involved in tree harvesting (without stump removal) is to be conducted on a sustainable basis and according to a Federal, State, Tribal, or other governmental unit approved forestry management plan;

(viii) Nutrient management;

(ix) Permanent establishment of a water source for wildlife (not livestock);

(x) Restoring and replacing property;

(xi) Soil and water development;

(xii) Spring development;

(xiii) Trough or tank installation; and

(xiv) Water harvesting catchment.

(13) (USDA–13c–FSA) Repair, improvement, or minor modification actions.

(i) Existing fence repair;

(ii) Improvement or repair of farm-related structures under 50 years of age; and

(iii) Minor amendments or revisions to previously approved projects, provided such proposed actions do not substantively alter the purpose, operation, location, impacts, or design of the project as originally approved.

(14) (USDA–14c–FSA) Planting actions.

(i) Bareland planting or planting without site preparation;

(ii) Bedding site establishment for wildlife;

(iii) Chiseling and subsoiling;

(iv) Clean tilling firebreaks;

(v) Conservation crop rotation;

(vi) Contour farming;

(vii) Contour grass strip establishment;

(viii) Cover crop and green manure crop planting;

(ix) Critical area planting;

(x) Firebreak installation;

(xi) Grass, forbs, or legume planting;

(xii) Heavy use area protection;

(xiii) Installation and maintenance of field borders or field strips;

(xiv) Pasture, range, and hayland planting;

(xv) Seeding of shrubs;

(xvi) Seedling shrub planting;

(xvii) Site preparation;

(xviii) Strip cropping;

(xix) Wildlife food plot planting; and

(xx) Windbreak and shelterbelt establishment.

(15) (USDA–15c–FSA) Management actions.

(i) Forage harvest management;

(ii) Integrated crop management;

(iii) Mulching, including plastic mulch;

(iv) Netting for hard woods;

(v) Obstruction removal;

(vi) Pest management (consistent with all labelling and use requirements);

(vii) Plant grafting;

(viii) Plugging artesian wells;

(ix) Residue management including seasonal management;

(x) Roof runoff management;

(xi) Thinning and pruning of plants;

(xii) Toxic salt reduction; and

(xiii) Water spreading.

(16) (USDA–16c–FSA) Miscellaneous FSA actions.

(i) Fence installation and replacement;

(ii) Fish stream improvement;

(iii) Grazing land mechanical treatment; and

(iv) Inventory property disposal or lease without protective easements or covenants;

(v) Conservation easement purchases with no construction planned;

(vi) Emergency program proposed actions (including Emergency Conservation Program and Emergency Forest Restoration Program) that have a total cost share of less than $5,000;

(vii) Financial assistance to supplement income, manage the supply of agricultural commodities, or influence the cost and supply of such commodities or programs of a similar nature or intent (that is, price support programs);

(viii) Individual farm participation in Farm Service Agency programs where

no ground disturbance or change in land use occurs as a result of the proposed action or participation;

(ix) Safety net programs without ground disturbance;

(x) Site characterization, environmental testing, and monitoring where no significant alteration of existing ambient conditions would occur, including air, surface water, groundwater, wind, soil, or rock core sampling; installation of monitoring wells; installation of small scale air, water, or weather monitoring equipment;

(xi) Stand analysis for forest management planning; and

(xii) Tree protection including plastic tubes.

(17) (USDA–17c–RD) A guarantee provided to the Federal Financing Bank pursuant to Section 313A(a) of the Rural Electrification Act of 1936 for the purpose of:

(i) Refinancing existing debt instruments of a lender organized on a not-for-profit basis; or

(ii) Prepaying outstanding notes or bonds made to or guaranteed by the Agency.

(18) (USDA–18c–RD) Financial assistance for minor construction proposals. The CEs in this section are for proposals for financial assistance that involve no or minimal alterations in the physical environment and typically occur on previously disturbed land. These actions normally do not require an applicant to submit environmental documentation with the application. However, based on the review of the project description, the Agency may request additional environmental documentation from the applicant at any time, specifically if the Agency determines that extraordinary circumstances may exist. In accordance with section 106 of the National Historic Preservation Act (54 U.S.C. 300101–306108) and its implementing regulations under 36 CFR 800.3(a), the agency has determined that the actions in this section are undertakings, and in accordance with 36 CFR 800.3(a)(1) has identified those undertakings for which no further review under 36 CFR part 800 is required because they have no potential to cause effects to historic properties. In accordance with section 7 of the Endangered Species Act (16 U.S.C. 1531–1544) and its implementing regulations at 50 CFR part 402, the agency has determined that the actions in this section are actions for purposes of the Endangered Species Act, and in accordance with 50 CFR 402.06 has identified those actions for which no further review under 50 CFR part 402 is required because they will have no effect to listed threatened and endangered species.

(i) Minor amendments or revisions to previously approved projects provided such activities do not alter the purpose, operation, geographic scope, or design of the project as originally approved;

(ii) Repair, upgrade, or replacement of equipment in existing structures for such purposes as improving habitability, energy efficiency (including heat rate efficiency), replacement or conversion to enable use of renewable fuels, pollution prevention, or pollution control;

(iii) Any internal modification or minimal external modification, restoration, renovation, maintenance, and replacement in-kind to an existing facility or structure;

(iv) Construction of or substantial improvement to a single-family dwelling, or a Rural Housing Site Loan project or multi-family housing project serving up to four families and affecting less than 10 acres of land;

(v) Siting, construction, and operation of new or additional water supply wells for residential, farm, or livestock use;

(vi) Replacement of existing water and sewer lines within the existing right-of-way and as long as the size of pipe is either no larger than the inner diameter of the existing pipe or is an increased diameter as required by Federal or state requirements. If a larger pipe size is required, applicants must provide a copy of written administrative requirements mandating a minimum pipe diameter from the regulatory agency with jurisdiction;

(vii) Modifications of an existing water supply well to restore production in existing commercial well fields, if there would be no drawdown other than in the immediate vicinity of the pumping well, no resulting long-term decline of the water table, and no degradation

of the aquifer from the replacement well;

(viii) Burying new facilities for communication purposes in previously developed, existing rights-of-way and in areas already in or committed to urbanized development or rural settlements whether incorporated or unincorporated that are characterized by high human densities and within contiguous, highly disturbed environments with human-built features. Covered actions include associated vaults and pulling and tensioning sites outside rights-of-way in nearby previously disturbed or developed land;

(ix) Changes to electric transmission lines that involve pole replacement or structural components only where either the same or substantially equivalent support structures at the approximate existing support structure locations are used;

(x) Phase or voltage conversions, reconductoring, upgrading, or rebuilding of existing electric distribution lines that would not affect the environment beyond the previously developed, existing rights-of-way. Includes pole replacements and overhead-to-underground conversions;

(xi) Collocation of telecommunications equipment on existing infrastructure and deployment of distributed antenna systems and small cell networks provided the latter technologies are not attached to and will not cause adverse effects to historic properties;

(xii) Siting, construction, and operation of small, ground source heat pump systems that would be located on previously developed land;

(xiii) Siting, construction, and operation of small solar electric projects or solar thermal projects to be installed on or adjacent to an existing structure and that would not affect the environment beyond the previously developed facility area and are not attached to and will not cause adverse effects to historic properties;

(xiv) Siting, construction, and operation of small biomass projects, such as animal waste anaerobic digesters or gasifiers, that would use feedstock produced on site (such as a farm where the site has been previously disturbed) and supply gas or electricity for the site's own energy needs with no or only incidental export of energy;

(xv) Construction of small standby electric generating facilities with a rating of one average megawatt (MW) or less, and associated facilities, for the purpose of providing emergency power for or startup of an existing facility;

(xvi) Additions or modifications to electric transmission facilities that would not affect the environment beyond the previously developed facility area including, but not limited to, switchyard rock, grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms; and

(xvii) Safety, environmental, or energy efficiency (including heat rate efficiency) improvements within an existing electric generation facility, including addition, replacement, or upgrade of facility components (such as precipitator, baghouse, or scrubber installations), that do not result in a change to the design capacity or function of the facility and do not result in an increase in pollutant emissions, effluent discharges, or waste products.

(19) (USDA–19c–USFS) Orders issued pursuant to 36 CFR part 261: Prohibitions to provide short-term resource protection or to protect public health and safety. Examples include, but are not limited to:

(i) Closing a road to protect bighorn sheep during lambing season, and

(ii) Closing an area during a period of extreme fire danger.

(20) (USDA–20c–USFS) Rules, regulations, or policies to establish service-wide administrative procedures, program processes, or instructions. Examples include, but are not limited to:

(i) Adjusting special use or recreation fees using an existing formula;

(ii) Proposing a technical or scientific method or procedure for screening effects of emissions on air quality related values in Class I wildernesses;

(iii) Proposing a policy to defer payments on certain permits or contracts to reduce the risk of default;

(iv) Proposing changes in contract terms and conditions or terms and conditions of special use authorizations;

(v) Establishing a service-wide process for responding to offers to exchange land and for agreeing on land values; and

(vi) Establishing procedures for amending or revising forest land and resource management plans.

(21) (USDA–21c–USFS) Repair and maintenance of administrative sites. Examples include, but are not limited to:

(i) Mowing lawns at a district office;

(ii) Replacing a roof or storage shed;

(iii) Painting a building; and

(iv) Applying registered pesticides for rodent or vegetation control.

(22) (USDA–22c–USFS) Repair and maintenance of roads, trails, and landline boundaries. Examples include, but are not limited to:

(i) Authorizing a user to grade, resurface, and clean the culverts of an established National Forest System (NFS) road;

(ii) Grading a road and clearing the roadside of brush without the use of herbicides;

(iii) Resurfacing a road to its original condition;

(iv) Pruning vegetation and cleaning culverts along a trail and grooming the surface of the trail; and

(v) Surveying, painting, and posting landline boundaries.

(23) (USDA–23c–USFS) Repair and maintenance of recreation sites and facilities. Examples include, but are not limited to:

(i) Applying registered herbicides to control poison ivy on infested sites in a campground;

(ii) Applying registered insecticides by compressed air sprayer to control insects at a recreation site complex;

(iii) Repaving a parking lot; and

(iv) Applying registered pesticides for rodent or vegetation control.

(24) (USDA–24c–USFS) Acquisition of land or interest in land. Examples include, but are not limited to:

(i) Accepting the donation of lands or interests in land to the NFS, and

(ii) Purchasing fee, conservation easement, reserved interest deed, or other interests in lands.

(25) (USDA–25c–USFS) Sale or exchange of land or interest in land and resources where resulting land uses remain essentially the same. Examples include, but are not limited to:

(i) Selling or exchanging land pursuant to the Small Tracts Act;

(ii) Exchanging NFS lands or interests with a State agency, local government, or other non-Federal party (individual or organization) with similar resource management objectives and practices;

(iii) Authorizing the Bureau of Land Management to issue leases on producing wells when mineral rights revert to the United States from private ownership and there is no change in activity; and

(iv) Exchange of administrative sites involving other than NFS lands.

(26) (USDA–26c–USFS) Approval, modification, or continuation of minor, short-term (1 year or less) special uses of NFS lands. Examples include, but are not limited to:

(i) Approving, on an annual basis, the intermittent use and occupancy by a State-licensed outfitter or guide;

(ii) Approving the use of NFS land for apiaries; and

(iii) Approving the gathering of forest products for personal use.

(27) (USDA–27c–USFS) Issuance of a new permit for up to the maximum tenure allowable under the National Forest Ski Area Permit Act of 1986 (16 U.S.C. 497b) for an existing ski area when such issuance is a purely ministerial action to account for administrative changes, such as a change in ownership of ski area improvements, expiration of the current permit, or a change in the statutory authority applicable to the current permit. Examples include, but are not limited to:

(i) Issuing a permit to a new owner of ski area improvements within an existing ski area with no changes to the master development plan, including no changes to the facilities or activities for that ski area;

(ii) Upon expiration of a ski area permit, issuing a new permit to the holder of the previous permit where the holder is not requesting any changes to the master development plan, including changes to the facilities or activities; and

(iii) Issuing a new permit under the National Forest Ski Area Permit Act of 1986 to the holder of a permit issued under the Term Permit and Organic Acts, where there are no changes in the type or scope of activities authorized and no other changes in the master development plan.

(28) (USDA–28c–USFS) Issuance of a new special use authorization to replace an existing or expired special use authorization, when such issuance is to account only for administrative changes, such as a change in ownership of authorized improvements or expiration of the current authorization, and where there are no changes to the authorized facilities or increases in the scope or magnitude of authorized activities. The applicant or holder must be in compliance with all the terms and conditions of the existing or expired special use authorization. Subject to the foregoing conditions, examples include, but are not limited to:

(i) Issuing a new authorization to replace a powerline facility authorization that is at the end of its term;

(ii) Issuing a new permit to replace an expired permit for a road that continues to be used as access to non-NFS lands; and

(iii) Converting a transitional priority use outfitting and guiding permit to a priority use outfitting and guiding permit.

(29) (USDA–29c–USFS) Issuance of a new authorization or amendment of an existing authorization for recreation special uses that occur on existing roads or trails, in existing facilities, in existing recreation sites, or in areas where such activities are allowed. Subject to the foregoing condition, examples include, but are not limited to:

(i) Issuance of an outfitting and guiding permit for mountain biking on NFS trails that are not closed to mountain biking;

(ii) Issuance of a permit to host a competitive motorcycle event;

(iii) Issuance of an outfitting and guiding permit for backcountry skiing;

(iv) Issuance of a permit for a one-time use of existing facilities for other recreational events; and

(v) Issuance of a campground concession permit for an existing campground that has previously been operated by the Forest Service.

(30) (USDA–30c–FSA) FSA Loan Actions

(i) Closing cost payments;

(ii) Commodity loans;

(iii) Debt set asides;

(iv) Deferral of loan payments;

(v) Youth loans;

(vi) Loan consolidation;

(vii) Loans for annual operating expenses, except livestock;

(viii) Loans for equipment;

(ix) Loans for family living expenses;

(x) Loan subordination, with no or minimal construction below the depth of previous tillage or ground disturbance, and no change in operations, including, but not limited to, an increase in animal numbers to exceed the current CAFO designation (as defined by the U.S. Environmental Protection Agency in 40 CFR 122.23);

(xi) Loans to pay for labor costs;

(xii) Loan (debt) transfers and assumptions with no new ground disturbance;

(xiii) Partial or complete release of loan collateral;

(xiv) Re-amortization of loans;

(xv) Refinancing of debt;

(xvi) Rescheduling loans;

(xvii) Restructuring of loans; and

(xviii) Writing down of debt.

(xix) Farm storage and drying facility loans for added capacity;

(xx) Loans for livestock purchases;

(xxi) Release of loan security for forestry purposes;

(xxii) Reorganizing farm operations; and

(xxiii) Replacement building loans;

(xxiv) Loans and loan subordination with construction, demolition, or ground disturbance planned;

(xxv) Real estate purchase loans with new ground disturbance planned; and

(xxvi) Term operating loans with construction or demolition planned;

(31) (USDA–31c–RD) The promulgation of rules or formal notices for policies or programs that are administrative or financial procedures for implementing Agency assistance activities.

(32) (USDA–32c–RD) Agency proposals for legislation that have no potential for significant environmental impacts because they would allow for no or

minimal construction or change in operations.

(d) The following categorical exclusions require NEPA documentation, which will be completed as set forth at §1b.3(g).

(1) (USDA–01d–FSA) Construction or ground disturbance actions.

(i) Bridges;

(ii) Chiseling and subsoiling in areas not previously tilled;

(iii) Construction of a new farm storage facility;

(iv) Dams;

(v) Dikes and levees;

(vi) Diversions;

(vii) Drop spillways;

(viii) Dugouts;

(ix) Excavation;

(x) Grade stabilization structures;

(xi) Grading, leveling, shaping and filling in areas or to depths not previously disturbed;

(xii) Installation of structures designed to regulate water flow such as pipes, flashboard risers, gates, chutes, and outlets;

(xiii) Irrigation systems;

(xiv) Land smoothing;

(xv) Line waterways or outlets;

(xvi) Lining;

(xvii) Livestock crossing facilities;

(xviii) Pesticide containment facility;

(xix) Pipe drop;

(xx) Pipeline for watering facility;

(xxi) Ponds, including sealing and lining;

(xxii) Precision land farming with ground disturbance;

(xxiii) Riparian buffer establishment;

(xxiv) Roads, including access roads;

(xxv) Rock barriers;

(xxvi) Rock filled infiltration trenches;

(xxvii) Sediment basin;

(xxviii) Sediment structures;

(xxix) Site preparation for planting or seeding in areas not previously tilled;

(xxx) Soil and water conservation structures;

(xxxi) Stream bank and shoreline protection;

(xxxii) Structures for water control;

(xxxiii) Subsurface drains;

(xxxiv) Surface roughening;

(xxxv) Terracing;

(xxxvi) Underground outlets;

(xxxvii) Watering tank or trough installation, if in areas not previously disturbed;

(xxxviii) Wells; and

(xxxix) Wetland restoration.

(2) (USDA–02d–FSA) Management and planting type actions.

(i) Establishing or maintaining wildlife plots in areas not previously tilled or disturbed;

(ii) Prescribed burning;

(iii) Tree planting when trees have root balls of one gallon container size or larger; and

(iv) Wildlife upland habitat management.

(3) (USDA–03d–NRCS) Planting appropriate herbaceous and woody vegetation, which does not include noxious weeds or invasive plants, on disturbed sites to restore and maintain the sites ecological functions and services.

(4) (USDA–04d–NRCS) Removing dikes and associated appurtenances (such as culverts, pipes, valves, gates, and fencing) to allow waters to access floodplains to the extent that existed prior to the installation of such dikes and associated appurtenances.

(5) (USDA–05d–NRCS) Plugging and filling excavated drainage ditches to allow hydrologic conditions to return to pre-drainage conditions to the extent practicable.

(6) (USDA–06d–NRCS) Replacing and repairing existing culverts, grade stabilization, and water control structures and other small structures that were damaged by natural disasters where there is no new depth required and only minimal dredging, excavation, or placement of fill is required.

(7) (USDA–07d–NRCS) Restoring the natural topographic features of agricultural fields that were altered by farming and ranching activities for the purpose of restoring ecological processes.

(8) (USDA–08d–NRCS) Removing or relocating residential, commercial, and other public and private buildings and associated structures constructed in the 100-year floodplain or within the breach inundation area of an existing dam or other flood control structure in order to restore natural hydrologic conditions of inundation or saturation, vegetation, or reduce hazards posed to public safety.

(9) (USDA–09d–NRCS) Removing storm debris and sediment following a natural disaster where there is a continuing and eminent threat to public health or safety, property, and natural and cultural resources and removal is necessary to restore lands to pre-disaster conditions to the extent practicable. Excavation will not exceed the pre-disaster condition.

(10) (USDA–10d–NRCS) Stabilizing stream banks and associated structures to reduce erosion through bio-engineering techniques following a natural disaster to restore pre-disaster conditions to the extent practicable, *e.g.*, utilization of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, rip-rap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).

(11) (USDA–11d–NRCS) Repairing or maintenance of existing small structures or improvements (including structures and improvements utilized to restore disturbed or altered wetland, riparian, in stream, or native habitat conditions). Examples of such activities include the repair or stabilization of existing stream crossings for livestock or human passage, levees, culverts, berms, dikes, and associated appurtenances.

(12) (USDA–12d–NRCS) Constructing small structures or improvements for the restoration of wetland, riparian, in stream, or native habitats. Examples of activities include installation of fences and construction of small berms, dikes, and associated water control structures.

(13) (USDA–13d–NRCS) Restoring an ecosystem, fish and wildlife habitat, biotic community, or population of living resources to a determinable pre-impact condition.

(14) (USDA–14d–NRCS) Repairing or maintenance of existing constructed fish passageways, such as fish ladders or spawning areas impacted by natural disasters or human alteration.

(15) (USDA–15d–NRCS) Repairing, maintaining, or installing fish screens to existing structures.

(16) (USDA–16d–NRCS) Repairing or maintaining principal spillways and appurtenances associated with existing serviceable dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the construction footprint of the dam, and no major change in reservoir or downstream operations will result.

(17) (USDA–17d–NRCS) Repairing or improving (deepening/widening/armoring) existing auxiliary/emergency spillways associated with dams, originally constructed to NRCS standards, in order to meet current safety standards. Work will be confined to the construction footprint of the dam or abutment areas, and no major change in reservoir or downstream operation will result.

(18) (USDA–18d–NRCS) Repairing embankment slope failures on structures or reshaping the embankment, originally built to NRCS standards, where the work is confined to the embankment or abutment areas.

(19) (USDA–19d–NRCS) Increasing the freeboard (which is the height from the auxiliary (emergency) spillway crest to the top of embankment) of an existing dam or dike, originally built to NRCS standards, by raising the top elevation in order to meet current safety and performance standards. The purpose of the safety standard and associated work is to ensure that during extreme rainfall events, flows are confined to the auxiliary/emergency spillway so that the existing structure is not overtopped which may result in a catastrophic failure. Elevating the top of the dam will not result in an increase to lake or stream levels. Work will be confined to the construction footprint of the dam and abutment areas, and no major change in reservoir operations will result. Examples of work may include the addition of fill material such as earth or gravel or placement of parapet walls.

(20) (USDA–20d–NRCS) Modifying existing residential, commercial, and other public and private buildings to prevent flood damages, such as elevating structures or sealing basements to comply with current State safety standards and Federal performance standards.

(21) (USDA–21d–NRCS) Undertaking minor agricultural practices to maintain and restore ecological conditions in floodplains after a natural disaster or on lands impacted by human alteration. Examples of these practices include: mowing, haying, grazing, fencing, off-stream watering facilities, and invasive species control which are undertaken when fish and wildlife are not breeding, nesting, rearing young, or during other sensitive timeframes.

(22) (USDA–22d–NRCS) Implementing soil control measures on existing agricultural lands, such as grade stabilization structures (pipe drops), sediment basins, terraces, grassed waterways, filter strips, riparian forest buffer, and critical area planting.

(23) (USDA–23d–NRCS) Implementing water conservation activities on existing agricultural lands, such as minor irrigation land leveling, irrigation water conveyance (pipelines), irrigation water control structures, and various management practices.

(24) The CEs in this section are for proposals for financial assistance that require an applicant to submit environmental documentation with their application to facilitate agency determination of extraordinary circumstances. At a minimum, the environmental documentation will include a complete description of all components of the applicant's proposal and any connected actions, including its specific location on detailed site plans as well as location maps equivalent to a U.S. Geological Survey (USGS) quadrangle map; and information from authoritative sources acceptable to the agency confirming the presence or absence of sensitive environmental resources in the area that could be affected by the applicant's proposal. The environmental documentation submitted must be accurate, complete, and capable of verification. The agency may request additional information as needed to make an environmental determination. Failure to submit the required environmental documentation will postpone further consideration of the applicant's proposal until the environmental documentation is submitted, or the agency may deny the request for financial assistance. The agency will review the environmental documentation and determine if extraordinary circumstances exist. The agency's review may determine that classification as an environmental assessment or an environmental impact statement is more appropriate than a categorical exclusion classification.

(i) (USDA–24–1d–RD) Small-scale site-specific development. The following CEs apply to proposals where site development activities (including construction, expansion, repair, rehabilitation, or other improvements) for rural development purposes would impact not more than 10 acres of real property and would not cause a substantial increase in traffic. These CEs are identified in subparagraphs (A) through (J) of this subparagraph (i). This paragraph does not apply to new industrial proposals (such as ethanol and biodiesel production facilities).

(A) Multi-family housing and Rural Housing Site Loans.

(B) Business development.

(C) Community facilities such as municipal buildings, libraries, security services, fire protection, schools, and health and recreation facilities.

(D) Infrastructure to support utility systems such as water or wastewater facilities; headquarters, maintenance, equipment storage, or microwave facilities; and energy management systems.

(E) Installation of new, commercial-scale water supply wells and associated pipelines or water storage facilities that are required by a regulatory authority or standard engineering practice as a backup to existing production well(s) or as reserve for fire protection.

(F) Construction of telecommunications towers and associated facilities, if the towers and associated facilities are 450 feet or less in height and would not be in or visible from an area of documented scenic value.

(G) Repair, rehabilitation, or restoration of water control, flood control, or water impoundment facilities, such as dams, dikes, levees, detention reservoirs, and drainage ditches, with minimal change in use, size, capacity, purpose, operation, location, or design from the original facility.

(H) Installation or enlargement of irrigation facilities on an applicant's

land, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers designed to irrigate less than 80 acres.

(I) Replacement or restoration of irrigation facilities, including storage reservoirs, diversion dams, wells, pumping plants, canals, pipelines, and sprinklers, with no or minimal change in use, size, capacity, or location from the original facility(s).

(J) Vegetative biomass harvesting operations of no more than 15 acres, provided any amount of land involved in harvesting is to be conducted managed on a sustainable basis and according to a Federal, state, or other governmental unit approved management plan.

(ii) (USDA–24–2d–RD) Financial assistance for small-scale corridor development.

(A) Construction or repair of roads, streets, and sidewalks, including related structures such as curbs, gutters, storm drains, and bridges, in an existing right-of-way with minimal change in use, size, capacity, purpose, or location from the original infrastructure;

(B) Improvement and expansion of existing water, wastewater, and gas utility systems: within 20 miles of currently served areas irrespective of the percent of increase in new capacity;

(C) Replacement of utility lines where road reconstruction undertaken by non-Agency applicants requires the relocation of lines either within or immediately adjacent to the new road easement or right-of-way; and

(D) Installation of new linear telecommunications facilities and related equipment and infrastructure.

(iii) (USDA–24–3d–RD) Financial assistance for small-scale energy proposals.

(A) Construction of electric power substations (including switching stations and support facilities) or modification of existing substations, switchyards, and support facilities;

(B) Construction of electric power lines and associated facilities designed for or capable of operation at a nominal voltage of either:

(*1*) Less than 69 kilovolts (kV);

(*2*) Less than 230 kV if no more than 25 miles of line are involved; or

(*3*) 230 kV or greater involving no more than three miles of line, but not for the integration of major new generation resources into a bulk transmission system;

(C) Reconstruction (upgrading or rebuilding) or minor relocation of existing electric transmission lines (230 kV or less) 25 miles in length or less to enhance environmental and land use values or to improve reliability or access. Such actions include relocations to avoid right-of-way encroachments, resolve conflict with property development, accommodate road/highway construction, allow for the construction of facilities such as canals and pipelines, or reduce existing impacts on environmentally sensitive areas;

(D) Repowering or uprating modifications or expansion of an existing unit(s) up to a rating of 50 average MW at electric generating facilities in order to maintain or improve the efficiency, capacity, or energy output of the facility. Any air emissions from such activities must be within the limits of an existing air permit;

(E) Installation of new generating units or replacement of existing generating units at an existing hydroelectric facility or dam which results in no change in the normal maximum surface area or normal maximum surface elevation of the existing impoundment. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(F) Installation of a heat recovery steam generator and steam turbine with a rating of 200 average MW or less on an existing electric generation site for the purpose of combined cycle operations. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(G) Construction of small electric generating facilities (except geothermal and solar electric projects), including those fueled with wind or biomass, with a rating of 10 average MW or less. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(H) Siting, construction, and operation of small biomass projects (except small electric generating facilities projects fueled with biomass) producing not more than 3 million gallons

of liquid fuel or 300,000 million British thermal units annually, developed on up 10 acres of land;

(I) Geothermal electric power projects or geothermal heating or cooling projects developed on up to 10 acres of land and including installation of one geothermal well for the production of geothermal fluids for direct use application (such as space or water heating/cooling) or for power generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(J) Solar electric projects or solar thermal projects developed on up to 10 acres of land including all supporting facilities and new related electric transmission lines 10 miles in length or less;

(K) Distributed resources of any capacity located at or adjacent to an existing landfill site or wastewater treatment facility that is powered by refuse-derived fuel. All supporting facilities and new related electric transmission lines 10 miles in length or less are included;

(L) Small conduit hydroelectric facilities having a total installed capacity of not more than 5 average MW using an existing conduit such as an irrigation ditch or a pipe into which a turbine would be placed for the purpose of electric generation. All supporting facilities and new related electric transmission lines 10 miles in length or less are included; and

(M) Modifications or enhancements to existing facilities or structures that would not substantially change the footprint or function of the facility or structure and that are undertaken for the purpose of improving energy efficiency (including heat rate efficiency), promoting pollution prevention or control, safety, reliability, or security. This includes, but is not limited to, retrofitting existing facilities to produce biofuels and replacing fossil fuels used to produce heat or power in biorefineries with renewable biomass. This also includes installation of fuel blender pumps and associated changes within an existing fuel facility.

(25) (USDA–25d–RD) Repairs made because of an emergency situation to return to service damaged facilities of an applicant's utility system or other actions necessary to preserve life and control the immediate impacts of the emergency.

(26) (USDA–26d–USFS) Construction and reconstruction of trails. Examples include, but are not limited to:

(i) Constructing or reconstructing a trail to a scenic overlook, and

(ii) Reconstructing an existing trail to allow use by handicapped individuals.

(27) (USDA–27d–USFS) Additional construction or reconstruction of existing telephone or utility lines in a designated corridor. Examples include, but are not limited to:

(i) Replacing an underground cable trunk and adding additional phone lines, and

(ii) Reconstructing a power line by replacing poles and wires.

(28) (USDA–28d–USFS) Approval, modification, or continuation of special uses that require less than 20 acres of NFS lands. Subject to the preceding condition, examples include but are not limited to:

(i) Approving the construction of a meteorological sampling site;

(ii) Approving the use of land for a one-time group event;

(iii) Approving the construction of temporary facilities for filming of staged or natural events or studies of natural or cultural history;

(iv) Approving the use of land for a utility corridor that crosses a national forest;

(v) Approving the installation of a driveway or other facilities incidental to use of a private residence; and

(vi) Approving new or additional communication facilities, associated improvements, or communication uses at a site already identified as available for these purposes.

(29) (USDA–29d–USFS) Regeneration of an area to native tree species, including site preparation that does not involve the use of herbicides or result in vegetation type conversion. Examples include, but are not limited to:

(i) Planting seedlings of superior trees in a progeny test site to evaluate genetic worth, and

(ii) Planting trees or mechanical seed dispersal of native tree species following a fire, flood, or landslide.

(30) (USDA–30d–USFS) Timber stand and/or wildlife habitat improvement activities that do not include the use of herbicides or do not require more than 1 mile of low standard road construction. Examples include, but are not limited to:

(i) Girdling trees to create snags;

(ii) Thinning or brush control to improve growth or to reduce fire hazard including the opening of an existing road to a dense timber stand;

(iii) Prescribed burning to control understory hardwoods in stands of southern pine; and

(iv) Prescribed burning to reduce natural fuel build-up and improve plant vigor.

(31) (USDA–31d–USFS) Modification or maintenance of stream or lake aquatic habitat improvement structures using native materials or normal practices. Examples include, but are not limited to:

(i) Reconstructing a gabion with stone from a nearby source;

(ii) Adding brush to lake fish beds; and

(iii) Cleaning and resurfacing a fish ladder at a hydroelectric dam.

(32) (USDA–32d–USFS) Short-term (1 year or less) mineral, energy, or geophysical investigations and their incidental support activities that may require cross-country travel by vehicles and equipment, construction of less than 1 mile of low standard road, or use and minor repair of existing roads. Examples include, but are not limited to:

(i) Authorizing geophysical investigations which use existing roads that may require incidental repair to reach sites for drilling core holes, temperature gradient holes, or seismic shot holes;

(ii) Gathering geophysical data using shot hole, vibroseis, or surface charge methods;

(iii) Trenching to obtain evidence of mineralization;

(iv) Clearing vegetation for sight paths or from areas used for investigation or support facilities;

(v) Redesigning or rearranging surface facilities within an approved site;

(vi) Approving interim and final site restoration measures; and

(vii) Approving a plan for exploration which authorizes repair of an existing road and the construction of 1–3 mile of temporary road; clearing vegetation from an acre of land for trenches, drill pads, or support facilities.

(33) (USDA–33d–USFS) Implementation or modification of minor management practices to improve allotment condition or animal distribution. Examples include, but are not limited to:

(i) Rebuilding a fence to improve animal distribution;

(ii) Adding a stock watering facility to an existing water line; and

(iii) Spot seeding native species of grass or applying lime to maintain forage condition.

(34) (USDA–34d–USFS) Post-fire rehabilitation activities, not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds), to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities:

(i) Shall be conducted consistent with Agency and departmental procedures and applicable land and resource management plans;

(ii) Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and

(iii) Shall be completed within 3 years following a wildland fire.

(35) (USDA–35d–USFS) Harvest of live trees not to exceed 70 acres, requiring no more than ½ mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Removal of individual trees for sawlogs, specialty products, or fuelwood, and

(ii) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.

(36) (USDA–36d–USFS) Salvage of dead and/or dying trees not to exceed 250 acres, requiring no more than ½ mile of temporary road construction.

The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees, and

(ii) Harvest of fire-damaged trees.

(37) (USDA–37d–USFS) Commercial and non-commercial sanitation harvest of trees to control insects or disease not to exceed 250 acres, requiring no more than ½ mile of temporary road construction, including removal of infested/infected trees and adjacent live uninfested/uninfected trees as determined necessary to control the spread of insects or disease. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include, but are not limited to:

(i) Felling and harvest of trees infested with southern pine beetles and immediately adjacent uninfested trees to control expanding spot infestations, and

(ii) Removal and/or destruction of infested trees affected by a new exotic insect or disease, such as emerald ash borer, Asian long horned beetle, and sudden oak death pathogen.

(38) (USDA–38d–USFS) Land management plans, plan amendments, and plan revisions developed in accordance with 36 CFR part 219 *et seq.* that provide broad guidance and information for project and activity decision-making in a NFS unit. (The plan approval document required by 36 CFR part 219 satisfies the documentation requirement for this categorical exclusion.) Proposals for actions that approve projects and activities, or that command anyone to refrain from undertaking projects and activities, or that grant, withhold or modify contracts, permits or other formal legal instruments, are outside the scope of this category and shall be considered separately under USDA NEPA procedures.

(39) (USDA–39d–USFS) Approval of a Surface Use Plan of Operations for oil and natural gas exploration and initial development activities, associated with or adjacent to a new oil and/or gas field or area, so long as the approval will not authorize activities in excess of any of the following:

(i) One mile of new road construction;

(ii) One mile of road reconstruction;

(iii) Three miles of individual or co-located pipelines and/or utilities disturbance; or

(iv) Four drill sites.

(40) (USDA–40d–USFS) Restoring wetlands, streams, riparian areas or other water bodies by removing, replacing, or modifying water control structures such as, but not limited to, dams, levees, dikes, ditches, culverts, pipes, drainage tiles, valves, gates, and fencing, to allow waters to flow into natural channels and floodplains and restore natural flow regimes to the extent practicable where valid existing rights or special use authorizations are not unilaterally altered or canceled. Examples include but are not limited to:

(i) Repairing an existing water control structure that is no longer functioning properly with minimal dredging, excavation, or placement of fill, and does not involve releasing hazardous substances;

(ii) Installing a newly-designed structure that replaces an existing culvert to improve aquatic organism passage and prevent resource and property damage where the road or trail maintenance level does not change;

(iii) Removing a culvert and installing a bridge to improve aquatic and/or terrestrial organism passage or prevent resource or property damage where the road or trail maintenance level does not change; and

(iv) Removing a small earthen and rock fill dam with a low hazard potential classification that is no longer needed.

(41) (USDA–41d–USFS) Removing and/or relocating debris and sediment following disturbance events (such as floods, hurricanes, tornados, mechanical/engineering failures, etc.) to restore uplands, wetlands, or riparian systems to pre-disturbance conditions, to the extent practicable, such that site conditions will not impede or negatively alter natural processes. Examples include but are not limited to:

(i) Removing an unstable debris jam on a river following a flood event and

relocating it back in the floodplain and stream channel to restore water flow and local bank stability;

(ii) Clean-up and removal of infrastructure flood debris, such as, benches, tables, outhouses, concrete, culverts, and asphalt following a hurricane from a stream reach and adjacent wetland area; and

(iii) Stabilizing stream banks and associated stabilization structures to reduce erosion through bioengineering techniques following a flood event, including the use of living and nonliving plant materials in combination with natural and synthetic support materials, such as rocks, riprap, geo-textiles, for slope stabilization, erosion reduction, and vegetative establishment and establishment of appropriate plant communities (bank shaping and planting, brush mattresses, log, root wad, and boulder stabilization methods).

(42) (USDA–42d–USFS) Activities that restore, rehabilitate, or stabilize lands occupied by roads and trails, including unauthorized roads and trails and National Forest System (NFS) roads and NFS trails, to a more natural condition that may include removing, replacing, or modifying drainage structures and ditches, reestablishing vegetation, reshaping natural contours and slopes, reestablishing drainageways, or other activities that would restore site productivity and reduce environmental impacts. Examples include but are not limited to:

(i) Decommissioning a road to a more natural state by restoring natural contours and removing construction fills, loosening compacted soils, revegetating the roadbed and removing ditches and culverts to reestablish natural drainage patterns;

(ii) Restoring a trail to a natural state by reestablishing natural drainage patterns, stabilizing slopes, reestablishing vegetation, and installing water bars; and

(iii) Installing boulders, logs, and berms on a road segment to promote naturally regenerated grass, shrub, and tree growth.

(43) (USDA–43d–USFS) Construction, reconstruction, decommissioning, relocation, or disposal of buildings, infrastructure, or other improvements at an existing administrative site, as that term is defined in section 502(1) of Public Law 109–54 (119 Stat. 559; 16 U.S.C. 580d note). Examples include but are not limited to:

(i) Relocating an administrative facility to another existing administrative site;

(ii) Construction, reconstruction, or expansion of an office, a warehouse, a lab, a greenhouse, or a fire-fighting facility;

(iii) Surface or underground installation or decommissioning of water or waste disposal system infrastructure;

(iv) Disposal of an administrative building; and

(v) Construction or reconstruction of communications infrastructure.

(44) (USDA–44d–USFS) Construction, reconstruction, decommissioning, or disposal of buildings, infrastructure, or improvements at an existing recreation site, including infrastructure or improvements that are adjacent or connected to an existing recreation site and provide access or utilities for that site. Recreation sites include but are not limited to campgrounds and camping areas, picnic areas, day use areas, fishing sites, interpretive sites, visitor centers, trailheads, ski areas, and observation sites. Activities within this category are intended to apply to facilities located at recreation sites managed by the Forest Service and those managed by concessioners under a special use authorization. Examples include but are not limited to:

(i) Constructing, reconstructing, or expanding a toilet or shower facility;

(ii) Constructing or reconstructing a fishing pier, wildlife viewing platform, dock, or other constructed feature at a recreation site;

(iii) Installing or reconstructing a water or waste disposal system;

(iv) Constructing or reconstructing campsites;

(v) Disposal of facilities at a recreation site;

(vi) Constructing or reconstructing a boat landing;

(vii) Replacing a chair lift at a ski area;

(viii) Constructing or reconstructing a parking area or trailhead; and

(ix) Reconstructing or expanding a recreation rental cabin.

(45) (USDA–45d–USFS) Road management activities on up to 8 miles of National Forest System (NFS) roads and associated parking areas. Activities under this category cannot include construction or realignment. Examples include but are not limited to:

(i) Rehabilitating an NFS road or parking area where management activities go beyond repair and maintenance;

(ii) Shoulder-widening or other safety improvements within the right-of-way for an NFS road; and

(iii) Replacing a bridge along an NFS road.

(46) (USDA–46d–USFS) Construction and realignment of up to 2 miles of National Forest System (NFS) roads and associated parking areas. Examples include but are not limited to:

(i) Constructing an NFS road to improve access to a trailhead or parking area;

(ii) Rerouting an NFS road to minimize resource impacts; and

(iii) Improving or upgrading the surface of an NFS road to expand its capacity.

(47) (USDA–47d–USFS) Forest and grassland management activities with a primary purpose of meeting restoration objectives or increasing resilience. Activities to improve ecosystem health, resilience, and other watershed and habitat conditions may not exceed 2,800 acres.

(i) Activities to meet restoration and resilience objectives may include, but are not limited to:

(A) Stream restoration, aquatic organism passage rehabilitation, or erosion control;

(B) Invasive species control and reestablishment of native species;

(C) Prescribed burning;

(D) Reforestation;

(E) Road and/or trail decommissioning (system and non-system);

(F) Pruning;

(G) Vegetation thinning; and

(H) Timber harvesting.

(ii) The following requirements or limitations apply to this category:

(A) Projects shall be developed or refined through a collaborative process that includes multiple interested persons representing diverse interests;

(B) Vegetation thinning or timber harvesting activities shall be designed to achieve ecological restoration objectives, but shall not include salvage harvesting as defined in Agency policy; and

(C) Construction and reconstruction of permanent roads is limited to 0.5 miles. Construction of temporary roads is limited to 2.5 miles, and all temporary roads shall be decommissioned no later than 3 years after the date the project is completed. Projects may include repair and maintenance of National Forest System (NFS) roads and trails to prevent or address resource impacts; repair and maintenance of NFS roads and trails is not subject to the above mileage limits.

[90 FR 29646, July 3, 2025, as amended at 90 FR, July 18, 2025]

§ 1b.5 Environmental assessments.

(a) *Generally.* If an action is subject to NEPA, as determined following the policy in §1b.2(e), and unless a USDA subcomponent finds that the proposed action is excluded from having to prepare an environmental assessment or environmental impact statement pursuant to a categorical exclusion as determined following the policy in §1b.2(f), or by another provision of law, when USDA is the lead agency the USDA subcomponent will prepare an environmental assessment with respect to a proposed action that does not have a reasonably foreseeable significant impact on the quality of the human environment, or if the significance of such effect is unknown. USDA is mindful of Congress' direction that environmental assessments are to be ''concise'' and set forth the basis of the subcomponent's analysis to support, if appropriate, a finding of no significant impact (NEPA section 106(b)(2); 42 U.S.C. 4336(b)(2).

(b) *Scope of analysis.* (1) In preparing the environmental assessment, the USDA subcomponent will focus its analysis on whether the environmental effects of the proposed action (and action alternatives, if any) or project at hand are significant.

(2) Similarly, the USDA subcomponent will document in the environmental assessment where and how it drew a reasonable and manageable line

relating to its consideration of any environmental effects from the proposed action (and action alternatives, if any) or project at hand that extend outside the geographical territory of the proposal or might materialize later in time.

(3) To the extent it assists in reasoned decision-making, the USDA subcomponent may, but is not required to by NEPA, analyze environmental effects from other actions separate in time, or separate in place, or that fall outside of the USDA subcomponent's regulatory authority, or that would have to be initiated by a third party. If the USDA subcomponent determines that such analysis would assist it in reasoned decision-making, it will document this determination in the environmental assessment and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate actions.

(c) *Elements.* For the purpose of providing evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, USDA subcomponents may apply any format they choose for the environmental assessment, but shall address the following elements at a minimum:

(1) *Purpose and need for the proposal.* The purpose and need should generally be based on the USDA subcomponent's statutory authority. When a subcomponent's statutory duty is to review an application for authorization, the subcomponent may base the purpose and need on the goals of the applicant and the subcomponent's authority.

(2) *No action, proposed action, and alternatives (if any).* (i) No action may be listed as a stand-alone alternative but is not required. The consequences of taking no action, however, shall be included as part of the environmental impacts analysis to contrast the impacts of the proposed action, and any alternative(s) if developed, with the current condition and expected future condition if the proposed action or alternative were not implemented.

(ii) Alternatives may be included to the extent required by NEPA section 102(2)(H), 42 U.S.C. 4332(2)(H). When there are no unresolved conflicts concerning alternative uses of available resources, the environmental assessment need only analyze the proposed action and may proceed without consideration of additional alternatives.

(iii) Where conflicts have been resolved during development of the proposed action or during the environmental analysis process through iterative modifications to the proposed action—such as addition of design criteria for the proposed action, changing the activities proposed, or adjusting locations of where activities are proposed—this should be described in the environmental assessment as rationale for why additional alternatives were not developed.

(3) *Potentially affected environment and environmental impacts.* Succinctly describe the potentially affected environment that may be affected by the proposed action and alternatives (if any) under consideration. The environmental assessment may combine the potentially affected environment description with evaluation of the environmental consequences, and it should be no longer than is necessary to provide context for the effects of the proposed action and alternatives (if any). Briefly discuss the reasonably foreseeable environmental impacts of the proposed action and alternatives (if any) and provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact, taking into consideration the potential for reasonably foreseeable significant impacts as outlined in §1b.2(f)(3).

(4) *Agencies and persons consulted.* Provide a succinct list of agencies and persons consulted.

(5) *Other environmental reviews.* Briefly document determinations for compliance with other applicable laws or regulations, as deemed necessary by the responsible official. When effects analysis is completed to demonstrate compliance with other applicable environmental laws, regulations, or executive orders and already addresses a resource being considered for effects under NEPA (*e.g.,* analysis completed for Endangered Species Act, National Historic Preservation Act, Clean Water Act, etc.) and it is clear from that

analysis and compliance discussion that no reasonably foreseeable significant impact exists, the responsible official may rely on that analysis to inform their finding of no significant impact.

(6) *Certifying statements for page limit and deadline.* The responsible official shall certify the environmental assessment complies with the page limit and deadline required by NEPA. Certification statements shall apply the criteria in paragraphs (d)(4) and (h) of this section.

(d) *Page limits*—(1) *Length of text.* The text of an environmental assessment will not exceed 75 pages, not including citations or appendices.

(2) *Appendices.* Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the Congressionally mandated page limits.

(3) *Page formatting.* Environmental assessments shall be formatted for an 8.5 by 11 inches page with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5 by 11 inches, each such item will count as one page.

(4) *Certification related to page limits.* The breadth and depth of analysis in an environmental assessment will be tailored to ensure that the environmental analysis does not exceed this page limit. In this regard, as part of the finalization of the environmental assessment, a responsible official will certify (and the certification will be incorporated into the environmental assessment) that the USDA subcomponent has considered the factors mandated by NEPA; that the environmental assessment represents the subcomponent's good-faith effort to prioritize documentation of the substantive issues and most important considerations required by the Act within the congressionally mandated page limits; that this prioritization reflects the subcomponent's expert judgment; and that any issues or considerations addressed briefly or left unaddressed were, in the subcomponent's judgment, comparatively not of a substantive nature (see §1b.11(53) of this part).

(e) *Deadlines.* As the Supreme Court has repeatedly held, NEPA is governed by a ''rule of reason'' and Congress established deadlines for the environmental assessment process in the 2023 revision of NEPA (NEPA section 107(g), 42 U.S.C. 4336a(g)). Thus, USDA subcomponents will complete the environmental assessment not later than the date that is one (1) year after the sooner of, as applicable:

(1) The date on which such agency (or subcomponent) determines that NEPA section 106(b)(2), 42 U.S.C. 4336(b)(2) requires the preparation of an environmental assessment with respect to such action. For internally driven proposals, this determination should not be made until a proposed action is finalized and determined by the responsible official to be ready for interdisciplinary review. For externally-driven proposals (*e.g.*, applications) submitted to a USDA subcomponent which require preparation of an environmental assessment, the responsible official should not make a determination that an action requires the issuance of an environmental assessment until receiving an application the responsible official deems complete and final;

(2) The date on which such agency (or subcomponent) notifies the applicant that the application to establish a right-of-way for such action is complete; or

(3) The date on which such agency (or subcomponent) issues a notice of intent to prepare the environmental assessment for such action. If the subcomponent determines that it will prepare an environmental assessment for a proposed action, the subcomponent may publish notice of intent to publish an environmental assessment. Publication of a notice of intent in the FEDERAL

REGISTER for an environmental assessment should be the exception rather than the norm and should only be done for those proposals that are of a more complex scope or scale, such as proposals that are regional or national in scope or other instances for which there are numerous cooperating agencies, or interested or affected parties, given the scope of the actions or scale of the proposal.

(f) *Publication of the environmental assessment.* USDA subcomponents shall make the environmental assessment available to the public on a USDA website. At the time the environmental assessment is published on the website, it shall be considered complete and conclude the timeline for the environmental assessment. The USDA subcomponent will publish the environmental assessment (unless the deadline is extended pursuant to paragraph (g) of this section), at the latest, on the day the deadline elapses, in as substantially complete form as is possible.

(g) *Deadline extensions.* The deadlines described in paragraph (e) of this section indicate Congress' determination that an agency has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances an extension will be given only for such as time as is necessary to complete the analysis. If a USDA subcomponent determines it is not able to meet the deadline prescribed by NEPA section 107(g)(1)(B), 42 U.S.C. 4336a(g)(1)(B), it must consult with the applicant, if any, pursuant to NEPA section 107(g)(2), 42 U.S.C. 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new deadline. If an extension is approved, the new deadline will be documented in writing and included in the proposal record. The documentation of the new deadline will specify the reason why the environmental assessment was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline. The responsible official should consider if other agencies or persons consulted as part of preparing the environmental assessment need to be notified of the change in the deadline.

(1) Cause for establishing a new deadline is only established if the environmental assessment is so incomplete, at the time at which the USDA subcomponent determines it is not able to meet the statutory deadline, that publication pursuant to paragraph (f) of this section would, in the responsible official's judgment, result in an inadequate analysis that does not meaningfully inform the responsible official's final decision regarding the proposed action or selected alternative (if applicable). Such new deadline must provide only so much additional time as is necessary to complete such environmental assessment.

(2) USDA subcomponents shall coordinate with the USDA Senior Agency Official (Undersecretary of Natural Resources and Environment), or the applicable mission area Under Secretary or other USDA official with delegated authority, prior to extending the deadline for an environmental assessment, in accordance with §1b.2(b)(5)(iv).

(h) *Certification Related to Deadline.* When the environmental assessment (EA) is published, the responsible official will certify (and the certification will be incorporated into the environmental assessment) that the resulting EA represents the USDA subcomponent's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; that, in the subcomponent's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the responsible official's judgment, the analysis contained therein is adequate to inform and reasonably explain the responsible official's finding regarding the proposed action or selected alternative.

§ 1b.6 Finding of no significant impact.

(a) *General.* When a USDA subcomponent is the lead agency, it will prepare a finding of no significant impact if the subcomponent determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action or selected alternative, or project at hand, will not have a reasonably foreseeable significant impact on the quality of the human environment. When it

will not prevent the USDA subcomponent from meeting the deadline in §1b.5(e), the finding of no significant impact may be prepared in conjunction with the environmental assessment and included in the same document and will not count towards the page limits in §1b.5(d).

(b) *Elements.* USDA subcomponents may apply any format they choose for the FONSI, but shall address the following elements at a minimum:

(1) Incorporate by reference the environmental assessment and note any other documentation related to it, such as documentation contained in the proposal record. The finding need not repeat any of the discussion in the environmental assessment;

(2) Include a statement of the selected alternative if other alternatives were considered and analyzed in detail in addition to the proposed action;

(3) Document the reasons why the responsible official has determined that the proposed action or selected alternative will not have a reasonably foreseeable significant impact on the quality of the human environment, based on analysis and evidence provided in the environmental assessment, and conclude with a statement that for these reasons an environmental impact statement will not be prepared. If the responsible official finds no significant impacts based on mitigation, state the authority for any mitigation that the responsible official has adopted and any applicable monitoring or enforcement provisions. If the responsible official finds no significant effects based on mitigation, the mitigated finding of no significant impact will state any mitigation requirements enforceable by the subcomponent or voluntary mitigation commitments that will be undertaken to avoid significant effects, and any applicable monitoring or enforcement provisions.

(4) A statement regarding when implementation of the action is anticipated to begin; and

(5) Include the date issued and the signature of the responsible official.

(c) *Other documentation consideration.* If a statute or regulation explicitly requires a decision document to approve actions analyzed in an environmental assessment, the finding of no significant impact can be retitled to indicate its function as a decision document.

(d) *Publication of the finding of no significant impact (FONSI).* When the FONSI is not included in the same document as the environmental assessment, as permitted in paragraph (a) of this section, the USDA subcomponents shall make the FONSI available to the public on the USDA website where the environmental assessment is published.

(e) *Notification.* The responsible official shall notify any agencies or persons consulted, as identified in the environmental assessment, that the FONSI is available. Notification shall be in the manner of communication used to consult with the agency or person.

(f) *Timing of action.* Once the USDA subcomponent has published the FONSI on the USDA website and provided necessary notifications (as required in paragraph (e) of this section), and unless other statutes or regulations require otherwise, the USDA subcomponent or applicant may begin implementing the action.

§1b.7 Environmental impact statements.

(a) *Generally.* A USDA subcomponent will prepare an environmental impact statement only with respect to proposed actions that otherwise require preparation of an environmental document and that have a reasonably foreseeable significant impact on the quality of the human environment (NEPA section 106(b)(1); 42 U.S.C. 4336(b)(1)). Whether an action rises to the level of significant is a matter of the responsible official's expert judgment, as informed by interdisciplinary analysis. Environmental impact statements will discuss effects in proportion to their reasonably foreseeable significance. With respect to issues that are not of a substantive nature (see §1b.11(53)) there will be no more than the briefest possible discussion to explain why those issues are not substantive and therefore not deemed necessary, at the sole discretion of the responsible official, of any further analysis. Environmental impact statements will be analytic, concise, and no longer than necessary to comply with NEPA in light of

the congressionally mandated page limits and deadlines.

(b) *Notice of intent.* As soon as practicable after determining that a proposal is sufficiently developed to allow for meaningful public comment and requires an environmental impact statement, when a USDA subcomponent is the lead agency it will publish a notice of intent in the FEDERAL REGISTER to prepare an environmental impact statement. Where there is a lengthy delay between the USDA subcomponent's decision to prepare an environmental impact statement and the time of actual preparation, the subcomponent may publish the notice of intent at a reasonable time in advance of preparation of the statement.

(1) The notice of intent to publish an environmental impact statement shall include:

(i) The purpose and need for the proposed action;

(ii) A preliminary description of the proposed action and any known alternatives the environmental impact statement will consider;

(iii) A preliminary list of substantive issues to be analyzed in detail, with a brief summary of expected impacts for each issue;

(iv) Anticipated permits and other authorizations (*i.e.*, anticipated related actions);

(v) A schedule for the decision-making process;

(vi) A description of the public scoping process, if any, including any scoping meeting(s);

(vii) Identification of any cooperating and participating agencies (*i.e.*, agencies responsible for related actions), and any information that such agencies require in the notice to facilitate their decisions or authorizations;

(viii) a request for public comment on alternatives or effects and on relevant information, studies, or analyses with respect to the proposal (NEPA section 107(c); 42 U.S.C. 4336a(c));

(ix) A link to the website where additional information about the proposal can be found, to include publication of the environmental impact statement and record of decision, as required by paragraph (n) of this section and §1b.8(c); and

(x) Contact information for a person within the lead agency who can answer questions about the proposed action and the environmental impact statement.

(2) A USDA subcomponent may publish a notice in the FEDERAL REGISTER to inform the public of a pause in its preparation of an environmental impact statement.

(3) USDA subcomponents shall publish a notice of intent in the FEDERAL REGISTER if a decision is made to withdraw the intent to complete an environmental impact statement, or to withdraw an environmental impact statement already filed with the Environmental Protection Agency (see paragraph (o) of this section).

(c) *Scoping.* When a USDA subcomponent is the lead agency, the subcomponent may use an early and open process to determine the scope of issues and alternatives for analysis in an environmental impact statement, including identifying substantive issues (see §1b.11(23) and (53)) and eliminating from further study non-substantive issues and action alternatives that are not technically or economically feasible or do not meet the purpose and need of the proposal (NEPA section 102(2)(C)(iii), 42 U.S.C. 4332(2)(C)(iii)). Scoping may begin as soon as practicable after the proposal is sufficiently developed for consideration. Scoping may include appropriate preapplication procedures or work conducted prior to publication of the notice of intent. Scoping is not a statutorily required step in the NEPA review procedures and there is no prescribed process or procedure required for scoping. If a USDA subcomponent is the lead agency, and the responsible official chooses to apply a scoping process, the subcomponent may, as appropriate:

(1) Invite the participation of likely affected Federal, State, Tribal, and local agencies and governments, the applicant, and other likely affected or interested persons;

(2) Hold a scoping meeting or meetings, publish scoping information, or use other means to communicate with those persons or agencies who may be

interested or affected, which the subcomponent may integrate with any other early planning meeting; and

(3) Take responsibility for the following:

(i) Allocate assignments for preparation of the environmental impact statement when there are joint and/or cooperating agencies, with the lead agency retaining responsibility for the statement;

(ii) Identify and eliminate from detailed study the issues that are not substantive or have been covered by prior environmental review(s), narrowing the discussion of these issues in the environmental impact statement to a brief presentation of why they are not of a substantive nature that meaningfully informed the consideration of environmental effects and the resulting decision on how to proceed;

(iii) Identify and eliminate from detailed study action alternatives that are not technically or economically feasible or do not meet the purpose and need of the proposal (NEPA section 102(2)(C)(iii), 42 U.S.C. 4332(2)(C)(iii));

(iv) Indicate any public environmental assessments and other environmental impact statements that are being or will be prepared and are related to, but are not part of, the scope of the impact statement under consideration;

(v) Identify other environmental review, authorization, and consultation requirements to allow for other required analyses and studies to be prepared concurrently and integrated with the environmental impact statement and ensure any joint and/or cooperating agencies have shared understanding of their role in meeting these requirements;

(vi) Indicate the relationship between the timing of the preparation of the environmental impact statement and the subcomponent's (or agencies') tentative planning and decision-making schedule; and

(vii) Specify the USDA website where additional information will be provided as the environmental impact statement is developed.

(d) *Requesting comments.* During the process of preparing an environmental impact statement, when a USDA subcomponent is the lead agency, it:

(1) Will request the comments of (NEPA section 102(2)(C), 42 U.S.C. 4332(2)(C)):

(i) Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact resulting from the proposed action (or action alternatives), or project at hand, or is authorized to develop and enforce environmental standards that govern the proposed action (or action alternatives), or project at hand; and

(ii) Appropriate State, Tribal, and local agencies that are authorized to develop and enforce environmental standards.

(2) May request the comments of:

(i) State, Tribal, or local governments that may be affected by the proposed action;

(ii) Any agency that has requested it receive statements on actions of the kind proposed;

(iii) The applicant, if any; and

(iv) The public, including by affirmatively soliciting comments in a manner designed to inform those persons or organizations who may be interested in or affected by the proposed action or action alternatives.

(3) The process of obtaining and requesting comments may be undertaken at any time that is determined reasonable by the responsible official in the process of preparing the environmental impact statement.

(4) The USDA subcomponent shall ensure that the process of obtaining and requesting comments, and the responsible official's subsequent consideration of those comments (as outlined in paragraph (f) of this section), does not cause the subcomponent to violate the congressionally mandated deadline for completion of an environmental impact statement, as specified in paragraph (k) of this section.

(e) *Electronic submission and publication of comments.* USDA subcomponents shall:

(1) Provide for electronic submission of comments.

(2) Electronically publish all substantive comments received on an environmental impact statement, including those received in response to the notice of intent to prepare an environmental impact statement, or any other opportunities for comment. If a USDA

subcomponent does not have the capability or capacity to publish substantive comments electronically, the subcomponent shall include a summary of substantive comments received, including those received in response to the notice of intent publication or any other opportunities for comment, as an appendix in the environmental impact statement.

(f) *Considering and addressing substantive comments.* A USDA subcomponent preparing an environmental impact statement:

(1) Shall consider and should address in writing comments that raise substantive issues and/or recommendations.

(i) Comments shall be analyzed to determine substantive issues raised (see §1b.11(23) and (53)) and, if applicable, recommendations made to remedy the issues.

(ii) Multiple comments regarding the same or similar substantive issues and/or recommendations may be grouped and paraphrased as one issue or recommendation. The USDA subcomponent need not address every comment individually. Rather, the manner and degree to which comments should be addressed should be commensurate with the degree to which the comments raise issues and/or recommendations that have bearing on the proposed action, development of alternatives, or analysis of the reasonably foreseeable significant impacts of the proposed action or alternatives.

(2) When addressing in writing substantive issues raised and/or recommendations made, documentation should focus on identifying the action the responsible official took in response to the issue and/or recommendation. The action taken in response to a substantive issue or recommendation may include:

(i) Modifying alternatives, including the proposed action;

(ii) Developing and evaluating alternatives not previously given serious consideration by the subcomponent;

(iii) Supplementing, improving, or modifying analyses;

(iv) Consideration of science or literature not previously considered, if the commenter clearly identifies cause-and-effect issues relating the literature to the environmental analysis;

(v) Making factual corrections; or

(vi) No action needed. The USDA subcomponent may provide brief rationale for taking no action, such as: the comment is outside the scope of what is being proposed; there is no cause-effect relationship between the actions the subcomponent is proposing and the issue raised and/or recommendation made; the commenter misinterpreted the information provided; or the recommendation made does not comply with applicable laws or regulations and/or is not feasible to implement (technically or economically) or does not meet the purpose and need of the proposal, etc.

(3) Where action was taken and when substantive issues and recommendations are addressed in writing, the USDA subcomponent should, where feasible, cite to where in the environmental impact statement or supporting proposal record the indicated action taken is accounted for.

(4) The USDA subcomponent's documentation of how substantive issues and recommendations were addressed should be included as an appendix in the environmental impact statement when this will not prevent the subcomponent from publishing the environmental impact statement within the deadlines specified in paragraph (k) of this section.

(g) *Scope of analysis.* (1) In preparing the environmental impact statement, the USDA subcomponent will focus its analysis on whether the environmental effects of the proposed action and action alternatives, or project at hand, are significant.

(2) Similarly, the USDA subcomponent will document in the environmental impact statement where and how it drew a reasonable and manageable line relating to its consideration of any environmental effects from the proposed action and action alternatives, or project at hand, that extend outside the geographical territory of the proposal or might materialize later in time.

(3) To the extent it assists in reasoned decision-making, the USDA subcomponent may, but is not required to

by NEPA, analyze environmental effects from other actions separate in time, or separate in place, or that fall outside of the USDA subcomponent's regulatory authority, or that would have to be initiated by a third party. If the USDA subcomponent determines that such analysis would assist it in reasoned decision-making, it will document this determination in the environmental impact statement and explain where it drew a reasonable and manageable line relating to the consideration of such effects from such separate actions.

(h) *Elements.* Environmental impact statements shall state the alternatives considered and disclose the difference in anticipated effects between alternatives. USDA subcomponents may apply any format they choose for the environmental impact statement, but shall address the following elements at a minimum:

(1) *Cover.* The cover shall not exceed two pages, front and back, and should include the following to convey necessary information associated with the proposal:

(i) The title of the proposal that is the subject of the statement;

(ii) A list of the responsible agencies, including the lead agency and any joint or cooperating agencies. Where the number of cooperating agencies is excessive, the list need only include the types of agencies participating as cooperating agencies;

(iii) Specification of where the action is located, such as the State(s), county(ies), or other applicable jurisdiction(s); and

(iv) The name, mailing address, email address, and telephone number of the person at the lead agency who can supply further information about the proposal.

(2) *Purpose and need for the proposal.* The purpose and need should generally be based on the USDA subcomponent's statutory authority. When a USDA subcomponent's statutory duty is to review an application for authorization, the subcomponent may base the purpose and need on the goals of the applicant and the subcomponent's authority.

(3) *Proposed action and alternatives* (NEPA sections 102(2)(C)(iii) and 102(2)(E), 42 U.S.C. 4332(2)(C)(iii) and (2)(E)). The alternatives section should list the no action alternative and describe the proposed action and the action alternatives in comparative form based on the difference in scope and scale of the activities proposed. Negative environmental impacts of not implementing the proposed action may be discussed in this section of the environmental impact statement or in conjunction with environmental impacts, as specified in paragraph (h)(5)(iv) of this section. In this section, USDA subcomponents shall:

(i) Evaluate a reasonable range of alternatives, in addition to the proposed action. Alternatives analyzed in detail must be technically and economically feasible and meet the purpose and need of the proposal (NEPA section 102(2)(C)(iii), 42 U.S.C. 4332(2)(C)(iii));

(ii) Not commit resources prejudicing selection of alternatives before making a final decision;

(iii) Briefly discuss the reasons the subcomponent eliminated alternatives from detailed study; and

(iv) Discuss each alternative considered in detail, including the proposed action, so that the responsible official may evaluate their comparative merits.

(4) *Potentially affected environment.* Succinctly describe the environment of the area(s) that may potentially be affected by the alternatives under consideration. The environmental impact statement may combine the potentially affected environment description with evaluation of the environmental consequences, and it should be no longer than is necessary to provide context for the effects of the alternatives.

(5) *Environmental impacts.* The environmental impacts section forms the scientific and analytic basis for the comparisons under subparagraph (3) above. It shall consolidate the discussions of those elements required by NEPA sections 102(2)(C)(i), (ii), (iv), and (v), 42 U.S.C. 4332(2)(C)(i)(ii)(iv) and (v), and that are within the scope of the statement and as much of section 102(2)(C)(iii) of NEPA, section 4332(2)(C)(iii), as is necessary to support the comparisons. This section

should not duplicate discussions outlined in paragraph (h)(3) of this section. When conducting analysis and documenting determinations for compliance with other applicable environmental laws, regulations, or executive orders (*e.g.*, analysis completed for Endangered Species Act, National Historic Preservation Act, Clean Water Act, etc.), as deemed necessary by the responsible official, that analysis may be relied on to inform discussions of significance in the environmental impact statement. The discussion shall include:

(i) Reasonably foreseeable environmental impacts of the proposed action and alternatives;

(ii) Any means identified to reduce adverse environmental effects, such as design criteria included in the proposed action or action alternatives;

(iii) Any reasonably foreseeable adverse environmental impacts which cannot be avoided should the proposed action or alternatives be implemented;

(iv) Consequences of taking no action to contrast the impacts of the proposed action and alternatives with the current condition and expected future condition if the proposed action or alternative were not implemented;

(v) Any adverse environmental impacts or consequences of not implementing the proposed action or alternatives;

(vi) Any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed action, or an action alternative, should it be implemented; and

(vii) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

(6) *Environmental review and consultation requirements, to include a list of agencies and persons consulted.* The environmental impact statement shall document compliance with other applicable laws or regulations, as deemed necessary by the responsible official, and list all Federal permits, licenses, and other authorizations that must be obtained in implementing the proposed action. If it is uncertain whether a Federal permit, license, or other authorization is necessary, the environmental impact statement shall so indicate. Provide a succinct list of agencies and persons consulted.

(7) *Appendices (if any).* (i) Appendices in the environmental impact statement may consist of:

(A) Material prepared in connection with an environmental impact statement (as distinct from material that is not incorporated by reference);

(B) Material substantiating any analysis fundamental to the environmental impact statement; and

(C) Material relevant to the decision to be made.

(ii) See paragraph (e) of this section regarding the need to provide a summary of comments received in response to the publication of the notice of intent, or any other opportunities for public comment, as an appendix in the environmental impact statement if comments cannot be electronically published.

(iii) See paragraph (f)(4) regarding the recommendation to provide documentation of how comments were addressed as an appendix in the environmental impact statement.

(iv) Appendices are to be used for voluminous materials, such as scientific tables, collections of data, statistical calculations, and the like, which substantiate the analysis provided in the environmental assessment. Appendices are not to be used to provide additional substantive analysis, because that would circumvent the Congressionally mandated page limits.

(8) *Certifying statements for page limit and deadline.* The responsible official shall certify the environmental impact statement complies with the page limit and deadline required by NEPA. Certification statements shall apply the criteria in paragraphs (j) and (m) of this section.

(i) *Page limits.* Except as provided in paragraph (i)(1) of this section, the text of an environmental impact statement will not exceed 150 pages, not including citations or appendices.

(1) An environmental impact statement for a proposal of extraordinary complexity will not exceed 300 pages, not including any citations or appendices.

(2) USDA subcomponents shall coordinate with the USDA Senior Agency

Official (Undersecretary of Natural Resources and Environment), or the applicable mission area Under Secretary or other USDA official with delegated authority, prior to determining that an environmental impact statement is of extraordinary complexity.

(3) Environmental impact statements shall be prepared on 8.5 inch by 11-inch paper with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information, although pages containing such material do count towards the page limit. When an item of graphical material is larger than 8.5 by 11 inches, each such item shall count as one page.

(j) *Certification related to page limits.* The breadth and depth of analysis in an environmental impact statement will be tailored to ensure that the environmental analysis does not exceed the page limit. In this regard, as part of the finalization of the environmental impact statement, a responsible official will certify (and the certification will be incorporated into the environmental impact statement) that the USDA subcomponent has considered the factors mandated by NEPA; that the environmental impact statement represents the subcomponent's good-faith effort to prioritize documentation of the substantive issues and most important considerations required by the Act within the congressionally mandated page limits; that this prioritization reflects the subcomponent's expert judgment; and that any issues or considerations addressed briefly or left unaddressed were, in the subcomponent's judgment, comparatively not of a substantive nature (see §1b.11(53)).

(k) *Deadlines.* As the Supreme Court has repeatedly held, NEPA is governed by a ''rule of reason'' and Congress established deadlines for the environmental impact statement process in the 2023 revision of NEPA (NEPA section 107(g), 42 U.S.C. 4336a(g)). A USDA subcomponent will complete the environmental impact statement not later than the date that is 2 years after the sooner of, as applicable:

(1) The date on which the subcomponent determines that section 102(2)(C) requires the issuance of an environmental impact statement with respect to such action. For internally driven proposals, this determination should not be made until a proposed action is finalized and determined by the responsible official to be ready for interdisciplinary review. For externally-driven proposals (*e.g.*, applications) to a USDA subcomponent which require preparation of an environmental impact statement, the responsible official should not make a determination that an action requires the issuance of an environmental impact statement until receiving an application the responsible official deems complete and final.

(2) The date on which the subcomponent notifies the applicant that the application to establish a right-of-way for such action is complete; or

(3) The date on which the subcomponent issues a notice of intent to prepare the environmental impact statement for such action.

(l) *End of deadline.* The environmental impact statement will be considered complete at the time it is published on a USDA website and is not indicated to be a draft. The USDA subcomponent will publish the environmental impact statement (unless the deadline is extended pursuant to paragraph (l)(1) of this section) on the day the deadline elapses, in as substantially complete form as is possible.

(1) *Deadline extensions.* The deadlines described in paragraph (k) of this section indicate Congress' determination that an agency has presumptively spent a reasonable amount of time on analysis and the document should issue, absent very unusual circumstances. In such circumstances, an extension will be given only for such as time as is necessary to complete the analysis. If a USDA subcomponent determines it is not able to meet the deadline prescribed by NEPA section 107(g)(1)(A), 42 U.S.C. 4336a(g)(1)(A), it must consult with the applicant, if any, pursuant to NEPA section 107(g)(2), 42 U.S.C. 4336a(g)(2). After such consultation, if needed, and for cause stated, it may establish a new

deadline by getting approval from the USDA official delegated authority for extending deadlines as specified in 1b.2(b)(2)(iv). If an extension is approved, the new deadline will be documented in writing and included in the proposal record. The documentation of the new deadline will specify the reason why the environmental impact statement was not able to be completed under the statutory deadline and whether the applicant consented to the new deadline. The documentation for extending an environmental impact statement deadline shall be posted on the USDA website specified in the notice of intent to prepare an environmental impact statement. The responsible official should consider if other agencies or persons consulted as part of preparing the environmental impact statement need to be notified of the change in the deadline.

(2) *Cause for deadline extension.* Cause for establishing a new deadline is only established if the environmental impact statement is so incomplete, at the time at which the USDA subcomponent determines it is not able to meet the statutory deadline, that issuance pursuant to paragraph (l) of this section would, in the responsible official's judgment, result in an inadequate analysis that does not meaningfully inform the responsible official's final decision regarding the proposed action or selected alternative. Such new deadline must provide only so much additional time as is necessary to complete such environmental impact statement.

(m) *Certification related to deadlines.* When the environmental impact statement is published, a responsible official will certify (and the certification will be incorporated into the environmental impact statement) that the resulting environmental impact statement represents the USDA subcomponent's good-faith effort to fulfill NEPA's requirements within the Congressional timeline; that such effort is substantially complete; and that, in the subcomponent's expert opinion, it has thoroughly considered the factors mandated by NEPA; and that, in the responsible official's judgment, the analysis contained therein is adequate to inform and reasonably explain the responsible official's final decision regarding the proposed action or selected alternative.

(n) *Publishing the environmental impact statement.* (1) During the process of preparing the environmental impact statement, a responsible official may choose to publish a draft environmental impact statement and any other pre-decisional materials that, in their judgment, may assist in fulfilling their responsibilities under NEPA and in facilitating the request for comments. Any draft environmental impact statement will be published to the USDA website that was specified in the notice of intent to prepare an environmental impact statement and will not be filed with the Environmental Protection Agency until such time it is considered complete. The responsible official shall ensure that the process of publishing a draft environmental impact statement does not cause the subcomponent to violate the congressionally mandated deadline for completion of an environmental impact statement as specified in paragraph (k) of this section.

(2) If the responsible official does not publish a draft environmental impact statement, they will publish the completed environmental impact statement to the USDA website that was specified in the notice of intent to prepare an environmental impact statement. The same version published to the USDA website must also be filed with the Environmental Protection Agency in accordance with the provision at paragraph (o) of this section.

(o) *Filing the environmental impact statement.* USDA subcomponents shall file completed environmental impact statements with the Environmental Protection Agency (EPA), Office of Federal Activities, consistent with EPA's procedures. Subcomponents may file environmental impact statements with the EPA at the same time they are transmitted to participating agencies and made available to the public. When the record of decision is included in the same document as the environmental impact statement, as permitted in paragraph (a) of §1b.8, it shall also be filed.

§ 1b.8 Records of decision.

(a) *General.* Upon completing the environmental impact statement, at the time of its decision a USDA subcomponent, if the lead agency, shall prepare and publish a record of decision or joint record of decision. When it will not prevent the USDA subcomponent from meeting the deadline in §1b.7(k), the record of decision may be prepared in conjunction with the environmental impact statement and included in the same document and will not count towards the page limits in §1b.7(i). When including the record of decision in the environmental impact statement (EIS), the EIS cover page should be updated to reflect the document also includes the record of decision.

(b) *Elements.* USDA subcomponents may apply any format they choose for the record of decision, but shall address the following elements at a minimum:

(1) Incorporate by reference the environmental impact statement and note any other documentation related to it, such as documentation contained in the proposal record. The record of decision need not repeat any of the discussion in the environmental impact statement;

(2) Certify that the subcomponent has considered all the substantive alternatives, information, and analyses submitted by State, Tribal, and local governments and public commenters for consideration by the lead and cooperating agencies in developing the environmental impact statement;

(3) State the decision, that is, the alternative selected;

(4) Provide explanation on how the responsible official considered significance, in accordance with §1b.2(f)(3), relative to the alternatives described in the environmental impact statement;

(5) Identify and discuss all such factors, including any essential considerations of national policy, that the responsible official balanced in making the decision and state how those considerations informed the decision. The discussion may include preferences among alternatives based on other relevant factors, such as environmentally preferable, economic and technical feasibility considerations, and subcomponent statutory missions;

(6) State any means identified to mitigate adverse environmental effects of the proposed action or selected alternative. The responsible official is mindful in this respect that NEPA imposes no substantive environmental obligations or restrictions and does not require or authorize the subcomponent to impose any mitigation measures. The subcomponent shall adopt and summarize, where applicable, a monitoring and enforcement program for any enforceable mitigation requirements or commitments;

(7) A statement regarding when implementation of the action is anticipated to begin; and

(8) Include the date issued and the signature of the responsible official.

(c) *Publication of the ROD.* When the ROD is not included in the same document as the environmental impact statement, as permitted in paragraph (a) of this section, USDA subcomponents shall make the record of decision available to the public on the USDA website that was specified in the notice of intent to prepare an environmental impact statement.

(d) *Notification.* The responsible official shall notify any agencies or persons consulted, as listed in the environmental impact statement, and any parties that submitted comments during in response to publication of the notice of intent or any other opportunities for comment on the environmental impact statement, that the record of decision has been signed and is available on a USDA website. Notification shall be in the manner of communication used to consult with the agency, person, or party.

(e) *Timing of action.* The Environmental Protection Agency publishes a notice of availability in the FEDERAL REGISTER each week of the environmental impact statements filed since its prior notice. Once the Environmental Protection Agency publishes the notice of availability in the FEDERAL REGISTER for the environmental impact statement filed by the USDA subcomponent and the subcomponent has published the record of decision on a USDA website and provided necessary notifications (as required in

paragraph (d) of this section), and unless other statutes or regulations require otherwise, the USDA subcomponent or applicant may begin implementing the action.

§ 1b.9 Efficient and effective environmental reviews.

(a) *Proposal Record.* Upon determining NEPA applies and an environmental document must be developed, USDA subcomponents should begin compiling the proposal record early in the process. The proposal record should be maintained throughout the NEPA process to ensure the responsible official has all necessary information available on which they base iterative decisions during the NEPA process, required findings and determinations (to include those required for other applicable laws or regulations), and approval of the action. The proposal record should include the following:

(1) Internal communications that contain substantive information demonstrating why the responsible official proceeded the way it did, to include briefing papers, presentations, emails, or other documented communications that capture rationale and decisions made at key points in the NEPA process;

(2) Necessary documentation generated by applicants or contractors, where documentation is determined not to be a potentially privileged information (see paragraph (c) of this section);

(3) Technical information, to include sampling results, survey information, engineering reports, applicable resource and program assessments, maps, etc.;

(4) Cost-benefit analysis if completed, as well as any technical or feasibility studies completed to inform development of the proposed action or action alternatives;

(5) External communications that contain substantive information about the proposal, to include a notice of intent to prepare an environmental impact statement and other such documents that invite feedback from the public or other external parties, and consultation communications with regulatory agencies and tribes (where information is not determined to be a potential withholding or privileged, as specified in paragraph (c) of this section);

(6) Comments or other submissions received from external parties or the public, as well as documentation, if any, of how substantive issues raised and/or recommendations made were considered and the action taken;

(7) Draft versions of any documents circulated externally for comment or review;

(8) Documents containing guidance or information that the USDA subcomponent relied on when developing the proposed action (or action alternatives) or conducting analysis, to include literature and scientific papers;

(9) Environmental documents, to include updated or supplemental versions when applicable, as specified in paragraph (r) of this section;

(10) Finding and determination documents, as well as decision documents; and

(11) Any other information deemed applicable by the responsible official.

(b) *Freedom of Information Act requests.* USDA subcomponents shall make documents associated with the NEPA review and integrated environmental review, comments received, and any other underlying documents available pursuant to the provisions of the Freedom of Information Act, as amended (5 U.S.C. 552), and in accordance with the subcomponent's statutory authority for protecting certain information.

(c) *Potential withholdings and privileges.* USDA subcomponents shall identify data or information with potential withholdings or privileges—such as potentially sensitive information about threatened or endangered species locations, cultural or heritage sites when certain conditions are met, third-party proprietary information, or personally identifiable information—and mark it as such in the proposal record to ensure it is properly reviewed prior to responding to Freedom of Information Act requests or other such requests for documentation regarding the NEPA process and other environmental analysis, consultation, or compliance efforts occurring commensurate with the NEPA process.

(d) *Classified information.* To the extent practicable, USDA subcomponents shall segregate any information that has been classified pursuant to Executive order or statute. Subcomponents shall maintain the confidentiality of such information in a manner required for the information involved. Such information may not be included in any publicly disclosed documents. If such material cannot be reasonably segregated, or if segregation would leave essentially meaningless material, the subcomponent must withhold the entire analysis document from the public; however, the subcomponent shall otherwise prepare the analysis documentation in accord with applicable regulations.

(e) *Reducing paperwork.* USDA subcomponents should avoid excessive paperwork and shall ensure environmental assessments and environmental impact statements meet specified page limits established by NEPA section 107(e), 42 U.S.C. 4336a(e). Recommended best practices for reducing paperwork include, but are not limited to:

(1) Preparing analytic and concise environmental documents by using web-based collaboration and document management platforms that allow for interdisciplinary review and analysis to occur in a centralized document that reduces redundant and contradictory discussions that can occur when analysis is documented in a partitioned and individualized manner;

(2) Compiling and maintaining the proposal record throughout the NEPA process so information can be efficiently incorporated by reference when it is appropriate to do so and meets the requirements specified in paragraph (c)(7) of this section;

(3) Discussing only briefly issues that are not identified as substantive issues and eliminating from further study non-substantive issues;

(4) Writing environmental documents and associated analyses in plain language;

(5) Following a clear format for environmental documents and associated decision documents that is tailored to address only the minimum requirements outlined in NEPA and this part;

(6) Integrating NEPA requirements with other environmental review and consultation requirements, and where appropriate to do so relying on analyses done to demonstrate compliance with other laws and regulations to inform findings and determinations made for NEPA;

(7) Incorporating (by reference), into an environmental document, any applicable material—such as planning studies, analyses, or other relevant information—developed specifically to support that environmental document or associated decision document when the effect will be to cut down on bulk without impeding other agency and public review of the action; and

(i) USDA subcomponents shall cite the incorporated material in the document in a manner that identifies the content it contains.

(ii) Subcomponents may not incorporate material by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment, when an opportunity for comment is provided.

(iii) Subcomponents should not incorporate by reference material with potential withholdings or privileges or that is classified (see paragraphs (c) and (d) of this section) as such material is not available for review and comment.

(8) Relying on an existing environmental assessment (EA), environmental impact statement (EIS), finding of no significant impact (FONSI), record of decision (ROD), documentation of a finding of applicability and no extraordinary circumstance (FANEC), or a portion thereof—to include supporting analysis documentation not included in an EA, EIS, FONSI, ROD or FANEC documentation itself—provided that the assessment, statement, finding, decision, analyses, or portion thereof provides the information necessary to inform the required findings or conclusions required for the level of NEPA being completed. USDA subcomponents may rely on previous analysis completed by the subcomponent or analysis completed by any other Federal agency where it makes sense to do so given the nature of the proposal, the potentially affected environment, and the anticipated effects.

(i) *Environmental impact statements and environmental assessments.* When relying on a previous environmental impact statement or environmental assessment in full, if the actions covered by the original document and anticipated effects are substantially the same for the current proposal being considered, the USDA subcomponent relying on the previously completed document shall specify the reliance in the applicable finding or decision document and provide explanation of how the actions were determined similar and the effects determined adequate (both quantitatively and qualitatively). For an environmental impact statement, the document need not be refiled with the Environmental Protection Agency but shall be published, with the new record of decision, on a USDA website and included in the proposal record. For an environmental assessment, the document shall be published, with the new finding of no significant impact, on a USDA website and included in the proposal record.

(ii) *Categorical exclusions.* Refer to §1b.3(h).

(iii) *Other analysis or portions of environmental documents.* USDA subcomponents may also rely on other analysis or portions of environmental documents when these contain information that supports necessary NEPA or other environmental law conclusions or determinations required by provisions of environmental law other than NEPA's procedural requirements (*e.g.*, those required by Endangered Species Act, National Historic Preservation Act, Clean Water Act, etc.). The analysis or environmental document(s) relied upon shall be included in the proposal record.

(iv) *Adequacy of analysis and inclusion in the proposal record.* A brief description shall be provided in the environmental document being completed as to how the effects analysis being relied on is adequate (both quantitatively and qualitatively) given the actions being proposed. The other analysis or environmental documents being relied on shall be included in the proposal record (as outlined in paragraph (a) of this section).

(v) *Programmatic documents.* Refer to paragraph (q) of this section for discussion on relying on programmatic environmental documents.

(vi) *Identification of certain circumstances.* When relying on another environmental document, other analysis, or portion thereof, USDA subcomponents shall specify if the subcomponent is relying on an environmental document, other analysis, or portion thereof that is:

(A) Not final within the agency that prepared it;

(B) The subject of an adequacy referral to the Council on Environmental Quality for NEPA or a referral to the applicable regulatory agency for other laws (*e.g.*, U.S. Fish and Wildlife Service for Endangered Species Act compliance); or

(C) The subject of a judicial action that is not final.

(f) *Reducing delay.* USDA subcomponents should reduce delay in the environmental review process. For environmental assessments and environmental impact statements, subcomponents shall ensure documents are completed within the deadlines specified in NEPA section 107(g), 42 U.S.C. 4336a(g). Recommended best practices for reducing delay include, but are not limited to:

(1) Establishing (§1b.3(b)), adopting (§1b.3(c)), and applying (§1b.3(e)) categorical exclusions for categories of actions that normally do not have a significant effect on the human environment and therefore do not require preparation of an environmental assessment or environmental impact statement;

(2) Completing an environmental assessment when an action, which is not otherwise categorically excluded, is not anticipated to have a significant effect on the human environment and therefore is not expected to require preparation of an environmental impact statement;

(3) Integrating considerations of the applicable NEPA process early in proposed action development;

(4) Integrating NEPA requirements with other environmental review and consultation requirements;

(5) Designating a person to manage and expedite the NEPA and overall environmental review process, such as a project manager or an individual with

adequate NEPA and environmental review experience;

(6) Engaging in interagency cooperation before or as the environmental impact statement is prepared, rather than awaiting submission of comments;

(7) Identifying and eliminating from detailed study the issues that are not substantive or have been covered by prior environmental review(s), and narrowing the discussion of these issues in the effects analysis to a brief presentation of why they are not of a substantive nature;

(8) Ensuring swift and fair resolution of lead agency disputes;

(9) Requiring comments received during in response to publication of a notice of intent to prepare an environmental impact statement, or other opportunities for comment, to be as specific as possible and, if documenting how substantive comments were considered, focusing on documenting the action taken in response to the substantive issues raised and/or recommendations made; and

(10) Eliminating duplication with State, Tribal, and local procedures by providing for joint preparation of environmental documents where practicable (see paragraph (l) of this section), and with other Federal procedures, by providing that a USDA subcomponent may rely on appropriate environmental documents or analysis prepared by another agency (see paragraph (e)(8) of this section).

(g) *Interdisciplinary preparation.* As required in NEPA section 102(2)(A), 42 U.S.C. 4332(2)(A), USDA subcomponents shall prepare environmental documents using an interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts. The disciplines of the preparers should be appropriate to the scope and issues identified at the sole discretion of the responsible official.

(h) *Methodology.* As required by NEPA section 102(2)(D), 42 U.S.C. 4332(2)(D), USDA subcomponents:

(1) Shall ensure the professional integrity, including scientific integrity, of the discussions and analyses in environmental documents;

(2) May make use of any reliable data sources, such as remotely gathered information or statistical models;

(3) Should identify any methodologies used and make explicit reference to the scientific and other sources relied upon for conclusions in the environmental document; and

(4) May place discussion of methodology used or list references cited in the proposal record or include these as an appendix in an environmental assessment or environmental impact statement.

(i) *Scientific accuracy.* USDA subcomponents should make use of existing credible and reliable scientific resources, data, and evidence that is relevant to evaluating the reasonably foreseeable impacts on the human environment. Subcomponents should not undertake new scientific and technical research to inform its analyses unless it is essential to a reasoned choice among alternatives and the overall costs and time frame of such undertaking are not unreasonable.

(j) *Information availability.* When a USDA subcomponent is evaluating a proposed action's reasonably foreseeable impacts on the human environment, and there is incomplete or unavailable information that cannot be obtained at a reasonable cost or the means to obtain it are unknown, the subcomponent should make clear in the relevant environmental document that such information is lacking.

(k) *Public involvement.* USDA subcomponents may host or sponsor public hearings, public meetings, or other opportunities for public involvement as deemed necessary by the responsible official to inform the decision-making process or in accordance with statutory requirements applicable to the subcomponent. Subcomponents may conduct public hearings and public meetings by means of electronic communication except where another format is required by law. When selecting appropriate methods for public involvement, subcomponents should consider the ability of affected entities to access the methods used. USDA subcomponents:

(1) Should announce opportunities for public involvement on USDA websites

where environmental documents are published.

(2) May provide additional guidance as needed to ensure interested persons can get information or status reports on environmental documents and other elements of the NEPA process.

(3) Should establish online platforms or systems that facilitate the sharing of environmental documents and other information pertinent to the management of environmental reviews conducted in conjunction with the applicable level of NEPA.

(l) *Elimination of duplication with State, Tribal, and local procedures.* USDA subcomponents may cooperate with State, Tribal, and local agencies that are responsible for preparing environmental documents, including those prepared pursuant to NEPA section 102(2)(G), 42 U.S.C. 4332(2)(G). To the fullest extent practicable, unless specifically prohibited by law, USDA subcomponents will cooperate with State, Tribal, and local agencies to reduce duplication between NEPA and State, Tribal, and local requirements, including through use of studies, analysis, and decisions developed by State, Tribal, or local agencies. Such cooperation may include:

(1) Joint planning processes;

(2) Joint environmental research and studies;

(3) Joint public hearings (except where otherwise provided by statute); or

(4) Joint environmental documents.

(m) *Timely and unified Federal reviews.* In many instances, a proposal or decision is undertaken in the context which entails activities or decisions undertaken by other Federal agencies (for example, where multiple Federal authorizations or analyses are required with respect to a proposal sponsor's overall purpose and goal). These activities and decisions are ''related actions,'' in that they are each the responsibility of a particular agency but they are all related in a matter relevant to NEPA by their relationship with one overarching proposal. In such instances, Congress has provided that the multiple agencies involved shall determine which of them will be the lead agency pursuant to the criteria identified in NEPA section 107(a)(1)(A), 42 U.S.C. 4336a(a)(1)(A). When serving as the lead agency, a USDA subcomponent is ultimately responsible for completing the NEPA process. When a joint lead relationship is established pursuant to NEPA section 107(a)(1)(B), 42 U.S.C. 4336a(a)(1)(B), a USDA subcomponent and the other joint lead agency or agencies are collectively responsible for completing the NEPA process.

(1) *Lead agency.* If a USDA subcomponent is participating in developing a proposal and there are two or more participating Federal agencies, the lead agency shall be determined in accordance with NEPA section 107(a)(1)(A), 42 U.S.C. 4336a(a)(1)(A). A lead agency shall fill the role described in NEPA section 107(a)(1)(B)(2), 42 U.S.C. 4336a(a)(1)(B)(2).

(i) Any Federal, State, Tribal, or local agency or person that is substantially affected by the lack of a designation of a lead agency with respect to a proposal, as described in paragraph (m) of this section, may submit a written request for such a designation to a participating Federal agency. An agency that receives a request under this paragraph shall transmit such request to each participating Federal agency and to the Council on Environmental Quality, in accordance with NEPA section 107(a)(4), 42 U.S.C. 4336a(a)(4).

(ii) When serving as the lead agency, the USDA subcomponent will determine the scope of the analysis for the proposal in accordance with §§ 1b.5(b) and 1b.7(g) and document the scope of the project at hand.

(2) *Joint lead agencies.* In making a determination under paragraph (m) of this section, the participating Federal agencies may appoint such State, Tribal, or local agencies as joint lead agencies as the involved Federal agencies shall determine appropriate. Joint lead agencies shall jointly fulfill the role described in NEPA section 107(a)(1)(B)(2), 42 U.S.C. 4336a(a)(1)(B)(2).

(3) *Cooperating agencies.* In accordance with NEPA section 107(a)(3), 42 U.S.C. 4336a(a)(3), the lead agency may, with respect to a proposal, designate any Federal, State, Tribal, or local agency that has jurisdiction by law or special expertise with respect to any

environmental impact involved in a proposal to serve as a cooperating agency. A cooperating agency may, not later than a date specified in the schedule established by the lead agency, submit comments to the lead agency.

(n) *Unified documentation.* If a USDA subcomponent proposal will require action by more than one Federal agency and the lead agency, as described in NEPA section 107(A), 42 U.S.C. 4336a(A), has determined that it requires preparation of an environmental document, the lead and cooperating agencies should evaluate the proposed action (and any action alternatives) in a single environmental document. If a USDA subcomponent is not the lead agency and the lead agency's NEPA implementing procedures specify:

(1) Format requirements for documenting categorical exclusion considerations, environmental assessments, or environmental impact statements, the USDA subcomponent should follow the formatting requirements for the lead agency.

(2) Format and signature requirements for findings of no significant impact or records of decision (and for categorical exclusion NEPA documentation if required), the USDA subcomponent should follow the format and signature requirements for the lead agency's finding or decision document. If more than one responsible official needs to sign a document, multiple signature blocks should be added to the one document created by the lead agency. When multiple signature blocks are included, the document shall specify what each signing responsible official is approving given the nature of the actions proposed and the responsible official's statutory authority.

(o) *Disagreement concerning proposed major Federal actions.* In the event there are interagency disagreements concerning designation of a lead or joint agency or disagreements over proposed major Federal actions that might cause significant environmental effects, these matters shall be referred to the USDA Senior Agency Official for determination on whether the disagreement needs elevated to the Council on Environmental Quality. The USDA Senior Agency Official may delegate this authority to the applicable mission-area Undersecretary or other USDA official for a subcomponent with NEPA responsibilities, per §1b.2(b)(2)(ix)).

(p) *Programmatic actions.* Environmental impact statements and environmental assessments may be prepared for programmatic Federal actions. When USDA subcomponents prepare such statements, they should be relevant to the program decision and timed to coincide with meaningful points in subcomponent planning and decision-making. When preparing statements on programmatic actions (including proposed actions by more than one agency), USDA subcomponents may find it useful to evaluate the proposed actions in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area;

(2) Generically, including actions that have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter; or

(3) By stage of technological development including Federal or federally assisted research, development or demonstration programs for new technologies that, if applied, could significantly affect the quality of the human environment. Statements on such programs should be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(q) *Relying on programmatic documents.* Consistent with NEPA section 108, 42 U.S.C. 4336b, and paragraph (e)(8) of this section, after completing a programmatic environmental assessment or environmental impact statement, USDA subcomponents may rely on that document for 5 years if there are not substantial new circumstances or information about the significance of adverse impacts that bear on the analysis. After 5 years, as long as the subcomponent reevaluates the analysis (see paragraph (r) of this section regarding reevaluation of environmental

documents) in the programmatic environmental document and any underlying assumption to ensure reliance on the analysis remains valid and briefly documents its reevaluation and explains why the analysis remains valid considering any new and substantial information or circumstances, the subcomponent may continue to rely on the document. Determinations of whether the analysis in the programmatic document and reliance on any underlying assumptions remains valid may be made on a case-by-case or programmatic basis and record keeping of the justifications for these determinations is advisable.

(r) *Reevaluation of environmental documents.* USDA subcomponents shall reevaluate, and if necessary, correct, revise, or supplement (hereinafter update) environmental documents, if a major Federal action or portion thereof remains to occur, and:

(1) The subcomponent makes changes to the proposed action, or selected alternative, that have the potential to change the anticipated degree of effect; or

(2) There are new circumstances or information with relevance to the proposal and these have bearing on the proposed action (or selected alternative) or potential to change the anticipated degree of effect.

(s) *Proposals for rules or regulations.* Where the proposal is the promulgation of a rule or regulation, procedures and documentation pursuant to other statutory or Executive order requirements may satisfy one or more requirements of this part. When a procedure or document satisfies one or more requirements of this part, a USDA subcomponent may substitute it for the corresponding requirements in this part and need not carry out duplicative procedures or documentation. Subcomponents will identify which corresponding requirements in this part are satisfied and consult with CEQ to confirm such determinations. For informal rulemaking conducted pursuant to the Administrative Procedure Act, 5 U.S.C. 553, the environmental document will normally accompany the proposed rule.

(t) *Proposals for legislation.* When developing legislation, USDA subcomponents shall integrate the NEPA process for proposals for legislation significantly affecting the quality of the human environment with the legislative process of the Congress. Technical drafting assistance does not by itself constitute a legislative proposal. Only the Federal agency that has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

(1) A legislative environmental impact statement is the detailed statement required by law to be included in a Federal agency's recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement that can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(2) Preparation of a legislative environmental impact statement shall conform to the requirements of the regulations in this subchapter, except there need not be a scoping process.

(u) *Unique identification numbers.* For environmental assessments and environmental impacts statements, USDA subcomponents will provide a unique identification number for tracking purposes, which the subcomponent will reference on other documents associated with the proposal and in any database or tracking system for such documents. A subcomponent may provide a unique identification number on documentation for a finding of applicability and no extraordinary circumstances where useful to do so. The unique identification number may be a number generated by a USDA subcomponent system used to track environmental reviews or an identification numbering process specified by the USDA Senior Agency Official or the Council on Environmental Quality.

(v) *Emergencies—Immediate actions.* If emergency circumstances exist that make it necessary to take action to mitigate harm to life, property, or important natural, cultural, or historic resources, the responsible official may

take such actions without preparing an environmental analysis or environmental document. When taking such actions, the responsible official shall take into account the probable environmental consequences of the emergency action and mitigate foreseeable adverse environmental effects to the extent practical.

(w) *Emergencies—Urgent but not immediate actions.* If emergency circumstances exist that make it necessary to take urgently needed actions before the NEPA process can be completed, the responsible official shall proceed as follows:

(1) When urgent actions are not likely to have a reasonably foreseeable significant environmental impacts, but an emergency exists that makes it necessary to take urgently needed actions before preparing documentation associated with a categorical exclusion, environmental assessment, or finding of no significant impact, USDA subcomponents may authorize alternative arrangements for environmental compliance so long as the alternative arrangements are limited to actions necessary to address the emergency circumstance. Alternative arrangements will, to the extent practicable, attempt to achieve the substantive requirements of this part for the level of NEPA being completed. USDA subcomponents should proceed as follows:

(i) Animal and Plant Health Inspection Services. The responsible official shall consult with the APHIS official who is delegated the authority to oversee NEPA compliance for the environmental unit. The APHIS official who is delegated the authority may authorize emergency alternative arrangements for completing the required NEPA compliance documentation.

(ii) Farm Service Agency. The responsible official shall consult the National Environmental Compliance Manager (or designee) who, with direction from the FSA Administrator (or designee), will identify alternative arrangements for compliance with this part with the appropriate subcomponents.

(iii) Rural Development. (Rural Business-Cooperative Service, Rural Housing Service, and Rural Utilities Service.) The responsible official shall consult the National Director for Environmental and Historic Preservation (or designee) who, in coordination with the Administrator (or designee) and appropriate subcomponents, will identify alternative arrangements for compliance with this part.

(iv) U.S. Forest Service. The responsible official shall consult with the national headquarters office about alternative arrangements. Consultation with national headquarters shall be coordinated through the applicable regional (or equivalent) office. The Chief or Associate Chief of the Forest Service may grant emergency alternative arrangements under NEPA for categorical exclusions, environmental assessments, and associated findings.

(v) All other USDA subcomponents. The responsible official shall consult with the national program manager for environmental review, NEPA compliance, or other equivalent program to determine the appropriate mission area official who can authorize alternative arrangements for categorical exclusions, environmental assessments, and findings of no significant impact. When the national program manager is unsure how to proceed, they should consult the USDA Senior Agency Official (or their designee).

(2) When urgent actions are likely to have significant environmental impacts, but an emergency exists that makes it necessary to take urgently needed actions before preparing an environmental impact statement or record of decision, the responsible official taking the action shall request consultation with the Council on Environmental Quality (CEQ) about alternative arrangements for compliance with NEPA section 102(2)(C), 42 U.S.C. 4332(2)(C). Consultation with CEQ shall be requested through the USDA Senior Agency Official (Undersecretary of Natural Resources and Environment). The USDA Senior Agency Official will coordinate with the applicable USDA mission area when arranging consultation with CEQ. The USDA Senior Agency Official and CEQ will limit such arrangements to urgent actions necessary to address the emergency circumstance prior to preparing the environmental impact statement.

§ 1b.10 Documentation prepared by applicant or third party.

(a) Environmental assessments and environmental impact statements. In accordance with NEPA section 107(f), 42 U.S.C. 4336a(f), USDA subcomponents may allow an applicant or other third party (*e.g.*, contractor) to prepare an environmental assessment or environmental impact statement, in whole or in part, under their supervision. Each USDA subcomponent is responsible for the accuracy, scope, and content of documentation prepared by an applicant or third party under the supervision of the agency. USDA subcomponents shall ensure applicants or third parties apply the process and documentation criteria set forth in this part and comply with all other applicable environmental laws, regulations, or executive orders under the subcomponent's purview. The agency may provide additional guidance to the applicants or third parties. Applicant and third-party preparation is subject to the following:

(1) A USDA subcomponent may require an applicant to submit environmental information for possible use by the subcomponent in preparing an environmental assessment or environmental impact statement. The subcomponent may also direct an applicant or authorize a third party to prepare an environmental assessment or environmental impact statement under the supervision of the agency.

(2) The subcomponent will assist the applicant by outlining the types of information required or, for the preparation of an environmental assessment or environmental impact statement, should provide guidance to the applicant or third party and participate in their preparation.

(3) The subcomponent may also provide appropriate guidance and assist in preparation of an environmental assessment or environmental impact statement, to the extent that the subcomponent's resources and policy priorities admit. The subcomponent will work with the applicant to define the purpose and need, and, when appropriate, to develop a reasonable range of alternatives to meet that purpose and need.

(4) The subcomponent shall independently evaluate the information or documentation submitted to determine if the accuracy, scope, and contents are sufficient and comply with USDA documentation criteria for an environmental assessment or environmental impact statement, and it shall take responsibility for its contents.

(5) Applicants or third parties preparing an environmental assessment or environmental impact statement shall submit a disclosure statement to the lead agency that specifies any financial or other interest in the outcome of the action. Such statement need not include privileged or confidential trade secrets or other confidential business information.

(6) Nothing in this section is intended to prohibit any USDA subcomponent from requesting any person, including the applicant, to submit information to it or to prohibit any person from submitting information to any agency for use in preparing an environmental assessment or environmental impact statement.

(7) The USDA subcomponent will work with the applicant to develop a schedule for preparation of an environmental assessment or an environmental impact statement. Major changes to the schedule or related matters will be documented through written correspondence in accordance with § 1b.5(g) and 1b.7(l)(1).

(b) *NEPA documentation for categorical exclusions.* For purposes of this part, subcomponents may also allow an applicant or other third party to complete, in whole or in part, documentation for a finding of applicability and no extraordinary circumstance for categorical exclusions requiring NEPA documentation. Applicant and third-party preparation of categorical exclusion NEPA documentation is also subject to paragraphs (a)(1) through (6) of this section, as it would pertain to NEPA documentation for a categorical exclusion.

§ 1b.11 Definitions and acronyms.

(a) *Definitions.* As used in this part, terms have the meanings provided in NEPA section 111, 42 U.S.C. 4336(e). The following definitions apply to this part. USDA subcomponents shall use these

terms uniformly throughout the Department.

(1) *Act* or *NEPA* means the National Environmental Policy Act, as amended (42 U.S.C. 4321–4347).

(2) *Action alternative* (or *alternative*) means an alternate means of implementing actions that is different from the agency's proposed action. Alternatives are developed in response to a substantive issue(s) and should demonstrate a clear difference in impacts when compared to the proposed action.

(3) *Agency* means a subcomponent of the Unites States Department of Agriculture.

(4) *Affecting* means will or may have an effect on.

(5) *Alternative*. See action alternative.

(6) *Authorization* means any license, permit, approval, finding, determination, or other administrative decision issued by an agency that is required or authorized under Federal law in order to implement a proposed action or selected alternative.

(7) *Categorical exclusion (CE)*. See NEPA section 111(1), 42 U.S.C. 4336e(1).

(8) *Control agents* means biological material or chemicals that are intended to enhance the production efficiency of an agricultural crop or animal such as through elimination of a pest.

(9) *Cooperating agency*. See NEPA section 111(2), 42 U.S.C. 4336e(2).

(10) *Council* means the Council on Environmental Quality established by title II of NEPA.

(11) *Design criteria* (or *design elements*, *design features*, or *conservation practices* etc.) means constraints or requirements proactively added to the proposed action (or action alternatives) or through an iterative interdisciplinary process to avoid or minimize adverse impacts. The need for design criteria is informed by the need to comply with other laws, regulations, or executive orders; interdisciplinary discussions that identify best management practices or other design recommendations; feedback from the public or external parties; or other input provided during proposed action development and preliminary effects analysis phases. When design criteria are added in response to an issue, that issue should no longer be analyzed in detail in the analysis process. Design criteria include:

(i) Avoiding the adverse impact altogether by not taking a certain action or parts of an action;

(ii) Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation; or

(iii) Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of the action.

(12) *Effects* or *impact* means changes to the human environment from the proposed action or action alternatives that are reasonably foreseeable and have a reasonably close causal relationship to the proposed action or alternatives.

(i) Effects include ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic (such as the effects on employment), social, or health effects. Effects may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the USDA subcomponent believes that the effect will be beneficial.

(ii) A ''but for'' causal relationship is insufficient to make a USDA subcomponent responsible for a particular effect under NEPA. Effects should generally not be considered if they are remote in time, geographically remote, or the product of a lengthy causal chain. Effects do not include those effects that the subcomponent has no ability to prevent due to the limits of its regulatory authority or that would occur regardless of the proposed action or selected alternative, or that would need to be initiated by a third party.

(iii) A USDA subcomponent's analysis of effects shall be consistent with this paragraph.

(13) *Emergency* means a situation demanding immediate or urgent action, where delaying action to follow standard procedures would be contrary to the public interest, as determined by a responsible official.

(14) *Environmental assessment (EA)*. See NEPA section 111(4), 42 U.S.C.

4336e(4). An EA is also an environmental document. (Refer to the definition for ''environmental documents'' in subparagraph (15) of this section.)

(15) *Environmental document*. See NEPA section 111(5), 42 U.S.C. 4336e(5).

(16) *Environmental impact statement (EIS)*. See NEPA section 111(6), 42 U.S.C. 4336e(6). An EIS is also an environmental document. (Refer to the definition for ''environmental documents'' in paragraph (a)(15) of this section.)

(17) *Extraordinary circumstance* means a unique situation exists in which actions that normally do not have significant impacts—and are therefore categorically excluded from documentation in an environmental assessment or environmental impact statement—create uncertainty whether the degree of the effect is significant, or certainty that the degree of effect is significant, for the relevant resources considered.

(18) *Federal agency* means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. For the purposes of these USDA implementing procedures, Federal agency also includes States, units of general local government, and Tribal governments assuming NEPA responsibilities from a Federal agency pursuant to statute.

(19) *Finding of applicability and no extraordinary circumstance (FANEC)* means a determination by a USDA subcomponent that a category (or categories) fits the proposed actions and extraordinary circumstances (as defined in paragraph (a)(17) of this section) do not exist for a categorically excluded action, and therefore the issuance of an environmental assessment or environmental impact statement is not required.

(20) *Finding of no significant impact (FONSI)*. See NEPA section 111(7), 42 U.S.C. 4336e(7). A FONSI is also an environmental document. (Refer to the definition for ''environmental documents'' in paragraph (a)(15) of this section.)

(21) *Human environment* means comprehensively the natural and physical environment and the relationship of present and future generations of Americans with that environment. (See also the definition of ''effects'' in paragraph (a)(12) of this section.)

(22) *Impact*. See *Effect*.

(23) *Issue* means a logical cause-effect relationship between the actions proposed (cause) and the reasonably foreseeable impacts (effect) on resources found in the affected environment. An issue may be addressed by modifying the proposed action, developing an action alternative, or supplementing, improving, or modifying the analysis to better understand the effects.

(24) *Jurisdiction by law (or statutory authority)* means Federal agency authority to approve, veto, or finance all or part of the proposal.

(25) *Lead agency*. See NEPA section 111(9), 42 U.S.C. 4336e(9).

(26) *Legislation* means a bill or legislative proposal to Congress developed by a Federal agency but does not include requests for appropriations or legislation recommended by the President.

(27) *Level of NEPA* refers to categorical exclusion, environmental assessment, or environmental impact statement.

(28) *Major Federal action:* See NEPA section 111(10), 42 U.S.C. 4336e(10).

(29) *Mitigation (or mitigation measure)* means constraints or requirements that avoid, minimize, or compensate for adverse impacts caused by a proposed action or selected alternative. Mitigations are documented in a finding of no significant impact or record of decision and are determined by the responsible official in reaction to the effects described in an environmental assessment or environmental impact statement. While NEPA requires consideration of mitigation, it does not mandate the form or adoption of any mitigation. Mitigation includes:

(i) Avoiding the adverse impact altogether by not taking a certain action or parts of an action;

(ii) Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation;

(iii) Rectifying the adverse impact by repairing, rehabilitating, or restoring the affected environment;

(iv) Reducing or eliminating the adverse impact over time by preservation

and maintenance operations during the life of the action; or

(v) Compensating for the adverse impact by replacing or providing substitute resources or environments.

(30) *NEPA process* means all the steps necessary to complete a level of NEPA (categorical exclusion, environmental assessment, or environmental impact statement) and issue the associated finding or decision document (finding of applicability and no extraordinary circumstance when NEPA documentation is required for a categorical exclusion, finding of no significant impact, or record of decision) to conclude the process.

(31) *Notice of availability* means a public announcement in the FEDERAL REGISTER that a document, generally an environmental impact statement (EIS), is available for review.

(32) *Notice of intent* means a public notice in the FEDERAL REGISTER that an agency will prepare an environmental impact statement (EIS), is pausing or resuming preparation of an EIS, or is withdrawing an EIS. In limited situations it can mean a public notice in the FEDERAL REGISTER that an agency will prepare an environmental assessment.

(33) *Page* means 8.5 by 11 inches paper with one-inch margins using a word processor with 12-point proportionally spaced font, single spaced. Footnotes may be in 10-point font. Such size restrictions do not apply to explanatory maps, diagrams, graphs, tables, and other means of graphically displaying quantitative or geospatial information. When an item of graphical material is larger than 8.5 by 11 inches, each such item shall count as one page.

(34) *Participating agency* means a Federal, State, Tribal, or local agency participating in an environmental review or authorization of an action.

(35) *Potentially affected environment* means the condition of the physical, biological, social, and economic factors that may be impacted by a proposed action (or action alternative).

(36) *Programmatic environmental document*. See NEPA section 111(11), 42 U.S.C. 4336e(11).

(37) *Proposal (or Project)*. See NEPA section 111(12), 42 U.S.C. 4336e(12).

(38) *Proposal record (or project record)* means all relevant documentation and records, including all environmental analysis documents and comment submissions, that contain information the responsible official relies on to make iterative decisions throughout the NEPA process or to determine if and how the action will be approved.

(39) *Proposed action* means the set of actions, to include design criteria when applicable, that is submitted for final interdisciplinary environmental review and effects analysis.

(40) *Publish* and *publication* mean methods found by the agency to efficiently and effectively make environmental documents and information available for review by interested persons, including electronic publication.

(41) *Purpose and need* means the reason action is needed in a location at this time. The purpose and need should generally be based on the USDA subcomponent's statutory authority. When a subcomponent's statutory duty is to review an application for authorization, the subcomponent may base the purpose and need on the goals of the applicant and the subcomponent's authority.

(42) *Reasonable alternatives* means a reasonable range of alternatives that are technically and economically feasible, meet the purpose and need for the proposal, and, where applicable, meet the goals of the applicant.

(43) *Reasonably foreseeable* means sufficiently likely to occur such that a person of ordinary prudence would take it into account in reaching a decision.

(44) *Record of decision* is a determination by the responsible official on how to proceed with respect to a proposed action and action alternatives that have reasonably foreseeable significant impacts on the quality of the human environment, as described in an environmental impact statement.

(45) *Related action* means an action undertaken by an agency, such as a permitting action, some other type of authorization action, an analysis required by statute, or the like, that bears a relationship to other actions undertaken by other agencies relevant to NEPA, whereas the set of related actions are all related to one overarching proposal.

(46) *Responsible official* means the USDA subcomponent employee who

has the authority to determine: when NEPA applies, what level of NEPA review is appropriate, the extent of environmental review; the final NEPA finding and compliance with other applicable laws, regulations, and executive orders; and, how to proceed for a proposed action or action alternative(s).

(47) *Scale* refers to the spatial extent or magnitude of the actions being proposed.

(48) *Scope* consists of the range of actions and alternatives developed for a proposal or the issues and impacts to be considered in an environmental analysis.

(49) *Senior agency official* means an official of assistant secretary rank or higher (or equivalent) that is designated for overall agency NEPA compliance, including resolving implementation issues.

(50) *Significance* means considering whether the reasonably foreseeable impacts of the proposed action are significant and analyzing the potentially affected environment and degree of the effects of the action.

(i) Potentially affected environment means the condition of the physical, biological, social, and economic factors that may be impacted by an action.

(ii) In considering the degree of effects, USDA subcomponents should consider the following, as appropriate to the specific action and in the context of the potentially affected environment:

(A) Both short- and long-term effects.

(B) Both beneficial and adverse effects.

(C) Effects on public health and safety.

(D) Economic effects.

(E) Effects on the quality of life of the American people.

(iii) In providing rationale for whether the degree of effect is significant, responsible officials shall consider:

(A) How the unavoidable short- and long-term adverse impacts of implementing the action compares to the short- and long-term adverse or beneficial consequences of not implementing the action as it relates to effects on public health and safety, economics, and the quality of life of the American people; and

(B) How the irreversible or irretrievable commitment of a resource, as part of the action, contributes to a loss of long-term productivity for the human environment.

(51) *Special expertise* means statutory responsibility, agency mission, or related program experience.

(52) *Subcomponent* means a mission area, agency, or staff office of the United States Department of Agriculture (USDA).

(53) *Substantive* means information that meaningfully informs the consideration of reasonably foreseeable impacts on the human environment and the resulting significance determination or decisions on how to proceed (*i.e.*, alternatives to be considered or analyzed or the alternative selected for implementation).

(54) *USDA Senior Agency Official* means the Under Secretary of Natural Resources and Environment.

(b) *Acronyms.* The following acronyms may appear throughout this part or may be used when applying this part during the applicable NEPA process:

(1) APHIS—Animal and Plant Health Inspection Service
(2) CE—Categorical Exclusion
(3) CEQ—Council on Environmental Quality
(4) CFR—Code of Federal Regulations
(5) EA—Environmental Assessment
(6) EIS—Environmental Impact Statement
(7) FANEC—Finding of Applicability and No Extraordinary Circumstance
(8) FONSI—Finding of No Significant Impact
(9) FSA—Farm Service Agency
(10) NEPA—National Environmental Policy Act
(11) NRCS—Natural Resources Conservation Service
(12) RD—Rural Development
(13) ROD—Record of Decision
(14) OSEC—Office of the Secretary
(15) USDA—U.S. Department of Agriculture
(16) USFS—U.S. Forest Service

§ 1b.12 Severability.

The sections of this part are separate and severable from one another. If any section or portion therein is stayed or determined to be invalid, or the applicability of any section to any person or

entity is held invalid, it is USDA's intention that the validity of the remainder of those parts will not be affected, with the remaining sections and all applications thereof to continue in effect.

PART 1c—PROTECTION OF HUMAN SUBJECTS

Sec.

1c.101 To what does this policy apply?
1c.102 Definitions for purposes of this policy.
1c.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.
1c.104 Exempt research.
1c.105 [Reserved]
1c.106 [Reserved]
1c.107 IRB membership.
1c.108 IRB functions and operations.
1c.109 IRB review of research.
1c.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
1c.111 Criteria for IRB approval of research.
1c.112 Review by institution.
1c.113 Suspension or termination of IRB approval of research.
1c.114 Cooperative research.
1c.115 IRB records.
1c.116 General requirements for informed consent.
1c.117 Documentation of informed consent.
1c.118 Applications and proposals lacking definite plans for involvement of human subjects.
1c.119 Research undertaken without the intention of involving human subjects.
1c.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.
1c.121 [Reserved]
1c.122 Use of Federal funds.
1c.123 Early termination of research support: Evaluation of applications and proposals.
1c.124 Conditions.

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

SOURCE: 83 FR 7269, Jan. 19, 2017 unless otherwise noted.

§ 1c.101 To what does this policy apply?

(a) Except as detailed in §1c.104, this policy applies to all research involving human subjects conducted, supported, or otherwise subject to regulation by any Federal department or agency that takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by Federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the Federal Government outside the United States. Institutions that are engaged in research described in this paragraph and institutional review boards (IRBs) reviewing research that is subject to this policy must comply with this policy.

(b) [Reserved]

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy and this judgment shall be exercised consistent with the ethical principles of the Belmont Report.[62]

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the Federal department or agency but not otherwise covered by this policy comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations that provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe) that may otherwise be applicable and that provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations that may otherwise be applicable and that provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human

[62] The National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.– Belmont Report. Washington, DC: U.S. Department of Health and Human Services. 1979.

subjects may differ from those set forth in this policy. In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the FEDERAL REGISTER or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy, provided the alternative procedures to be followed are consistent with the principles of the Belmont Report.[63] Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Human Research Protections, Department of Health and Human Services (HHS), or any successor office, or to the equivalent office within the appropriate Federal department or agency, and shall also publish them in the FEDERAL REGISTER or in such other manner as provided in department or agency procedures. The waiver notice must include a statement that identifies the conditions under which the waiver will be applied and a justification as to why the waiver is appropriate for the research, including how the decision is consistent with the principles of the Belmont Report.

(j) Federal guidance on the requirements of this policy shall be issued only after consultation, for the purpose of harmonization (to the extent appropriate), with other Federal departments and agencies that have adopted this policy, unless such consultation is not feasible.

(k) [Reserved]

(l) Compliance dates and transition provisions:

(1) *Pre-2018 Requirements.* For purposes of this section, the *pre-2018 Requirements* means this subpart as published in the 2016 edition of the Code of Federal Regulations.

(2) *2018 Requirements.* For purposes of this section, the *2018 Requirements* means the Federal Policy for the Protection of Human Subjects requirements contained in this part. The general compliance date for the 2018 Requirements is January 21, 2019. The compliance date for §1c.114(b) (cooperative research) of the 2018 Requirements is January 20, 2020.

(3) *Research subject to pre-2018 requirements.* The pre-2018 Requirements shall apply to the following research, unless the research is transitioning to comply with the 2018 Requirements in accordance with paragraph (l)(4) of this section:

(i) Research initially approved by an IRB under the pre-2018 Requirements before January 21, 2019;

(ii) Research for which IRB review was waived pursuant to §1c.101(i) of the pre-2018 Requirements before January 21, 2019; and

(iii) Research for which a determination was made that the research was exempt under §1c.101(b) of the pre-2018 Requirements before January 21, 2019.

(4) *Transitioning research.* If, on or after July 19, 2018, an institution planning or engaged in research otherwise covered by paragraph (l)(3) of this section determines that such research instead will transition to comply with the 2018 Requirements, the institution or an IRB must document and date such determination.

(i) If the determination to transition is documented between July 19, 2018, and January 20, 2019, the research shall:

(A) Beginning on the date of such documentation through January 20, 2019, comply with the pre-2018 Requirements, except that the research shall comply with the following:

(*1*) Section 1c.102(l) of the 2018 Requirements (definition of research) (instead of §1c.102(d) of the pre-2018 Requirements);

[63] *Id.*

(*2*) Section 1c.103(d) of the 2018 Requirements (revised certification requirement that eliminates IRB review of application or proposal) (instead of §1c.103(f) of the pre-2018 Requirements); and

(*3*) Section 1c.109(f)(1)(i) and (iii) of the 2018 Requirements (exceptions to mandated continuing review) (instead of §1c.103(b), as related to the requirement for continuing review, and in addition to §1c.109, of the pre-2018 Requirements); and

(B) Beginning on January 21, 2019, comply with the 2018 Requirements.

(ii) If the determination to transition is documented on or after January 21, 2019, the research shall, beginning on the date of such documentation, comply with the 2018 Requirements.

(5) *Research subject to 2018 Requirements*. The 2018 Requirements shall apply to the following research:

(i) Research initially approved by an IRB on or after January 21, 2019;

(ii) Research for which IRB review is waived pursuant to paragraph (i) of this section on or after January 21, 2019; and

(iii) Research for which a determination is made that the research is exempt on or after January 21, 2019.

(m) Severability: Any provision of this part held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to continue to give maximum effect to the provision permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event the provision shall be severable from this part and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances.

[82 FR 7269, Jan. 19, 2018, as amended at 83 FR 28510, June 19, 2018]

§1c.102 Definitions for purposes of this policy.

(a) *Certification* means the official notification by the institution to the supporting Federal department or agency component, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and approved by an IRB in accordance with an approved assurance.

(b) *Clinical trial* means a research study in which one or more human subjects are prospectively assigned to one or more interventions (which may include placebo or other control) to evaluate the effects of the interventions on biomedical or behavioral health-related outcomes.

(c) *Department or agency head* means the head of any Federal department or agency, for example, the Secretary of HHS, and any other officer or employee of any Federal department or agency to whom the authority provided by these regulations to the department or agency head has been delegated.

(d) *Federal department or agency* refers to a federal department or agency (the department or agency itself rather than its bureaus, offices or divisions) that takes appropriate administrative action to make this policy applicable to the research involving human subjects it conducts, supports, or otherwise regulates (*e.g.*, the U.S. Department of Health and Human Services, the U.S. Department of Defense, or the Central Intelligence Agency).

(e)(1) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research:

(i) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (ii) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens.

(2) *Intervention* includes both physical procedures by which information or biospecimens are gathered (*e.g.*, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes.

(3) *Interaction* includes communication or interpersonal contact between investigator and subject.

(4) *Private information* includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information that has been provided for specific purposes by an individual and that the

individual can reasonably expect will not be made public (*e.g.*, a medical record).

(5) *Identifiable private information* is private information for which the identity of the subject is or may readily be ascertained by the investigator or associated with the information.

(6) *An identifiable biospecimen* is a biospecimen for which the identity of the subject is or may readily be ascertained by the investigator or associated with the biospecimen.

(7) Federal departments or agencies implementing this policy shall:

(i) Upon consultation with appropriate experts (including experts in data matching and re-identification), reexamine the meaning of ''identifiable private information,'' as defined in paragraph (e)(5) of this section, and ''identifiable biospecimen,'' as defined in paragraph (e)(6) of this section. This reexamination shall take place within 1 year and regularly thereafter (at least every 4 years). This process will be conducted by collaboration among the Federal departments and agencies implementing this policy. If appropriate and permitted by law, such Federal departments and agencies may alter the interpretation of these terms, including through the use of guidance.

(ii) Upon consultation with appropriate experts, assess whether there are analytic technologies or techniques that should be considered by investigators to generate ''identifiable private information,'' as defined in paragraph (e)(5) of this section, or an ''identifiable biospecimen,'' as defined in paragraph (e)(6) of this section. This assessment shall take place within 1 year and regularly thereafter (at least every 4 years). This process will be conducted by collaboration among the Federal departments and agencies implementing this policy. Any such technologies or techniques will be included on a list of technologies or techniques that produce identifiable private information or identifiable biospecimens. This list will be published in the FEDERAL REGISTER after notice and an opportunity for public comment. The Secretary, HHS, shall maintain the list on a publicly accessible Web site.

(f) *Institution* means any public or private entity, or department or agency (including federal, state, and other agencies).

(g) *IRB* means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(i) *Legally authorized representative* means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research. If there is no applicable law addressing this issue, *legally authorized representative* means an individual recognized by institutional policy as acceptable for providing consent in the nonresearch context on behalf of the prospective subject to the subject's participation in the procedure(s) involved in the research.

(j) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

(k) *Public health authority* means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, an Indian tribe, or a foreign government, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is responsible for public health matters as part of its official mandate.

(l) *Research* means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or

supported under a program that is considered research for other purposes. For example, some demonstration and service programs may include research activities. For purposes of this part, the following activities are deemed not to be research:

(1) Scholarly and journalistic activities (*e.g.,* oral history, journalism, biography, literary criticism, legal research, and historical scholarship), including the collection and use of information, that focus directly on the specific individuals about whom the information is collected.

(2) Public health surveillance activities, including the collection and testing of information or biospecimens, conducted, supported, requested, ordered, required, or authorized by a public health authority. Such activities are limited to those necessary to allow a public health authority to identify, monitor, assess, or investigate potential public health signals, onsets of disease outbreaks, or conditions of public health importance (including trends, signals, risk factors, patterns in diseases, or increases in injuries from using consumer products). Such activities include those associated with providing timely situational awareness and priority setting during the course of an event or crisis that threatens public health (including natural or man-made disasters).

(3) Collection and analysis of information, biospecimens, or records by or for a criminal justice agency for activities authorized by law or court order solely for criminal justice or criminal investigative purposes.

(4) Authorized operational activities (as determined by each agency) in support of intelligence, homeland security, defense, or other national security missions.

(m) *Written,* or *in writing,* for purposes of this part, refers to writing on a tangible medium (*e.g.*, paper) or in an electronic format.

§ 1c.103 Assuring compliance with this policy—research conducted or supported by any Federal department or agency.

(a) Each institution engaged in research that is covered by this policy, with the exception of research eligible for exemption under §1c.104, and that is conducted or supported by a Federal department or agency, shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements of this policy. In lieu of requiring submission of an assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, on file with the Office for Human Research Protections, HHS, or any successor office, and approved for Federalwide use by that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Human Research Protections, HHS, or any successor office. Federal departments and agencies will conduct or support research covered by this policy only if the institution has provided an assurance that it will comply with the requirements of this policy, as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB (if such certification is required by §1c.103(d)).

(b) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(c) The department or agency head may limit the period during which any assurance shall remain effective or otherwise condition or restrict the assurance.

(d) Certification is required when the research is supported by a Federal department or agency and not otherwise waived under §1c.101(i) or exempted under §1c.104. For such research, institutions shall certify that each proposed research study covered by the assurance and this section has been reviewed and approved by the IRB. Such certification must be submitted as prescribed by the Federal department or agency component supporting the research.

Under no condition shall research covered by this section be initiated prior to receipt of the certification that the research has been reviewed and approved by the IRB.

(e) For nonexempt research involving human subjects covered by this policy (or exempt research for which limited IRB review takes place pursuant to §1c.104(d)(2)(iii), (d)(3)(i)(C), or (d)(7) or (8)) that takes place at an institution in which IRB oversight is conducted by an IRB that is not operated by the institution, the institution and the organization operating the IRB shall document the institution's reliance on the IRB for oversight of the research and the responsibilities that each entity will undertake to ensure compliance with the requirements of this policy (*e.g.*, in a written agreement between the institution and the IRB, by implementation of an institution-wide policy directive providing the allocation of responsibilities between the institution and an IRB that is not affiliated with the institution, or as set forth in a research protocol).

(Approved by the Office of Management and Budget under Control Number 0990–0260)

§ 1c.104 Exempt research.

(a) Unless otherwise required by law or by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the categories in paragraph (d) of this section are exempt from the requirements of this policy, except that such activities must comply with the requirements of this section and as specified in each category.

(b) Use of the exemption categories for research subject to the requirements of subparts B, C, and D: Application of the exemption categories to research subject to the requirements of 45 CFR part 46, subparts B, C, and D, is as follows:

(1) *Subpart B.* Each of the exemptions at this section may be applied to research subject to subpart B if the conditions of the exemption are met.

(2) *Subpart C.* The exemptions at this section do not apply to research subject to subpart C, except for research aimed at involving a broader subject population that only incidentally includes prisoners.

(3) *Subpart D.* The exemptions at paragraphs (d)(1), (4), (5), (6), (7), and (8) of this section may be applied to research subject to subpart D if the conditions of the exemption are met. Paragraphs (d)(2)(i) and (ii) of this section only may apply to research subject to subpart D involving educational tests or the observation of public behavior when the investigator(s) do not participate in the activities being observed. Paragraph (d)(2)(iii) of this section may not be applied to research subject to subpart D.

(c) [Reserved]

(d) Except as described in paragraph (a) of this section, the following categories of human subjects research are exempt from this policy:

(1) Research, conducted in established or commonly accepted educational settings, that specifically involves normal educational practices that are not likely to adversely impact students' opportunity to learn required educational content or the assessment of educators who provide instruction. This includes most research on regular and special education instructional strategies, and research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research that only includes interactions involving educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior (including visual or auditory recording) if at least one of the following criteria is met:

(i) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects;

(ii) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; or

(iii) The information obtained is recorded by the investigator in such a manner that the identity of the human

subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by §1c.111(a)(7).

(3)(i) Research involving benign behavioral interventions in conjunction with the collection of information from an adult subject through verbal or written responses (including data entry) or audiovisual recording if the subject prospectively agrees to the intervention and information collection and at least one of the following criteria is met:

(A) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained, directly or through identifiers linked to the subjects;

(B) Any disclosure of the human subjects' responses outside the research would not reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, educational advancement, or reputation; or

(C) The information obtained is recorded by the investigator in such a manner that the identity of the human subjects can readily be ascertained, directly or through identifiers linked to the subjects, and an IRB conducts a limited IRB review to make the determination required by §1c.111(a)(7).

(ii) For the purpose of this provision, benign behavioral interventions are brief in duration, harmless, painless, not physically invasive, not likely to have a significant adverse lasting impact on the subjects, and the investigator has no reason to think the subjects will find the interventions offensive or embarrassing. Provided all such criteria are met, examples of such benign behavioral interventions would include having the subjects play an online game, having them solve puzzles under various noise conditions, or having them decide how to allocate a nominal amount of received cash between themselves and someone else.

(iii) If the research involves deceiving the subjects regarding the nature or purposes of the research, this exemption is not applicable unless the subject authorizes the deception through a prospective agreement to participate in research in circumstances in which the subject is informed that he or she will be unaware of or misled regarding the nature or purposes of the research.

(4) Secondary research for which consent is not required: Secondary research uses of identifiable private information or identifiable biospecimens, if at least one of the following criteria is met:

(i) The identifiable private information or identifiable biospecimens are publicly available;

(ii) Information, which may include information about biospecimens, is recorded by the investigator in such a manner that the identity of the human subjects cannot readily be ascertained directly or through identifiers linked to the subjects, the investigator does not contact the subjects, and the investigator will not re-identify subjects;

(iii) The research involves only information collection and analysis involving the investigator's use of identifiable health information when that use is regulated under 45 CFR parts 160 and 164, subparts A and E, for the purposes of ''health care operations'' or ''research'' as those terms are defined at 45 CFR 164.501 or for ''public health activities and purposes'' as described under 45 CFR 164.512(b); or

(iv) The research is conducted by, or on behalf of, a Federal department or agency using government-generated or government-collected information obtained for nonresearch activities, if the research generates identifiable private information that is or will be maintained on information technology that is subject to and in compliance with section 208(b) of the E-Government Act of 2002, 44 U.S.C. 3501 note, if all of the identifiable private information collected, used, or generated as part of the activity will be maintained in systems of records subject to the Privacy Act of 1974, 5 U.S.C. 552a, and, if applicable, the information used in the research was collected subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*.

(5) Research and demonstration projects that are conducted or supported by a Federal department or

agency, or otherwise subject to the approval of department or agency heads (or the approval of the heads of bureaus or other subordinate agencies that have been delegated authority to conduct the research and demonstration projects), and that are designed to study, evaluate, improve, or otherwise examine public benefit or service programs, including procedures for obtaining benefits or services under those programs, possible changes in or alternatives to those programs or procedures, or possible changes in methods or levels of payment for benefits or services under those programs. Such projects include, but are not limited to, internal studies by Federal employees, and studies under contracts or consulting arrangements, cooperative agreements, or grants. Exempt projects also include waivers of otherwise mandatory requirements using authorities such as sections 1115 and 1115A of the Social Security Act, as amended.

(i) Each Federal department or agency conducting or supporting the research and demonstration projects must establish, on a publicly accessible Federal Web site or in such other manner as the department or agency head may determine, a list of the research and demonstration projects that the Federal department or agency conducts or supports under this provision. The research or demonstration project must be published on this list prior to commencing the research involving human subjects.

(ii) [Reserved]

(6) Taste and food quality evaluation and consumer acceptance studies:

(i) If wholesome foods without additives are consumed, or

(ii) If a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(7) Storage or maintenance for secondary research for which broad consent is required: Storage or maintenance of identifiable private information or identifiable biospecimens for potential secondary research use if an IRB conducts a limited IRB review and makes the determinations required by §1c.111(a)(8).

(8) Secondary research for which broad consent is required: Research involving the use of identifiable private information or identifiable biospecimens for secondary research use, if the following criteria are met:

(i) Broad consent for the storage, maintenance, and secondary research use of the identifiable private information or identifiable biospecimens was obtained in accordance with §1c.116(a)(1) through (4), (a)(6), and (d);

(ii) Documentation of informed consent or waiver of documentation of consent was obtained in accordance with §1c.117;

(iii) An IRB conducts a limited IRB review and makes the determination required by §1c.111(a)(7) and makes the determination that the research to be conducted is within the scope of the broad consent referenced in paragraph (d)(8)(i) of this section; and (iv) The investigator does not include returning individual research results to subjects as part of the study plan. This provision does not prevent an investigator from abiding by any legal requirements to return individual research results.

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§§ 1c.105–1c.106 [Reserved]

§ 1c.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members (professional competence), and the diversity of its members, including race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. The IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments (including policies

and resources) and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a category of subjects that is vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these categories of subjects.

(b) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(c) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(d) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(e) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues that require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

§ 1c.108 IRB functions and operations.

(a) In order to fulfill the requirements of this policy each IRB shall:

(1) Have access to meeting space and sufficient staff to support the IRB's review and recordkeeping duties;

(2) Prepare and maintain a current list of the IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications or licenses sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution, for example, full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant;

(3) Establish and follow written procedures for:

(i) Conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution;

(ii) Determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and

(iii) Ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that investigators will conduct the research activity in accordance with the terms of the IRB approval until any proposed changes have been reviewed and approved by the IRB, except when necessary to eliminate apparent immediate hazards to the subject.

(4) Establish and follow written procedures for ensuring prompt reporting to the IRB; appropriate institutional officials; the department or agency head; and the Office for Human Research Protections, HHS, or any successor office, or the equivalent office within the appropriate Federal department or agency of

(i) Any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB; and

(ii) Any suspension or termination of IRB approval.

(b) Except when an expedited review procedure is used (as described in §1c.110), an IRB must review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

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§ 1c.109 IRB review of research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy, including exempt research activities under §1c.104 for which limited IRB review is a condition of exemption (under §1c.104(d)(2)(iii), (d)(3)(i)(C), and (d)(7), and (8)).

(b) An IRB shall require that information given to subjects (or legally authorized representatives, when appropriate) as part of informed consent is in accordance with §1c.116. The IRB may require that information, in addition to that specifically mentioned in §1c.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with §1c.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research requiring review by the convened IRB at intervals appropriate to the degree of risk, not less than once per year, except as described in §1c.109(f).

(f)(1) Unless an IRB determines otherwise, continuing review of research is not required in the following circumstances:

(i) Research eligible for expedited review in accordance with §1c.110;

(ii) Research reviewed by the IRB in accordance with the limited IRB review described in §1c.104(d)(2)(iii), (d)(3)(i)(C), or (d)(7) or (8);

(iii) Research that has progressed to the point that it involves only one or both of the following, which are part of the IRB-approved study:

(A) Data analysis, including analysis of identifiable private information or identifiable biospecimens, or

(B) Accessing follow-up clinical data from procedures that subjects would undergo as part of clinical care.

(2) [Reserved]

(g) An IRB shall have authority to observe or have a third party observe the consent process and the research.

(Approved by the Office of Management and Budget under Control Number 0990–0260)

§ 1c.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary of HHS has established, and published as a Notice in the FEDERAL REGISTER, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The Secretary will evaluate the list at least every 8 years and amend it, as appropriate, after consultation with other federal departments and agencies and after publication in the FEDERAL REGISTER for public comment. A copy of the list is available from the Office for Human Research Protections, HHS, or any successor office.

(b)(1) An IRB may use the expedited review procedure to review the following:

(i) Some or all of the research appearing on the list described in paragraph (a) of this section, unless the reviewer determines that the study involves more than minimal risk;

(ii) Minor changes in previously approved research during the period for which approval is authorized; or

(iii) Research for which limited IRB review is a condition of exemption under §1c.104(d)(2)(iii), (d)(3)(i)(C), and (d)(7) and (8).

(2) Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the

reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited procedure set forth in §1c.108(b).

(c) Each IRB that uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals that have been approved under the procedure.

(d) The department or agency head may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure.

§1c.111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized:

(i) By using procedures that are consistent with sound research design and that do not unnecessarily expose subjects to risk, and

(ii) Whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (*e.g.*, the possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted. The IRB should be particularly cognizant of the special problems of research that involves a category of subjects who are vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by, §1c.116.

(5) Informed consent will be appropriately documented or appropriately waived in accordance with §1c.117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(i) The Secretary of HHS will, after consultation with the Office of Management and Budget's privacy office and other Federal departments and agencies that have adopted this policy, issue guidance to assist IRBs in assessing what provisions are adequate to protect the privacy of subjects and to maintain the confidentiality of data.

(ii) [Reserved]

(8) For purposes of conducting the limited IRB review required by §1c.104(d)(7)), the IRB need not make the determinations at paragraphs (a)(1) through (7) of this section, and shall make the following determinations:

(i) Broad consent for storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens is obtained in accordance with the requirements of §1c.116(a)(1)–(4), (a)(6), and (d);

(ii) Broad consent is appropriately documented or waiver of documentation is appropriate, in accordance with §1c.117; and

(iii) If there is a change made for research purposes in the way the identifiable private information or identifiable biospecimens are stored or maintained, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, individuals with impaired decision-making capacity, or economically or educationally disadvantaged

persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

§ 1c.112 Review by Institution

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

§ 1c.113 Suspension or Termination of IRB Approval of Research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

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§ 1c.114 Cooperative Research.

(a) Cooperative research projects are those projects covered by this policy that involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy.

(b)(1) Any institution located in the United States that is engaged in cooperative research must rely upon approval by a single IRB for that portion of the research that is conducted in the United States. The reviewing IRB will be identified by the Federal department or agency supporting or conducting the research or proposed by the lead institution subject to the acceptance of the Federal department or agency supporting the research.

(2) The following research is not subject to this provision:

(i) Cooperative research for which more than single IRB review is required by law (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe); or

(ii) Research for which any Federal department or agency supporting or conducting the research determines and documents that the use of a single IRB is not appropriate for the particular context.

(c) For research not subject to paragraph (b) of this section, an institution participating in a cooperative project may enter into a joint review arrangement, rely on the review of another IRB, or make similar arrangements for avoiding duplication of effort.

§ 1c.115 IRB Records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent forms, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings, which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities, including the rationale for conducting continuing review of research that otherwise would not require continuing review as described in § 1c.109(f)(1).

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described in § 1c.108(a)(2).

(6) Written procedures for the IRB in the same detail as described in § 1c.108(a)(3) and (4).

(7) Statements of significant new findings provided to subjects, as required by § 1c.116(c)(5).

(8) The rationale for an expedited reviewer's determination under § 1c.110(b)(1)(i) that research appearing on the expedited review list described in § 1c.110(a) is more than minimal risk.

(9) Documentation specifying the responsibilities that an institution and an organization operating an IRB each will undertake to ensure compliance with the requirements of this policy, as described in § 1c.103(e).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research that is conducted shall be retained for at least 3 years after completion of the research. The institution or IRB may maintain the records in printed form, or electronically. All records shall be accessible for inspection and copying by authorized representatives of the Federal department or agency at reasonable times and in a reasonable manner.

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§ 1c.116 General Requirements for Informed Consent.

(a) *General.* General requirements for informed consent, whether written or oral, are set forth in this paragraph and apply to consent obtained in accordance with the requirements set forth in paragraphs (b) through (d) of this section. Broad consent may be obtained in lieu of informed consent obtained in accordance with paragraphs (b) and (c) of this section only with respect to the storage, maintenance, and secondary research uses of identifiable private information and identifiable biospecimens. Waiver or alteration of consent in research involving public benefit and service programs conducted by or subject to the approval of state or local officials is described in paragraph (e) of this section. General waiver or alteration of informed consent is described in paragraph (f) of this section. Except as provided elsewhere in this policy:

(1) Before involving a human subject in research covered by this policy, an investigator shall obtain the legally effective informed consent of the subject or the subject's legally authorized representative.

(2) An investigator shall seek informed consent only under circumstances that provide the prospective subject or the legally authorized representative sufficient opportunity to discuss and consider whether or not to participate and that minimize the possibility of coercion or undue influence.

(3) The information that is given to the subject or the legally authorized representative shall be in language understandable to the subject or the legally authorized representative.

(4) The prospective subject or the legally authorized representative must be provided with the information that a reasonable person would want to have in order to make an informed decision about whether to participate, and an opportunity to discuss that information.

(5) Except for broad consent obtained in accordance with paragraph (d) of this section:

(i) Informed consent must begin with a concise and focused presentation of the key information that is most likely to assist a prospective subject or legally authorized representative in understanding the reasons why one might or might not want to participate in the research. This part of the informed consent must be organized and presented in a way that facilitates comprehension.

(ii) Informed consent as a whole must present information in sufficient detail relating to the research, and must be organized and presented in a way that does not merely provide lists of isolated facts, but rather facilitates the prospective subject's or legally authorized representative's understanding of the reasons why one might or might not want to participate.

(6) No informed consent may include any exculpatory language through which the subject or the legally authorized representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution, or its agents from liability for negligence.

(b) *Basic elements of informed consent.* Except as provided in paragraph (d), (e), or (f) of this section, in seeking informed consent the following information shall be provided to each subject or the legally authorized representative:

(1) A statement that the study involves research, an explanation of the

purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures that are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others that may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject;

(8) A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled; and

(9) One of the following statements about any research that involves the collection of identifiable private information or identifiable biospecimens:

(i) A statement that identifiers might be removed from the identifiable private information or identifiable biospecimens and that, after such removal, the information or biospecimens could be used for future research studies or distributed to another investigator for future research studies without additional informed consent from the subject or the legally authorized representative, if this might be a possibility; or

(ii) A statement that the subject's information or biospecimens collected as part of the research, even if identifiers are removed, will not be used or distributed for future research studies.

(c) *Additional elements of informed consent.* Except as provided in paragraph (d), (e), or (f) of this section, one or more of the following elements of information, when appropriate, shall also be provided to each subject or the legally authorized representative:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) that are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's or the legally authorized representative's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4) The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research that may relate to the subject's willingness to continue participation will be provided to the subject;

(6) The approximate number of subjects involved in the study;

(7) A statement that the subject's biospecimens (even if identifiers are removed) may be used for commercial profit and whether the subject will or will not share in this commercial profit;

(8) A statement regarding whether clinically relevant research results, including individual research results, will be disclosed to subjects, and if so, under what conditions; and

(9) For research involving biospecimens, whether the research will (if known) or might include whole genome sequencing (*i.e.*, sequencing of a human germline or somatic specimen with the intent to generate the genome or exome sequence of that specimen).

(d) *Elements of broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens.* Broad

consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens (collected for either research studies other than the proposed research or nonresearch purposes) is permitted as an alternative to the informed consent requirements in paragraphs (b) and (c) of this section. If the subject or the legally authorized representative is asked to provide broad consent, the following shall be provided to each subject or the subject's legally authorized representative:

(1) The information required in paragraphs (b)(2), (b)(3), (b)(5), and (b)(8) and, when appropriate, (c)(7) and (9) of this section;

(2) A general description of the types of research that may be conducted with the identifiable private information or identifiable biospecimens. This description must include sufficient information such that a reasonable person would expect that the broad consent would permit the types of research conducted;

(3) A description of the identifiable private information or identifiable biospecimens that might be used in research, whether sharing of identifiable private information or identifiable biospecimens might occur, and the types of institutions or researchers that might conduct research with the identifiable private information or identifiable biospecimens;

(4) A description of the period of time that the identifiable private information or identifiable biospecimens may be stored and maintained (which period of time could be indefinite), and a description of the period of time that the identifiable private information or identifiable biospecimens may be used for research purposes (which period of time could be indefinite);

(5) Unless the subject or legally authorized representative will be provided details about specific research studies, a statement that they will not be informed of the details of any specific research studies that might be conducted using the subject's identifiable private information or identifiable biospecimens, including the purposes of the research, and that they might have chosen not to consent to some of those specific research studies;

(6) Unless it is known that clinically relevant research results, including individual research results, will be disclosed to the subject in all circumstances, a statement that such results may not be disclosed to the subject; and

(7) An explanation of whom to contact for answers to questions about the subject's rights and about storage and use of the subject's identifiable private information or identifiable biospecimens, and whom to contact in the event of a research-related harm.

(e) *Waiver or alteration of consent in research involving public benefit and service programs conducted by or subject to the approval of state or local officials*—(1) *Waiver*. An IRB may waive the requirement to obtain informed consent for research under paragraphs (a) through (c) of this section, provided the IRB satisfies the requirements of paragraph (e)(3) of this section. If an individual was asked to provide broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens in accordance with the requirements at paragraph (d) of this section, and refused to consent, an IRB cannot waive consent for the storage, maintenance, or secondary research use of the identifiable private information or identifiable biospecimens.

(2) *Alteration*. An IRB may approve a consent procedure that omits some, or alters some or all, of the elements of informed consent set forth in paragraphs (b) and (c) of this section provided the IRB satisfies the requirements of paragraph (e)(3) of this section. An IRB may not omit or alter any of the requirements described in paragraph (a) of this section. If a broad consent procedure is used, an IRB may not omit or alter any of the elements required under paragraph (d) of this section.

(3) *Requirements for waiver and alteration*. In order for an IRB to waive or alter consent as described in this subsection, the IRB must find and document that:

(i) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine:

(A) Public benefit or service programs;

(B) Procedures for obtaining benefits or services under those programs;

(C) Possible changes in or alternatives to those programs or procedures; or

(D) Possible changes in methods or levels of payment for benefits or services under those programs; and

(ii) The research could not practicably be carried out without the waiver or alteration.

(f) *General waiver or alteration of consent*—(1) *Waiver.* An IRB may waive the requirement to obtain informed consent for research under paragraphs (a) through (c) of this section, provided the IRB satisfies the requirements of paragraph (f)(3) of this section. If an individual was asked to provide broad consent for the storage, maintenance, and secondary research use of identifiable private information or identifiable biospecimens in accordance with the requirements at paragraph (d) of this section, and refused to consent, an IRB cannot waive consent for the storage, maintenance, or secondary research use of the identifiable private information or identifiable biospecimens.

(2) *Alteration.* An IRB may approve a consent procedure that omits some, or alters some or all, of the elements of informed consent set forth in paragraphs (b) and (c) of this section provided the IRB satisfies the requirements of paragraph (f)(3) of this section. An IRB may not omit or alter any of the requirements described in paragraph (a) of this section. If a broad consent procedure is used, an IRB may not omit or alter any of the elements required under paragraph (d) of this section.

(3) *Requirements for waiver and alteration.* In order for an IRB to waive or alter consent as described in this subsection, the IRB must find and document that:

(i) The research involves no more than minimal risk to the subjects;

(ii) The research could not practicably be carried out without the requested waiver or alteration;

(iii) If the research involves using identifiable private information or identifiable biospecimens, the research could not practicably be carried out without using such information or biospecimens in an identifiable format;

(iv) The waiver or alteration will not adversely affect the rights and welfare of the subjects; and

(v) Whenever appropriate, the subjects or legally authorized representatives will be provided with additional pertinent information after participation.

(g) *Screening, recruiting, or determining eligibility.* An IRB may approve a research proposal in which an investigator will obtain information or biospecimens for the purpose of screening, recruiting, or determining the eligibility of prospective subjects without the informed consent of the prospective subject or the subject's legally authorized representative, if either of the following conditions are met:

(1) The investigator will obtain information through oral or written communication with the prospective subject or legally authorized representative, or

(2) The investigator will obtain identifiable private information or identifiable biospecimens by accessing records or stored identifiable biospecimens.

(h) *Posting of clinical trial consent form.* (1) For each clinical trial conducted or supported by a Federal department or agency, one IRB-approved informed consent form used to enroll subjects must be posted by the awardee or the Federal department or agency component conducting the trial on a publicly available Federal Web site that will be established as a repository for such informed consent forms.

(2) If the Federal department or agency supporting or conducting the clinical trial determines that certain information should not be made publicly available on a Federal Web site (*e.g.* confidential commercial information), such Federal department or agency may permit or require redactions to the information posted.

(3) The informed consent form must be posted on the Federal Web site after the clinical trial is closed to recruitment, and no later than 60 days after the last study visit by any subject, as required by the protocol.

(i) *Preemption.* The informed consent requirements in this policy are not intended to preempt any applicable Federal, state, or local laws (including tribal laws passed by the official governing body of an American Indian or Alaska Native tribe) that require additional information to be disclosed in order for informed consent to be legally effective.

(j) *Emergency medical care.* Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable Federal, state, or local law (including tribal law passed by the official governing body of an American Indian or Alaska Native tribe).

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§ 1c.117 Documentation of informed consent.

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written informed consent form approved by the IRB and signed (including in an electronic format) by the subject or the subject's legally authorized representative. A written copy shall be given to the person signing the informed consent form.

(b) Except as provided in paragraph (c) of this section, the informed consent form may be either of the following:

(1) A written informed consent form that meets the requirements of § 1c.116. The investigator shall give either the subject or the subject's legally authorized representative adequate opportunity to read the informed consent form before it is signed; alternatively, this form may be read to the subject or the subject's legally authorized representative.

(2) A short form written informed consent form stating that the elements of informed consent required by § 1c.116 have been presented orally to the subject or the subject's legally authorized representative, and that the key information required by § 1c.116(a)(5)(i) was presented first to the subject, before other information, if any, was provided. The IRB shall approve a written summary of what is to be said to the subject or the legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Only the short form itself is to be signed by the subject or the subject's legally authorized representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the subject's legally authorized representative, in addition to a copy of the short form.

(c)(1) An IRB may waive the requirement for the investigator to obtain a signed informed consent form for some or all subjects if it finds any of the following:

(i) That the only record linking the subject and the research would be the informed consent form and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject (or legally authorized representative) will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern;

(ii) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context; or

(iii) If the subjects or legally authorized representatives are members of a distinct cultural group or community in which signing forms is not the norm, that the research presents no more than minimal risk of harm to subjects and provided there is an appropriate alternative mechanism for documenting that informed consent was obtained.

(2) In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects or legally authorized representatives with a written statement regarding the research.

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§ 1c.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to Federal departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subjects' involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. Except for research waived under §1c.101(i) or exempted under §1c.104, no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted, by the institution, to the Federal department or agency component supporting the research.

§ 1c.119 Research undertaken without the intention of involving human subjects.

Except for research waived under §1c.101(i) or exempted under §1c.104, in the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted by the institution to the Federal department or agency component supporting the research, and final approval given to the proposed change by the Federal department or agency component.

§ 1c.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal department or agency.

(a) The department or agency head will evaluate all applications and proposals involving human subjects submitted to the Federal department or agency through such officers and employees of the Federal department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.

(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.

§ 1c.121 [Reserved]

§ 1c.122 Use of Federal funds.

Federal funds administered by a Federal department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

§ 1c.123 Early termination of research support: Evaluation of applications and proposals.

(a) The department or agency head may require that Federal department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person or persons who would direct or has/have directed the scientific and technical aspects of an activity has/have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

§ 1c.124 Conditions.

With respect to any research project or any class of research projects the department or agency head of either the conducting or the supporting Federal department or agency may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Subpart A—General

Sec.

2.1 Establishment of the Department.
2.2 Authority of the Secretary to prescribe regulations.
2.3 Authority of the Secretary to delegate authority.
2.4 General officers.
2.5 Order in which officers of the Department shall act as Secretary.

Subpart B—General Delegations of Authority by the Secretary of Agriculture

2.6 Designation of first assistants.
2.7 Authority to supervise and direct.
2.8 Delegations of authority to agency heads to order that the United States flag be flown at half-staff.
2.9 Additional delegations.
2.10 Limitations.
2.11 New principles and periodic reviews.
2.12 Secretary and general officers not precluded from exercising delegated powers.
2.13 Status of prior delegations.

Subpart C—Delegations of Authority to the Deputy Secretary, Under Secretaries, and Assistant Secretaries

2.14 Deputy Secretary.
2.15 Under Secretary for Trade and Foreign Agricultural Affairs.
2.16 Under Secretary for Farm Production and Conservation.
2.17 Under Secretary for Rural Development.
2.18 Under Secretary for Food Safety.
2.19 Under Secretary for Food, Nutrition, and Consumer Services.
2.20 Under Secretary for Natural Resources and Environment.
2.21 Under Secretary for Research, Education, and Economics.
2.22 Under Secretary for Marketing and Regulatory Programs.
2.23 Assistant Secretary for Congressional Relations.
2.24 Assistant Secretary for Administration.
2.25 Assistant Secretary for Civil Rights.
2.26 Director, Office of the Executive Secretariat.

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

2.27 Office of Administrative Law Judges.
2.28 Chief Financial Officer.
2.29 Chief Economist.
2.30 Director, Office of Budget and Program Analysis.
2.31 General Counsel.
2.32 Chief Information Officer.
2.33 Inspector General.
2.34 Director, National Appeals Division.
2.35 Judicial Officer.
2.36 Director, Office of Communications.
2.37 Director, Office of Small and Disadvantaged Business Utilization.
2.38 Director, Office of Partnerships and Public Engagement.
2.39 Director, Office of Tribal Relations.

Subpart E [Reserved]

Subpart F—Delegations of Authority by the Under Secretary for Farm Production and Conservation

2.40 Deputy Under Secretary for Farm Production and Conservation.
2.41 Chief Operating Officer, Farm Production and Conservation Business Center.
2.42 Administrator, Farm Service Agency.
2.43 Chief, Natural Resources and Conservation Service.
2.44 Administrator, Risk Management Agency and Manager, Federal Crop Insurance Corporation.

Subpart G—Delegations of Authority by the Under Secretary for Rural Development

2.45 Deputy Under Secretary for Rural Development.
2.46 Chief Operating Officer, Rural Development Business Center.
2.48 Administrator, Rural Business-Cooperative Service.
2.49 Administrator, Rural Housing Service.

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

2.51 Deputy Under Secretary for Food Safety.

2.53 Administrator, Food Safety and Inspection Service.

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.
2.57 Administrator, Food and Nutrition Service.

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

2.59 Deputy Under Secretaries for Natural Resources and Environment.
2.60 Chief, Forest Service.
2.61 [Reserved]

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

2.63 Deputy Under Secretary for Research, Education, and Economics.
2.65 Administrator, Agricultural Research Service.
2.66 Director, National Institute of Food and Agriculture.
2.67 Administrator, Economic Research Service.
2.68 Administrator, National Agricultural Statistics Service.
2.69 Director, Office of the Chief Scientist.

Subpart L—Delegations of Authority by the Chief Economist

2.70 Deputy Chief Economist.
2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.
2.72 Chairman, World Agricultural Outlook Board.
2.73 Director, Office of Energy and Environmental Policy.
2.74 [Reserved]
2.75 Director, Office of Pest Management Policy.

Subpart M [Reserved]

Subpart N—Delegations of Authority by the Under Secretary for Marketing and Regulatory Programs

2.77 Deputy Under Secretary for Marketing and Regulatory Programs.
2.79 Administrator, Agricultural Marketing Service.
2.80 Administrator, Animal and Plant Health Inspection Service.
2.81 [Reserved]

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

2.83 Deputy Assistant Secretary for Congressional Relations.
2.85 Director, Office of Intergovernmental Affairs.

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

2.87 Deputy Assistant Secretary for Administration.
2.89 [Reserved]
2.90 Director, Office of Property and Environmental Management.
2.91 Director, Office of Human Resources Management.
2.93 Director, Office of Contracting and Procurement.
2.94 Chief Security Director, Office of Safety, Security, and Protection.
2.95 Executive Director, Office of Homeland Security.
2.96 Director, Office of Operations.
2.97 [Reserved]

Subpart Q—Delegations of Authority by the General Counsel

2.200 Principal Deputy General Counsel.
2.201 Director, Office of Ethics.
2.202 Deputy Director, Office of Ethics.

Subpart R—Delegations of Authority by the Assistant Secretary for Civil Rights

2.300 Deputy Assistant Secretary for Civil Rights.

Subpart S—Delegations of Authority by the Chief Information Officer

2.400 Deputy Chief Information Officer.

Subpart T—Delegations of Authority by the Chief Financial Officer

2.500 Principal Deputy Chief Financial Officer.

Subpart U—Delegations of Authority by the Under Secretary for Trade and Foreign Agricultural Affairs

2.600 Deputy Under Secretary for Trade and Foreign Agricultural Affairs.
2.601 Administrator, Foreign Agricultural Service.

2.602 Manager, U.S. Codex Office.

Subpart V—Delegations of Authority by the Director, Office of Partnerships and Public Engagement

2.700–2.701 [Reserved]

AUTHORITY: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949–1953 Comp., p. 1024.

SOURCE: 60 FR 56393, Nov. 8, 1995, unless otherwise noted.

EDITORIAL NOTES: 1. Nomenclature changes to part 2 appear at 83 FR 22178, May 14, 2018.

2. Nomenclature changes to part 2 appear at 83 FR 61310, Nov. 29, 2018

3. Nomenclature changes to part 2 appear at 85 FR 65504, Oct. 15, 2020.

4. Nomenclature changes to part 2 appear at 87 FR 44266, July 26, 2022.

Subpart A—General

§ 2.1 Establishment of the Department.

The Department of Agriculture was created by the Act of May 15, 1862, and by the Act of February 9, 1889, it was made an executive department in the Federal Government under the supervision and control of the Secretary of Agriculture (7 U.S.C. 2201, 2202, 2204).

§ 2.2 Authority of the Secretary to prescribe regulations.

The general authority of the Secretary to prescribe regulations governing the work of the Department is based on 5 U.S.C. 301 which provides that the head of an Executive department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use and preservation of its records, papers, and property.

§ 2.3 Authority of the Secretary to delegate authority.

(a) The general authority of the Secretary to make delegations of his authority is based on:

(1) Section 4(a) of Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), which provides that the Secretary of Agriculture may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by an agency or employee, of the Department of Agriculture of any function of the Secretary, including any function transferred to the Secretary by the provisions of this reorganization plan; and

(2) Section 212(a)(1) of the Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354, 7 U.S.C. 6912(a)(1), which provides that the Secretary may delegate to any agency, office, officer, or employee of the Department the authority to perform any function transferred to the Secretary under 7 U.S.C. 6912(a) or any other function vested in the Secretary as of the date of the enactment of the Act.

(b) [Reserved]

§ 2.4 General officers.

The work of the Department is under the supervision and control of the Secretary who is assisted by the following general officers: The Deputy Secretary, the Under Secretary for Farm Production and Conservation; the Under Secretary for Food, Nutrition, and Consumer Services, the Under Secretary for Food Safety; the Under Secretary for Marketing and Regulatory Programs; the Under Secretary for Natural Resources and Environment; the Under Secretary for Research, Education, and Economics; the Under Secretary for Rural Development; the Under Secretary for Trade and Foreign Agricultural Affairs; the Assistant Secretary for Administration; the Assistant Secretary for Civil Rights; the Assistant Secretary for Congressional Relations; the Chief Economist; the Chief Financial Officer; the Chief Information Officer; the General Counsel; the Inspector General; the Judicial Officer; the Director, National Appeals Division; the Director, Office of Budget and Program Analysis; the Director, Office of Communications; the Director, Office of Partnerships and Public Engagement; the Director, Office of Tribal Relations; and the Director, Office of Small and Disadvantaged Business Utilization.

[85 FR 65504, Oct. 15, 2020]

§ 2.5 Order in which officers of the Department shall act as Secretary.

(a) Pursuant to Executive Order 13612, ''Providing an Order of Succession Within the Department of Agriculture'' (77 FR 31153, May 24, 2012),

during any period in which both the Secretary and the Deputy Secretary have died, resigned, or are otherwise unable to perform the functions and duties of the office of Secretary, the following officials designated in paragraphs (a)(1) through (a)(15) of this section shall act as Secretary, in the order in which they are listed. Each official shall act only in the event of the death, resignation, or inability to perform the functions and duties of Secretary of the immediately preceding official:

(1) Under Secretary of Agriculture for Farm and Foreign Agricultural Services.

(2) Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.

(3) Assistant Secretary of Agriculture for Administration.

(4) Under Secretary of Agriculture for Research, Education, and Economics.

(5) Under Secretary of Agriculture for Food Safety.

(6) Under Secretary of Agriculture for Natural Resources and Environment.

(7) Under Secretary of Agriculture for Rural Development.

(8) Under Secretary of Agriculture for Marketing and Regulatory Programs.

(9) General Counsel of the Department of Agriculture.

(10) Chief of Staff, Office of the Secretary.

(11) State Executive Directors of the Farm Service Agency for the States of California, Iowa, and Kansas, in order of seniority fixed by length of unbroken service as State Executive Director of that State.

(12) Regional Administrators of the Food and Nutrition Service for the Mountain Plains Regional Office (Denver, Colorado), Midwest Regional Office (Chicago, Illinois), and Western Regional Office (San Francisco, California), in order of seniority fixed by length of unbroken service as Regional Administrator of that Regional Office.

(13) Chief Financial Officer of the Department of Agriculture.

(14) Assistant Secretary of Agriculture (Civil Rights).

(15) Assistant Secretary of Agriculture (Congressional Relations).

(b) If any two or more individuals designated in paragraphs (a)(11) or (a)(12) of this section were sworn in to, or commenced service in, their respective offices on the same day, precedence shall be determined by the alphabetical order of the State in which the individual serves.

(c) No individual who is serving in an office listed in paragraphs (a)(1) through (a)(15) of this section shall, by virtue of so serving, act as Secretary pursuant to this section.

(d) No individual who is serving in an office listed in paragraphs (a)(1) through (a)(15) of this section shall act as Secretary unless that individual is otherwise eligible to so serve under the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345, *et seq.*).

(e) Notwithstanding the provisions of this section and Executive Order 13612, the President retains discretion, to the extent permitted by law, to depart from the order of succession in paragraph (a) of this section in designating an acting Secretary.

[78 FR 40936, July 9, 2013]

Subpart B—General Delegations of Authority by the Secretary of Agriculture

§ 2.6 Designation of first assistants.

(a) Every office within the Department to which appointment is required to be made by the President with the advice and consent of the Senate (''PAS Office'') may have a First Assistant within the meaning of 5 U.S.C. 3345–3349d.

(1) Where there is a position of principal deputy to the PAS Office, the principal deputy shall be the First Assistant.

(2) Where there is only one deputy position to the PAS Office, the official in that position shall be the First Assistant.

(3) Where there is more than one deputy position to the PAS Office, and this part establishes which deputy is delegated the authority to perform all the duties and exercise all the powers of the PAS Office during the absence or unavailability of the PAS official, the deputy delegated such authority shall be the First Assistant.

(4) Where neither paragraph (a)(1), (2), nor (3) of this section is applicable to the PAS Office, except as provided in paragraph (b) of this section, the Secretary may designate in writing the First Assistant position.

(b) The Inspector General of the Department shall determine any arrangements for the temporary performance of the functions and duties of the Inspector General when that office is vacant.

[81 FR 45963, July 15, 2016]

§ 2.7 Authority to supervise and direct.

Unless specifically reserved, or otherwise delegated (including delegations of legal functions to the General Counsel at §2.31), the delegations of authority to each general officer of the Department and each agency head contained in this part includes the authority to direct and supervise the employees engaged in the conduct of activities under such official's jurisdiction, and the authority to take any action, execute any document, authorize any expenditure, promulgate any rule, regulation, order, or instruction required by or authorized by law and deemed by the general officer or agency head to be necessary and proper to the discharge of his or her responsibilities. This authority will be exercised subject to applicable administrative directives. Unless otherwise provided, a general officer or agency head may, subject to his or her continuing responsibility for the proper discharge of delegations made to him, in this part, delegate and provide for the redelegation of his or her authority to appropriate officers and employees. Subject to the general supervision of the Secretary, agency heads who are delegated authority from a general officer, in this part, report to and are under the supervision of that general officer.

[60 FR 56393, Nov. 8, 1995, as amended at 83 FR 22179, May 14, 2018]

§ 2.8 Delegations of authority to agency heads to order that the United States flag be flown at half-staff.

Pursuant to section 5 of Proclamation 3044, 3 CFR, 1954–1958 Comp., p. 4, each general officer and agency head is delegated authority to order that the United States flag shall be flown at half-staff on buildings and grounds under his or her jurisdiction or control. This authority shall be exercised in accordance with directives promulgated by the Director, Office of Operations.

§ 2.9 Additional delegations.

The authority granted to a general officer may be exercised in the discharge of any additional functions which the Secretary may assign.

§ 2.10 Limitations.

The delegations made in this part shall not be construed to confer upon any general officer or agency head the authority of the Secretary to prescribe regulations which by law require approval of the President.

§ 2.11 New principles and periodic reviews.

In the exercise of authority delegated by the Secretary, the application of new principles of major importance or a departure from principles established by the Secretary should be brought to the attention of the Secretary. General officers are responsible for assuring that periodic reviews are conducted of the activities of the agencies assigned to their direction and supervision, as required by 5 U.S.C. 305.

§ 2.12 Secretary and general officers not precluded from exercising delegated powers.

No delegation of authority by the Secretary or a general officer contained in this part shall preclude the Secretary or general officer from exercising any of the authority so delegated.

§ 2.13 Status of prior delegations.

Nothing in this part shall affect the bylaws of the Commodity Credit Corporation, the Federal Crop Insurance Corporation, or the Rural Telephone Bank. All delegations previously made which are inconsistent with delegations made in this part are superseded; however, any regulation, order, authorization, expenditure, or other instrument, heretofore issued or made pursuant to any delegation of authority shall continue in full force and effect

unless and until withdrawn or superseded pursuant to authority granted in this part.

Subpart C—Delegations of Authority to the Deputy Secretary, Under Secretaries, and Assistant Secretaries

EDITORIAL NOTE: Nomenclature changes to subpart C of part 2 appear at 60 FR 66713, Dec. 26, 1995.

§2.14 Deputy Secretary.

The following delegation of authority is made by the Secretary of Agriculture to the Deputy Secretary: Perform all of the duties and exercise all of the powers and functions which are now or which may hereafter be, vested in the Secretary of Agriculture. This delegation is subject to the limitation in §2.10.

[60 FR 56393, Nov. 8, 1995. Redesignated at 87 FR 44266, July 26, 2022]

§2.15 Under Secretary for Trade and Foreign Agricultural Affairs.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Trade and Foreign Agricultural Affairs:

(1) *Related to foreign agriculture.* (i) Coordinate the carrying out by Department agencies of their functions involving foreign agricultural policies and programs and their operations and activities in foreign areas. Act as liaison on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Policy Committee, the Agency for International Development, and other departments, agencies, and committees of the U.S. Government, foreign governments, the Organization for Economic Cooperation and Development, the European Union, the Food and Agriculture Organization of the United Nations, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Organization of American States, and other public and private U.S. and international organizations, and the contracting parties to the World Trade Organization (WTO).

(ii) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing operations under section 32 of the Act of August 23, 1935, as amended (7 U.S.C. 612c), delegated to the Under Secretary for Marketing and Regulatory Programs, and utilization research delegated to the Under Secretary for Research, Education, and Economics.

(iii) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities; obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department; provide information to domestic producers, the agricultural trade, the public and other interests; and promote normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Under Secretary for Research, Education, and Economics.

(iv) Conduct functions of the Department relating to WTO, the Trade Expansion Act of 1962 (19 U.S.C. 1801 *et seq.*), the Trade Act of 1974 (19 U.S.C. 2101 *et seq.*), the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the Omnibus Trade and Competition Act of 1988 (19 U.S.C. 2901 *et seq.*), and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(v) Maintain a worldwide agricultural intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests and to acquire information on demand, competition, marketing, and distribution of U.S. agricultural commodities

abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1768).

(vi) Exercise the Department's functions with respect to the International Coffee Agreement or any such future agreement.

(vii) Administer functions of the Department relating to import controls, except those functions reserved to the Secretary in paragraph (b) of this section and those relating to section 8e of the Agricultural Act of 1938 (7 U.S.C. 608e–1), as assigned to the Under Secretary for Marketing and Regulatory Programs. These include:

(A) Functions under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624);

(B) General note 15(c) to the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202);

(C) Requests for emergency relief from duty-free imports of perishable products filed with the Department of Agriculture under section 213(f) of the Caribbean Basin Recovery Act of 1983 (19 U.S.C. 2703(f));

(D) Section 404 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112 note);

(E) Section 204(d) of the Andean Trade Preference Act (19 U.S.C. 3203(d));

(F) [Reserved]

(G) Section 301(a) of the United States–Canada Free Trade Agreement Implementation Act (19 U.S.C. 2112 note); and

(H) Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

(viii) Conduct Department activities to carry out the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. Chapter 56).

(ix) Exercise the Department's responsibilities in connection with international negotiations of the Grains Trade Convention and in the administration of such Convention.

(x) Plan and carry out programs and activities under the foreign market promotion authority of: The Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and Promotion Act (7 U.S.C. 2101–2118); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2911); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); the Floral Research and Consumer Information Act of 1981 (7 U.S.C. 4301–4319); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4514); the Honey Research, Promotion, and Consumer Information Act of 1984, as amended (7 U.S.C. 4601–4613); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Watermelon Research and Promotion Act, as amended (7 U.S.C. 4901–4916); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311); the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814); the Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101–7111); the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425); the Canola and Rapeseed Research, Promotion, and Consumer Information Act (7 U.S.C. 7441–7452); the National Kiwifruit Research, Promotion, and Consumer Information Act (7 U.S.C. 7461–7473); and, the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7481–7491). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(xi) Formulate policies and administer barter programs under which agricultural commodities are exported.

(xii) Perform functions of the Department in connection with the development and implementation of agreements to finance the sale and exportation of agricultural commodities under the Food for Peace Act (7 U.S.C. 1691, 1701 *et seq.*).

(xiii) [Reserved]

(xiv) Coordinate within the Department activities arising under the Food for Peace Act (except as delegated to the Under Secretary for Research, Education, and Economics in §2.21(a)(8)), and represent the Department in its relationships in such matters with the Department of State, any interagency committee on the Food for Peace Act, and other departments, agencies and committees of the Government.

(xv)–(xvi) [Reserved]

(xvii) Carry out activities relating to the sale, reduction, or cancellation of debt, as authorized by title VI of the Agricultural Trade and Development Act of 1954, as amended (7 U.S.C. 1738 *et seq.*).

(xviii) [Reserved]

(xix) Allocate the agricultural commodities acquired under price support programs that have been determined by the Under Secretary for Farm Production and Conservation or designee to be available for export among the various export programs.

(xx) Conduct economic analyses pertaining to the foreign sugar situation.

(xxi) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(xxii) Exercise the Department's responsibilities with respect to tariff-rate quotes for dairy products under chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(xxiii) Serve as a focal point for handling quality or weight discrepancy inquiries from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(xxiv) Establish and administer regulations relating to foreign travel by employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating Department of State medical clearances and imposing requirements for itineraries and contacting the Foreign Agricultural Affairs Officers upon arrival in the Officers' country(ies) of responsibility.

(xxv) Formulate policies and administer programs and activities authorized by the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5601 *et seq.*).

(xxvi) Administer the Foreign Service personnel system for the Department in accordance with 22 U.S.C. 3922, except as otherwise delegated to the Under Secretary for Marketing and Regulatory Programs in §2.22(a)(2)(i), but including authority to approve joint regulations issued by the Department of State and authority to represent the Department of Agriculture in all interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations.

(xxvii) Establish and maintain U.S. Agricultural Trade Offices, to develop, maintain and expand international markets for U.S. agricultural commodities in accordance with title IV of Public Law No. 95–501 (7 U.S.C. 1765a–g).

(xxviii) Administer the programs under section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)), relating to the foreign donation of CCC stocks of agricultural commodities, except as otherwise delegated in §2.42(a)(43).

(xxix) Support remote sensing activities of the Department and research with satellite imagery including:

(A) Providing liaison with U.S. space programs;

(B) Providing administrative management of the USDA Remote Sensing Archive and the transfer of satellite imagery to all USDA agencies;

(C) Coordinating all agency satellite imagery data needs; and

(D) Arranging for acquisition, and preparation of imagery for use to the extent of existing capabilities.

(xxx) Promote cooperation and coordination between 1862, 1890, 1994, and NLGCA Institutions, HSACUs, and cooperating forestry schools and international partner institutions in developing countries by exercising the Secretary's authority in 7 U.S.C. 3292, including coordinating with the Under Secretary for Research, Education, and Economics to place interns from covered institutions in, or in service to benefit, developing countries.

(xxxi) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o), except as otherwise delegated in § 2.42(a)(43).

(xxxii) Serve as Department adviser on policies, organizational arrangements, budgets, and actions to accomplish international scientific and technical cooperation in food and agriculture.

(xxxiii) Administer and direct the Department's programs in international development, technical assistance, and training carried out under the Foreign Assistance Act, as amended, as requested under such act (22 U.S.C. 2151 *et seq.*).

(xxxiv) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research centers, and other organizations, institutions, or individuals (7 U.S.C. 1624, 3291).

(xxxv) Direct and coordinate the Department's participation in scientific and technical matters and exchange agreements between the United States and other countries.

(xxxvi) Direct and coordinate the Department's work with international organizations and interagency committees concerned with food and agricultural development programs (7 U.S.C. 2201–2202).

(xxxvii) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(xxxviii) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

(xxxix) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 3319a).

(xl) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(xli) Administer the Cochran Fellowship Program (7 U.S.C. 3293).

(xlii) Determine quantity trigger levels and impose additional duties under the special safeguard measures in accordance with U.S. note 2 to subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(xliii) Implement provisions of the Trade Act of 1974 regarding adjustment assistance for farmers (19 U.S.C. 2401–2401g).

(xliv) Implement section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1).

(xlv) Administer the International Agricultural Education Fellowship Program (7 U.S.C. 3295).

(xlvi) Implement section 3206 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1726c) regarding local and regional food aid procurement projects.

(xlvii) Administer the Borlaug International Agricultural Science and Technology Fellowship Program (7 U.S.C. 3319j).

(xlviii) Compile and make available information relating to the improvement of international food security, and provide technical assistance for the improvement of international food security to Federal, State, or local agencies; agencies or instrumentalities of the government of foreign country; domestic or international organizations; or intergovernmental organizations (7 U.S.C. 1736dd).

(xlix) Administer the following provisions of the Agricultural Act of 2014, Public Law 113–79:

(A) Section 12314 relating to the Pima Agriculture Cotton Trust Fund (7 U.S.C. 2101 note), in coordination with the Under Secretary for Farm Production and Conservation.

(B) Section 12315 relating to the Agriculture Wool Apparel Manufacturers Trust Fund (7 U.S.C. 7101 note), in coordination with the Under Secretary for Farm Production and Conservation.

(l) In consultation with the Tribal Advisory Committee and the Director of the Office of Tribal Relations, and in coordination with the Secretaries of

Commerce, State, Interior, and the heads of any other relevant Federal agencies, implement section 3312 of the Agriculture Improvement Act of 2018 (7 U.S.C. 5608) to support greater inclusion of Tribal agricultural food products in Federal trade activities.

(2) [Reserved]

(3) Administer responsibilities and functions assigned under the Defense Production Act of 1950 (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning foreign agricultural intelligence and other foreign agricultural matters.

(4) Carry out prize competition authorities in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated to the Under Secretary for Trade and Foreign Agricultural Affairs, except for authorities delegated to the Chief Financial Officer in §2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(2) of this section.

(5) *Related to the U.S. Codex Office.* (i) Inform the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (19 U.S.C. 2578; Pres. Proc. 6780).

(ii) Enter into agreements with organizations, institutions or individuals throughout the world to conduct activities related to the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission, including international outreach and education, in order to promote and support the development of a viable and sustainable global agricultural system; antihunger and improved international nutrition efforts; and increased quantity, quality, and availability of food (7 U.S.C. 3291).

(iii) Coordinate with institutions and other persons throughout the world performing agricultural and related research, extension, and teaching activities by exchanging research materials and results with such institutions or persons or by conducting with such institutions or persons joint or coordinated research, extension, or teaching activities that are related to the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission and that address problems of significance to food and agriculture in the United States (7 U.S.C. 3291).

(iv) Work with transitional and more advanced countries in food, agricultural, and related research, development, teaching, and extension activities related to the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (7 U.S.C. 3291).

(v) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements to carry out the Department's agricultural research, extension, or teaching activities related to the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (7 U.S.C. 3318, 3319a).

(vi) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(vii) Coordinate policy formulation for USDA international science and technology programs concerning the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (7 U.S.C. 3291).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to foreign agriculture.* (i) Approving export controls with respect to any agricultural commodity, including fats and oils or animal hides or skins as provided for in the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*).

(ii) Advising the President that imports are having the effect on programs or operations of this Department required as a prerequisite for the imposition of import controls under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624a), recommending that the President cause an investigation to be made by the Tariff Commission of the facts so that a determination can be made whether import restrictions should be imposed under that Act, and determining under section 204(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e)) that there exists a serious injury, or threat thereof and recommending to the

President whether or not to take action.

(iii) Determining the agricultural commodities and the quantities thereof available for disposition under the Food for Peace Act (7 U.S.C. 1731).

(2) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

[83 FR 22181, May 14, 2018, as amended at 85 FR 65512, Oct, 15, 2020. Redesignated and amended at 87 FR 44266, July 26, 2022]

§ 2.16 Under Secretary for Farm Production and Conservation.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Farm Production and Conservation:

(1) *Related to Farm Service Agency.* (i) Formulate policies and administer programs authorized by the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1282 *et seq.*).

(ii) Formulate policies and administer programs authorized by the Agricultural Act of 1949, as amended (7 U.S.C. 1441 *et seq.*).

(iii) Coordinate and prevent duplication of aerial photographic work of the Department, including:

(A) Clearing photography projects;

(B) Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books;

(C) Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage;

(D) Promoting interchange of technical information and techniques to develop lower costs and better quality;

(E) Representing the Department on committees, task forces, work groups, and other similar groups concerned with aerial photography acquisition and reproduction, and serving as liaison with other governmental agencies on aerial photography but excluding mapping;

(F) Providing a Chairperson for the Photography Sales Committee of the Department;

(G) Coordinating development, preparation, and issuance of specifications for aerial photography for the Department;

(H) Coordinating and performing procurement, inspection, and application of specifications for USDA aerial photography;

(I) Providing for liaison with EROS Data Center to support USDA programs and research with satellite imagery reproductions; and

(J) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(iv) [Reserved]

(v) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201 *et seq.*).

(vi) Conduct fiscal, accounting and claims functions relating to Commodity Credit Corporation (CCC) programs for which the Under Secretary for Farm Production and Conservation has been delegated authority.

(vii) Conduct assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended (50 U.S.C. 98 *et seq.*).

(viii) Supervise and direct Farm Service Agency State and county offices and delegate functions to be performed by Farm Service Agency State and county committees.

(ix) Administer the dairy indemnity program under the Act of August 13, 1968, as amended (7 U.S.C. 4551 *et seq.*).

(x) Administer procurement, processing, handling, distribution, disposition, transportation, payment, and related services with respect to surplus removal and supply operations which are carried out under section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agricultural Act of 1965, as amended (7 U.S.C. 1446a–1), except as delegated in paragraph (a)(3) of this section and to the Under Secretary for Food, Nutrition, and Consumer Services in § 2.19, and assist the Under Secretary for Food, Nutrition, and Consumer Services and the Assistant Secretary for Marketing and Regulatory Programs in the procurement, handling, payment, and related services under section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), the Act of June 28, 1937, as amended (7

U.S.C. 713c), the National School Lunch Act, as amended (42 U.S.C. 1751, *et seq.*), section 8 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1777), section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note), and section 1114 of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e).

(xi) Administer the Organic Certification Cost Share Programs authorized under the Federal Crop Insurance Act (7 U.S.C. 1524(b)(4)(C)(ii), and under the Farm Security and Rural Investment Act, as amended by the Agricultural Act of 2014 (7 U.S.C. 6523). [Reserved]

(xii) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 *et seq.*), except those functions delegated in §2.21(a)(8)(xi).

(xiii) Administer energy management activities as assigned.

(xiv) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901 *et seq.*), and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001 *et seq.*).

(xv) Conduct field operations of diversion programs for fresh fruits and vegetables under section 32 of the Act of August 29, 1935.

(xvi) [Reserved]

(xvii) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(xviii) Formulate and carry out the Conservation Reserve Program, including the implementation of technical assistance, under the Food Security Act of 1985, as amended (16 U.S.C. 3831 *et seq.*), and the functions of the Grassland Reserve Program transferred to the Conservation Reserve Program.

(xix) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(xx)–(xxii) [Reserved]

(xxiii) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

(xxiv) [Reserved]

(xxv) Administer all programs of the Commodity Credit Corporation that provide assistance with respect to the production of agricultural commodities or the income of producers, including disaster assistance and the domestic marketing of such commodities, except as may otherwise be reserved by the Secretary of Agriculture, and similar programs (including commodity quality development programs) consigned by statute to the Secretary of Agriculture unless otherwise delegated.

(xxvi) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Under Secretary for Farm Production and Conservation:

(A) The equitable relief provisions of section 1613 (7 U.S.C. 7996).

(B) The tracking of benefits under section 1614 (7 U.S.C. 7997).

(xxvii) Formulate and carry out the Grassroots Source Water Protection Program authorized by the Food Security Act of 1985, as amended (16 U.S.C. 3839bb–2).

(xxviii)i–(xxxi) [Reserved]

(xxxii) Implement the authority in section 1241 of the Food Security Act of 1985 (16 U.S.C. 3841) to accept and use voluntary contributions of non–Federal funds in support of natural resources conservation programs under subtitle D of title XII of that Act with respect to authorities delegated to the Under Secretary for Farm Production and Conservation.

(xxxiii) In coordination with the Director, Office of Partnerships and Public Engagement, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(xxxiv) Administer the following provisions of the Food, Conservation, and Energy Act of 2008, Public Law 110–246:

(A) [Reserved]

(B) Section 1609 relating to the tracking of benefits.

(C)–(D) [Reserved]

(E) Section 1621 relating to direct reimbursement payments to geographically disadvantaged farmers or ranchers.

(F)–(G) [Reserved]

(H) Section 14212 relating to the closure or relocation of county or field offices of the Farm Service Agency.

(I) Section 15353(a) relating to information reporting for Commodity Credit Corporation transactions.

(xxxv) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(xxxvi) Administer the following provisions of the Agricultural Act of 2014, Public Law 113–79, as amended:

(A) Sections 1401–1410 relating to a margin protection program for dairy producers (7 U.S.C. 9051–9060), and section 1431 relating to a dairy product donation program (7 U.S.C. 9071).

(B) Section 1612 relating to the tracking of benefits (7 U.S.C. 9095).

(C) Section 12314 relating to the Pima Agriculture Cotton Trust Fund (7 U.S.C. 2101 note).

(D) Section 12315 relating to the Agriculture Wool Apparel Manufacturers Trust Fund (7 U.S.C. 7101 note).

(xxxvii) Administer the funds made available to the Office of the Secretary under Title I of Subdivision B, Further Supplemental Appropriations for Disaster Relief Requirements Act, 2018, Public Law 115–123.

(xxxviii) Determine the agricultural commodities acquired under price support programs which are available for export.

(xxxix) Administer the following provisions of the Agriculture Improvement Act of 2018, Public Law 116–334:

(A) Section 5413 relating to reporting on farm loans (7 U.S.C. 2008x).

(B) Section 12304 relating to the National Beginning Farmer and Rancher Coordinator (7 U.S.C. 6934a).

(C) Section 12612 relating to a national agriculture imagery program (7 U.S.C. 2204j).

(D) Section 12615 relating to the eligibility for farm operators on heirs' property to obtain a farm loan number (7 U.S.C. 2266b).

(2) *Related to farm credit.* (i) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*), except for the authority contained in the following sections:

(A) [Reserved]

(B) Section 306 (7 U.S.C. 1926), relating to all programs in that section;

(C) Section 306A (7 U.S.C. 1926a) and section 306B (7 U.S.C. 1926b), relating to the emergency community water assistance grant programs, and section 306D (7 U.S.C. 1926d), relating to water systems for rural Alaskan Native Villages;

(D) Section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks;

(E) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), regarding assets and programs related to rural development;

(F) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development loans;

(G) Section 310B (7 U.S.C. 1932), regarding various Rural Development programs;

(H) Section 310C (7 U.S.C. 1933), relating to housing program interest rates;

(I) Section 310G (7 U.S.C. 1936a), relating to the use of rural development loans and grants for other purposes, and section 353A (7 U.S.C. 2001a), relating to the servicing of community facilities loans;

(J) Section 364 (7 U.S.C. 2006f) and section 365 (7 U.S.C. 2008);

(K) Administrative provisions of subtitle D of the Consolidated Farm and Rural Development Act related to Rural Utilities Service, Rural Business-Cooperative Service, and Rural Housing Service activities.

(L) Section 375 (7 U.S.C. 2008j), relating to the National Sheep Industry Improvement Center.

(M) Sections 379 (7 U.S.C. 2008n) through 379G (7 U.S.C. 2008u) and subtitles E through I (7 U.S.C. 2009–2009dd–7) relating to rural development programs and activities.

(ii) Collect, service, and liquidate loans made or insured by the Farm Service Agency, or its predecessor agencies.

(iii) Administer the Rural Rehabilitation Corporation Trust Liquidation

Act (40 U.S.C. 440 *et seq.*), and trust, liquidation, and other agreements entered into pursuant thereto.

(iv) [Reserved]

(v) Administer Farmers Home Administration or any successor agency assets conveyed in trust under the Participation Sales Act of 1966 (12 U.S.C. 1717).

(vi) Administer the Emergency Loan and Guarantee Programs under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606), the Disaster Relief Act of 1969 (Pub. L. No. 91–79), Pub. L. No. 92–385, approved August 16, 1972, and the Emergency Livestock Credit Act of 1974 (Pub. L. No. 93–357), as amended.

(vii) Administer loans to homestead or desertland entrymen and purchasers of land in reclamation projects or to an entryman under the desertland law (7 U.S.C. 1006a and 1006b).

(viii) [Reserved]

(ix) Service, collect, settle, and liquidate:

(A) Deferred land purchase obligations of individuals under the Wheeler-Case Act of August 11, 1939, as amended (16 U.S.C. 590y), and under the item, ''Water Conservation and Utilization projects'' in the Department of the Interior Appropriation Act, 1940 (53 Stat. 719), as amended;

(B) Puerto Rican Hurricane Relief loans under the Act of July 11, 1956 (70 Stat. 525); and

(C) Loans made in conformance with section 4 of the Southeast Hurricane Disaster Relief Act of 1965 (79 Stat. 1301).

(x) Administer loans to Indian tribes, tribal corporations, and purchasers of highly fractionated land (25 U.S.C. 488–492).

(xi) Administer the State Agricultural Loan Mediation Program under title 5 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101 *et seq.*)

(xii) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961), delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(xiii) Exercise all authority and discretion vested in the Secretary by section 331(c) of the Consolidated Farm and Rural Development Act, as amended by section 2 of the Farmers Home Administration Improvement Act of 1994, Pub. L. 103–248 (7 U.S.C. 1981(c)), including the following:

(A) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(B) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel, for the conduct of litigation and refer such actions; and

(C) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farm Service Agency.

(xiv) Administer programs for Apple Loans and Emergency Loans for Seed Producers under sections 203(f) and 253, respectively, of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1421 note, Pub. L. 106–224).

(xv) Administer evaluations of direct and guaranteed loan programs under section 5301 of the Farm security and Rural Investment Act of 2002 (7 U.S.C. 1922 note).

(3) *Related to natural resources conservation.* (i) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(A) Quality in the natural resource base for sustained use;

(B) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(C) Quality in the standard of living based on community improvement and adequate income.

(ii) Provide national leadership in and evaluate and coordinate land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), including the Farms for the Future Program authorized by sections 1465–1470 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 4201 note), except as otherwise delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(1)(lxii).

(iii) Administer the basic program of soil and water conservation under Public Law 74–46, and related laws (16 U.S.C. 590a–f, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(A) Technical and financial assistance to land users in carrying out locally adapted soil and water conservation programs primarily through soil and water conservation districts in the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and Federally recognized Native American tribes, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(*1*) Comprehensive planning assistance in nonmetropolitan districts;

(*2*) Assistance in the field of income-producing recreation on rural non-Federal lands;

(*3*) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(*4*) Assistance in developing programs relating to natural beauty; and

(*5*) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*i*) To the Farm Service Agency in the development and technical servicing of certain programs, such as the Agricultural Conservation Program and other such similar conservation programs;

(*ii*) To the Rural Housing Service in connection with their loan and land disposition programs;

(B) Soil Surveys, including:

(*1*) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(*2*) Conducting soil surveys for resource planning and development; and

(*3*) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps;

(C) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. IV of 1940 (5 U.S.C. App.);

(D) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead–Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(E) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(iv) Administer the Watershed Protection and Flood Prevention Programs, including:

(A) The eleven authorized watershed projects authorized under the Flood Control Act of 1944 (Pub. L. 78–534);

(B) The emergency flood control work under 33 U.S.C. 701b–1;

(C) The Cooperative River Basin Surveys and Investigations Programs under 16 U.S.C. 1006;

(D) The pilot watershed projects under 16 U.S.C. 590 a–f and 16 U.S.C. 1001–1009;

(E) The Watershed Protection and Flood Prevention Program under 16

U.S.C. 1001–1010, including rehabilitation of water resource structural measures constructed under certain Department of Agriculture programs under 16 U.S.C. 1012, except for responsibilities assigned to the Under Secretary for Rural Development.

(F) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(G) The Emergency Conservation Program and the Emergency Watershed Protection Program under sections 401–405 of the Agricultural Credit Act of 1978, 16 U.S.C. 2201–2205.

(v) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), except those responsibilities assigned to the Under Secretary for Natural Resources and Environment.

(vi) Administer the Resource Conservation and Development Program under 16 U.S.C. 590 a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Under Secretary for Rural Development.

(vii) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(viii) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 *et seq.*).

(ix) Administer the Rural Clean Water Program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*).

(x) Monitor actions and progress of USDA in complying with Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121, regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(xi) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(xii) Administer section 202(c) of the Colorado River Basin Salinity Control Act, 43 U.S.C. 1592(c), including:

(A) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(B) Conduct salinity control studies of irrigated salt source areas;

(C) Provide technical and financial assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(D) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(E) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(F) Enter into and administer contracts with program participants and waive cost-sharing requirements when such cost-sharing requirements would result in a failure to proceed with needed on-farm measures.

(xiii) Except as otherwise delegated, administer natural resources conservation authorities, including authorities related to programs of the Commodity Credit Corporation that provide assistance with respect to natural resources conservation, under Title XII of the Food Security Act of 1985 (the Act), as amended (16 U.S.C. 3801 *et seq.*), including the following:

(A) Technical assistance related to the conservation of highly erodible lands and wetlands pursuant to sections 1211–1224 of the Act (16 U.S.C. 3811–3824).

(B) Technical assistance related to the Conservation Reserve Program authorized by sections 1231–1235 of the Act (16 U.S.C. 3831–3835).

(C) The Wetlands Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237F of the Act (16 U.S.C. 3837–3837f) prior to February 7, 2014, the transition authority under section 2703 of the Agricultural Act of 2014, and the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act (Pub. L. 103–75).

(D) The Conservation Security Program authorized by sections 1238–1238C of the Act (16 U.S.C. 3838–3838c) and the Conservation Stewardship Program authorized by sections 1240I–1240L–1 (16 U.S.C. 3839aa–21—3839aa–25).

(E) The Farmland Protection Program authorized by sections 1238H–1238I of the Act (16 U.S.C. 3838h–3838i) prior to February 7, 2014, and the transition authority under section 2704 of the Agricultural Act of 2014.

(F) The Farm Viability Program authorized by section 1238J of the Act (16 U.S.C. 3838j) prior to February 7, 2014, and the transition authority under section 2704 of the Agricultural Act of 2014.

(G) The Environmental Quality Incentives Program authorized by sections 1240–1240H of the Act (16 U.S.C. 3839aa–3839aa–8), the Agricultural Water Enhancement Program authorized by section 1240H of the Act (16 U.S.C. 3839aa–9) prior to February 7, 2014, and section 2706 of the Agricultural Act of 2014.

(H) The conservation of private grazing lands authorized by section 1240M of the Act (16 U.S.C. 3839bb).

(I) The Wildlife Habitat Incentives Program authorized by section 1240N of the Act (16 U.S.C. 3839bb–1) prior to February 7, 2014 and Section 2707 of the Agricultural Act of 2014.

(J) The program for soil erosion and sedimentation control in the Great Lakes basin authorized by section 1240P of the Act (16 U.S.C. 3839bb–3) prior to February 7, 2014, and section 2708 of the Agricultural Act of 2014.

(K) The Chesapeake Bay Watershed Program authorized by section 1240Q of the Act (16 U.S.C. 3839bb–4) prior to February 7, 2014, and section 2709 of the Agricultural Act of 2014.

(L) The delivery of technical assistance under section 1242 of the Act (16 U.S.C. 3842), including the approval of persons or entities outside of USDA to provide technical services.

(M) The authority for partnerships and cooperation provided by section 1243 of the Act (16 U.S.C. 3843) prior to February 7, 2014, and section 2710 of the Agricultural Act of 2014.

(N) The incentives for certain farmers and ranchers and Indian tribes and the protection of certain proprietary information related to natural resources conservation programs as provided by section 1244 of the Act (16 U.S.C. 3844).

(O) The Agriculture Conservation Experienced Services Program authorized by section 1252 of the Act (16 U.S.C. 3851).

(P) The authority under sections 1261–1262 of the Act (16 U.S.C. 3861–3862) to establish and utilize State Technical Committees.

(Q) The Grassland Reserve Program under sections 1238N–1238Q of the Act (16 U.S.C. 3838n–3838q) prior to February 7, 2014, and section 2705 of the Agricultural Act of 2014.

(R) The authority in section 1241 of the Act (16 U.S.C. 3841) to accept and use voluntary contributions of non-Federal funds in support of natural resources conservation programs under subtitle D of title XII of the Act with respect to authorities delegated to the Under Secretary for Farm Production and Conservation.

(S) The Agricultural Conservation Easement Program authorized by sections 1265–1265D of the Act (16 U.S.C. 3865–3865d).

(T) The Regional Conservation Partnership Program authorized by sections 1271–1271F of the Act (16 U.S.C. 3871–3871f).

(U) The Voluntary Public Access and Habitat Incentive Program authorized by section 1240R of the Act (16 U.S.C. 3839bb–5).

(V) A wetlands mitigation banking program authorized by section 1222(k) of the Act (16 U.S.C. 3822(k)).

(xiv) Approve and transmit to the Congress comprehensive river basin reports.

(xv) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(xvii) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301 *et seq.*).

(xviii) Enter into cooperative agreements, which may provide for the acquisition of goods or services, including personal services, as authorized by Public Law 106–387 (7 U.S.C. 6962a).

(xix) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under such Act and submitted to the Secretary of Commerce, consistent with section 306(a) and (c) of such Act (16 U.S.C. 1455(a) and (c)).

(xx) Administer the Healthy Forests Reserve Program authorized by sections 501–508, Title V of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6571–6578).

(xxi) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(xxii) In coordination with the Director, Office of Advocacy and Outreach, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(xxiii) Authorize employees of the Natural Resources Conservation Service to carry and use firearms for personal protection while conducting field work in remote locations in the performance of their official duties (7 U.S.C. 2274a).

(xxiv) Conduct activities that assist the Chief Economist in developing guidelines regarding the development of environmental services markets.

(xxv) Administer the Terminal Lakes assistance program authorized by section 2507 of the Farm Security and Rural Investment Act of 2002 (16 U.S.C. 3839bb–6).

(xxvi) Administer the state and private forest landscape-scale restoration program (16 U.S.C. 2109a).

(xxvii) Administer the following provisions of the Agriculture Improvement Act of 2018 (Pub. L. 116–334):

(A) Section 1704 (7 U.S.C. 1308–3a), authorizing waivers of the adjusted gross income limitation.

(B) In consultation with the Director of the U.S. Fish and Wildlife Service, Section 2707 (16 U.S.C. 1531 note), relating to wildlife management.

(C) In coordination with the Under Secretary for Marketing and Regulatory Programs, Section 2408 (7 U.S.C. 8351 note), relating to the Feral Swine Eradication and Control Pilot Program.

(D) Section 8628, relating to the purchase of Natural Resources Conservation Service property in Riverside County, California.

(E) Section 12302, relating to the Office of Urban Agriculture and Innovative Production.

(4) *Related to risk management.* (i) Exercise general supervision of the Federal Crop Insurance Corporation.

(ii) Appoint such officers and employees as may be necessary for the transaction of the business of the Federal Crop Insurance Corporation and the Risk Management Agency.

(iii) Conduct pilot programs involving revenue insurance, risk management savings accounts, or the use of futures markets to manage risk and support farm income.

(iv) Provide education in management of the financial risks inherent in the production and marketing of agricultural commodities.

(v) Conduct a study and issue a report on the efficacy and accuracy of the application of pack factors regarding the measurement of farm-stored production for purposes of providing policies or plans of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

(vi) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(vii) Prepare cropland reports as required by section 11014(c) of the Agricultural Act of 2013, Public Law 113–79.

(viii) Assist the Under Secretary for Research, Education, and Economics with implementing section 10016 of the Agricultural Act of 2014 regarding locally or regionally produced agricultural food products (7 U.S.C. 2204h).

(ix) Administer the Federal Crop Insurance Act (7 U.S.C. 1501, *et seq.*), except for sections 524(a)(1)(B), (a)(3), and (b) (7 U.S.C. 1524(a)(1)(B), (a)(3), (b)) and 531 (7 U.S.C. 1531).

(x) Coordinate between agencies of the Department on the type and format of data received under the noninsured

crop disaster assistance program as authorized by Sec. 196 of the Federal Agriculture Improvement and Reform Act of 1996, (Pub. L. 104–127, as amended) (7 U.S.C. 7333).

(5) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(6) *Related to defense and emergency preparedness.* (i) Administer responsibilities and functions assigned under the Defense Production Act of 1950 (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning agricultural production; food processing, storage, and distribution; distribution of farm equipment and fertilizer; rehabilitation and use of food, agricultural, and related agribusiness facilities; CCC resources; and farm credit and financial assistance.

(ii) Administer functions delegated by the President to the Secretary under Executive Order 13603, ''National Defense Resources Preparedness'' (3 CFR, 2012 Comp., p. 225), and Executive Order 12742, ''National Security Industrial Responsiveness'' (3 CFR, 1991 Comp., p. 309), including administration of an Agriculture Priorities and Allocations System.

(7) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petition for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act.

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(9) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Recommend actions and policies of the loan and grant programs under his or her authority concerning compliance with the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, Subtitle E of Public Law No. 104–208.

(10) Carry out prize competition authorities in section 24 of the Stevenson–Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated to the Under Secretary for Farm Production and Conservation, except for authorities delegated to the Chief Financial Officer in §2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(4) of this section.

(11) Administer a Century Farms Program as authorized by section 12508 of the Agriculture Improvement Act of 2018 (7 U.S.C. 2266a).

(12) Establish programs with any bureau of the U.S. Department of the Interior (DOI), or with other agencies within USDA, in support of the Service First initiative for the purpose of promoting customer service and efficiency, including delegating to employees of DOI and other USDA agencies the authorities of the agencies in the Farm Production and Conservation mission area necessary to carry out projects on behalf of USDA (43 U.S.C. 1703).

(13) Enter into cooperative agreements with Federal agencies, State and local governments, and any other organization or individual to improve the coordination and effectiveness of Federal programs, services, and actions affecting rural areas (7 U.S.C. 2204b(b)(4)).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to farm service.* (i) Appointment of Farm Service Agency State committeemen.

(ii) Final approval of regulations relating to the selection and exercise of the functions of committees promulgated under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590h(b)).

(iii) Final approval of allocations orders issued by the Department pursuant to authorities delegated by the President to the Secretary under Executive Order 13603, ''National Defense Resources Preparedness'' (3 CFR, 2012 Comp., p. 225).

(2) *Related to natural resources conservation.* Designation of new project areas in which the resource conservation and development program assistance will be provided.

(3) *Related to risk management.* (i) Appointment of those members of the Board of Directors of the Federal Crop Insurance Corporation who are not already otherwise employed by the Department of Agriculture, and as authorized in 7 U.S.C. 1505(a) designating an Under Secretary of Agriculture to be a member of the Board in addition to the Under Secretary responsible for the Federal crop insurance program who is a Board member pursuant to 7 U.S.C. 1505(a).

(ii) Appointment of the Administrator of the Risk Management Agency who also shall serve as the Manager of the Federal Crop Insurance Corporation.

(4) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

[60 FR 56393, Nov. 8, 1995, as amended at 61 FR 25775, May 23, 1996; 61 FR 37552, July 18, 1996; 62 FR 1031, Jan. 8, 1997; 62 FR 19900, Apr. 24, 1997; 62 FR 40253, July 28, 1997; 65 FR 12427, Mar. 9, 2000; 68 FR 27435, May 20, 2003; 71 FR 35491, June 21, 2006; 71 FR 51421, Aug. 30, 2006; 74 FR 3401, Jan. 21, 2009; 75 FR 43368, July 23, 2010; 78 FR 40937, July 9, 2013; 79 FR 44106, July 30, 2014; 80 FR 58336, Sept. 29, 2015; 83 FR 22179, May 14, 2018; 83 FR 61311, Nov. 29. 2018; 85 FR 65504, Oct. 15, 2020; 87 FR 44267, July 26, 2022; 89 FR 80074, Oct. 2, 2024]

§ 2.17 Under Secretary for Rural Development.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Rural Development:

(1) Provide leadership and coordination within the executive branch of a Nationwide Rural Development Program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(2) Coordinate activities relative to rural development among agencies reporting to the Under Secretary for Rural Development and, through appropriate channels, serve as the coordinating official for other departmental agencies having primary responsibilities for specific titles of the Rural Development Act of 1972, and allied legislation.

(3) Administer a national program of economic, social, and environmental research and analysis, statistical programs, and associated service work related to rural people and the communities in which they live including rural industrialization; rural population and manpower; local government finance; income development strategies; housing; social services and utilization; adjustments to changing economic and technical forces; and other related matters.

(4) Work with Federal agencies in encouraging the creation of rural community development organizations.

(5) Assist other Federal agencies in making rural community development organizations aware of the Federal programs available to them.

(6) Advise rural community development organizations of the availability of Federal assistance programs.

(7) Advise other Federal agencies of the need for particular Federal programs.

(8) Assist rural community development organizations in making contact with Federal agencies whose assistance may be of benefit to them.

(9) Assist other Federal agencies and national organizations in developing means for extending their services effectively to rural areas.

(10) Assist other Federal agencies in designating pilot projects in rural areas.

(11) Conduct studies to determine how programs of the Department can be brought to bear on the economic development problems of the country and assure that local groups are receiving adequate technical assistance from Federal agencies or from local and

State governments in formulating development programs and in carrying out planned development activities.

(12) Assist other Federal agencies in formulating manpower development and training policies.

(13) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be re-delegated.

(14) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning rural development credit and financial assistance.

(15) *Related to energy.* (i) Provide Department-wide operational support and coordination for loan and grant programs to foster and encourage the production of fuels from agricultural and forestry products or by-products.

(ii) Participate as a Department representative at conferences, meetings and other contacts including liaison with the Department of Energy and other government agencies and departments with respect to implementation of established Department energy policy.

(iii) Serve as Co-Chairperson of the Energy Coordinating Committee of the Department.

(16) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Utilities Service, the Rural Housing Service, the Rural Business-Cooperative Service, or their predecessor agencies.

(17) [Reserved]

(18) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the

final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(19) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(20) *Related to rural utilities service.* (i) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) except for rural economic development loan and grant programs; (7 U.S.C. 940c and 950aa *et seq.*): Provided, however, that the Under Secretary may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

(ii) Administer the Rural Electrification Act of 1938 (7 U.S.C. 903 note).

(iii) Designate the chief executive officer of the Rural Telephone Bank.

(iv) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(A) Section 306 (7 U.S.C. 1926), related to water and waste facilities.

(B) Section 306A (7 U.S.C. 1926a).

(C) Section 306B (7 U.S.C. 1926b).

(D) Section 306C (7 U.S.C. 1926c).

(E) Section 306D (7 U.S.C. 1926d).

(F) Section 306E (7 U.S.C. 1926e).

(G) Section 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities.

(H) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development

(I) Section 310B(b) (7 U.S.C. 1932(b)).

(J) [Reserved]

(K) Administrative Provisions of subtitle D of the consolidated Farm and Rural Development act relating to rural utility activities.

(L) Section 379B (7 U.S.C. 2008p).

(v) Administer section 8, and those functions with respect to repayment of obligations under section 4 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the Resource Conservation and Development Program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(vi) Administer the Water and Waste Loan Program (7 U.S.C. 1926–1).

(vii) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(viii) Administer the Distance Learning and Medical Link Programs (7 U.S.C. 950aaa *et seq.*).

(ix) Administer Water and Waste Facility Programs and activities (7 U.S.C. 1926–1).

(x) Consult with the Assistant Secretary of Commerce for Communications and Information to assist in the verification of eligibility of the broadband loan and grant programs of the Department of Agriculture (7 U.S.C. 950bb–6).

(xi) In coordination with the Director, Office of Partnerships and Public Engagement, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(xii) Administer section 6407 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8107a), relating to a rural energy savings program.

(xiii) Administer section 6210 of the Agricultural Act of 2014, Public Law 113–79, relating to funding of pending rural development loan and grant applications.

(xiv) Administer the authority under section 746 of Division A of the Consolidated Appropriations Act, 2018 (Pub. L. 115–141), and any successor provisions in subsequent appropriations acts, to issue waivers to the U.S. iron and steel requirements for the construction, alteration, maintenance, or repair of a public water or wastewater system.

(xv) In coordination with the Federal Communications Commission, administer Section 12511 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) relating to the precision agriculture connectivity task force.

(21) *Related to rural business-cooperative.* (i) Administer the Rural Economic Development Loan and Grant Programs under the Rural Electrification Act (7 U.S.C. 940c and 950aa *et seq.*).

(ii) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(A) Section 306(a)(110(A) (7 U.S.C. 1926(a)(11)(A)), relating to grants for business technical assistance and planning.

(B) [Reserved]

(C) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development.

(D) Section 310B (7 U.S.C. 1932), relating to various Rural Development programs, except for subsection (b) of that section.

(E) Section 310H (7 U.S.C. 1936b), relating to an intermediary relending program.

(F) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural business-cooperative activities.

(G) Section 378 (7 U.S.C. 2008m) relating to the National Rural Development Partnership;

(H) Section 379E (7 U.S.C. 2008s) relating to the Rural Microentrepreneur Assistance Program.

(I) Section 379F (7 U.S.C. 2000t) relating to the Expansion of Employment Opportunities for Individuals with Disabilities in Rural Areas Program.

(J) Section 379G (7 U.S.C. 2008u) relating to Health Care Services.

(K) Section 382A *et seq.* (7 U.S.C. 2009aa *et seq.*) relating to the Delta Regional Authority.

(L) Section 383A *et seq.* (7 U.S.C. 2009bb *et seq.*) relating to the Northern Great Plains Regional Authority.

(M) Section 384A *et seq.* (7 U.S.C. 2009cc *et seq.*) relating to the Rural Business Investment Program;

(N) Section 385A *et seq.* (7 U.S.C. 2009dd *et seq.*) relating to the Rural Collaborative Investment Program.

(iii) Administer Alcohol Fuels Credit Guarantee Program Account (Pub. L. 102–341, 106 Stat. 895).

(iv) [Reserved]

(v) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 204).

(vi) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620).

(vii) Administer the Drought and Disaster Guaranteed Loan Program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(viii) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(ix) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(x) Administer the Economically Disadvantaged Rural Community Loan Program (7 U.S.C. 6616).

(xi) Administer the assets of the Alternative Agricultural Research and Commercialization Corporation and the funds in the Alternative Agricultural Research and Commercialization Fund in accordance with section 6201 of the Farm Security and Rural Investment Act of 2000 (note to 7 U.S.C. 5901 (repealed)).

(xii) Administer programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457).

(xiii) Carry out the responsibilities of the Secretary of Agriculture relating to the marketing aspects of cooperatives, including economic research and analysis, the application of economic research findings, technical assistance to existing and developing cooperatives, education on cooperatives, and statistical information pertaining to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(xiv) Work with institutions and international organizations throughout the world on subjects related to the development and operation of agricultural cooperatives. Such work may be carried out by:

(A) Exchanging materials and results with such institutions or organizations;

(B) Engaging in joint or coordinated activities; or

(C) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3291).

(xv) Administer in rural areas the process of designation, provision of monitoring and oversight, and provision of technical assistance for Empowerment Zones and Enterprise Communities pursuant to section 13301 of Public Law 103–66, Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391 *et seq.*)

(xvi) Work with Federal agencies in encouraging the creation of local rural community development organizations. Within a State, assist other Federal agencies in developing means for extending their services effectively to rural areas and in designating pilot projects in rural areas (7 U.S.C. 2204).

(xvii) Conduct assessments to determine how programs of the Department can be brought to bear on the economic development problems of a State or local area and assure that local groups are receiving adequate and effective technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities (7 U.S.C. 2204b).

(xviii) Develop a process through which State, sub-state and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis (7 U.S.C. 2204b).

(xix) Prepare local or area-wide rural development strategies based on the needs, goals, objectives, plans and recommendations of local communities, sub-state areas and States (7 U.S.C. 2204b).

(xx) Develop a system of outreach in the State or local area to promote rural development and provide for the publication and dissemination of information, through multi-media methods, relating to rural development. Advise local rural development organizations of availability of Federal programs and the type of assistance available, and assist in making contact with Federal program (7 U.S.C. 2204; 7 U.S.C. 2204b).

(xxi) In coordination with the Under Secretary of Marketing and Regulatory Programs, administer the value-added producer grants program and farmers' markets and local food promotion program (7 U.S.C. 1627c(d)(5)–(6)).

(xxii) Administer the Agriculture Innovation Center Demonstration program (7 U.S.C. 1632b).

(xxiii) Administer the renewable energy programs authorized in sections 9003, 9004, 9005, 9007, and 9009 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103, 8104, 8105, 8107, and 8109).

(xxiv) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(xxv) In coordination with the Director, Office of Partnerships and Public

Engagement, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(xxvi) Administer the Healthy Food Financing Initiative under section 243 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6953).

(xxvii) Administer section 6209 of the Agricultural Act of 2014 (7 U.S.C. 2207b), relating to the collection and reporting of program metrics.

(xxviii) Implementation of a program for the Federal procurement of biobased products and of a voluntary ''USDA Certified Biobased product'' labeling program (7 U.S.C. 8102).

(xxix) Entering into cooperative agreements to further research programs in the food and agricultural sciences, related to establishing and implementing Federal biobased procurement and voluntary biobased labeling programs (7 U.S.C. 3318).

(22) *Related to rural housing.* (i) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(A) Section 306 (7 U.S.C. 1926), except with respect to financing for water and waste disposal facilities; or loans for rural electrification or telephone systems or facilities other than hydroelectric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities Service financing; and financing for grazing facilities and irrigation and drainage facilities; and subsection 306(a)(11).

(B) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities.

(C) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural housing activities.

(D) Section 379 (7 U.S.C. 2008n) relating to the Rural Telework program;

(E) Section 379A (7 U.S.C. 2008o) relating to the Historic Barn Preservation program; and

(F) Section 379C (7 U.S.C. 2008q) relating to the Farm Workers Training Grant program.

(ii) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), except those functions pertaining to research.

(iii) In consultation with the Department of Justice, Secretary of Housing and Urban Development, and Secretary of Health and Human Services, administer the emergency and transitional pet shelter and housing assistance grant program (34 U.S.C. 20127).

(iv) Administer the Rural Housing Disaster Program under sections 232, 234, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606).

(v) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. 100–628 (42 U.S.C. 1480(d)), including the following:

(A) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(B) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions; and

(C) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Rural Housing Service and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

(vi) Administer the Rural Firefighters and Emergency Personnel Grant program (7 U.S.C. 2655).

(vii) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(viii) In coordination with the Director, Office of Partnerships and Public Engagement, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(23) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Recommend actions and policies of the loan and grant programs under his or her authority concerning compliance with the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, Subtitle E of Public Law No. 104–208.

(24)–(25) [Reserved]

(26) *Related cooperative agreements.* Enter into cooperative agreements with other Federal agencies, State and local governments, and any other organizations or individuals to improve the coordination and effectiveness of Federal programs, services, and actions affecting rural areas, including the establishment and financing of interagency groups, as long as the objectives of the agreement will serve the mutual interest of the parties in rural development activities (7 U.S.C. 2204b(b)(4)).

(27) Exercise the authority in section 10101 of the Disaster Relief and Recovery Supplemental Appropriations Act, 2008, Public Law 110–329, div. B., regarding the Rural Development Disaster Assistance Fund.

(28) In coordination with the Office of Tribal Relations, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

(29) Implement section 14218 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 6941a).

(30) *Related to biomass research and development.*

Administer section 9008 of FSRIA (7 U.S.C. 8108) with respect to biomass research and development, including administration of the Biomass Research and Development Board and Biomass Research and Development Technical Advisory Committee, and submission of reports to Congress, except for the authority delegated to the Under Secretary for REE in § 2.21(a)(1)(cci) to carry out the Biomass Research and Development Initiative; consult and coordinate, as appropriate, with the Under Secretary for REE and other mission areas within the Department as deemed necessary in carrying out the authorities delegated herein; and serve as the designated point of contact referenced in 7 U.S.C. 8108 for the Department, except for purposes of administering the Biomass Research and Development Initiative as provided in § 2.21(a)(1)(cci).

(31) Carry out prize competition authorities in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated to the Under Secretary for Rural Development, except for authorities delegated to the Chief Financial Officer in § 2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(2) of this section.

(32) Oversee the Rural Health Liaison (7 U.S.C. 6946).

(b) The following authority is reserved to the Secretary of Agriculture:

(1) *Related to rural business-cooperative.* Submission to the Congress of the report required pursuant to section 1469 of Pub. L. No. 101–624.

(2) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

[60 FR 56393, Nov. 8, 1995, as amended at 65 FR 12427, Mar. 9, 2000; 66 FR 31107, June 11, 2001; 68 FR 27436, May 20, 2003; 74 FR 3402, Jan. 21, 2009; 75 FR 43368, July 23, 2010; 76 FR 52851, Aug. 24, 2011; 78 FR 40937, July 9, 2013; 79 FR 44106, July 30, 2014; 80 FR 58336, Sept. 29, 2015; 83 FR 22181, May 14, 2018; 83 FR 61311, Nov. 29, 2018; 85 FR 65506, Oct. 15, 2020]

§ 2.18 Under Secretary for Food Safety.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Food Safety:

(1) *Related to food safety and inspection.* (i) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats, and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(ii) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(A) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470, 472);

(B) Federal Meat Inspection Act, as amended, and related legislation, excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–613, 615–624, 641–645, 661, 671–680, 683, 691–692, 694–695);

(C) Egg Products Inspection Act, except for the Shell Egg Surveillance Program, voluntary laboratory analyses of egg products, and the Voluntary Egg Grading Program (21 U.S.C. 1031–1056);

(D) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(E) Humane Slaughter Act (7 U.S.C. 1901–1906);

(F) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products;

(G) Administer and conduct a Food Safety Research Program (7 U.S.C. 427); and

(H) Conduct an education program regarding the availability and safety of processes and treatments that eliminate or substantially reduce the level of pathogens on meat, meat food products, poultry, and poultry products (21 U.S.C. 679b).

(iii) Coordinate with the Assistant Secretary for Marketing and Regulatory Programs the administration of programs relating to human pathogen reduction (such as *salmonella enteritidis*) pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 120).

(iv) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

(2) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(3) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning the wholesomeness of meat and poultry and products thereof and inspection of eggs and egg products.

(4) *Related to biotechnology.* Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology as they may affect the safety of meat, poultry or egg products.

(5) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(6) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(7) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable the USDA agency under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in

developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(iv) Exercise primary responsibility to regulate drug, pesticide, and environmental contaminants in food products as covered by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*), including the Food Quality Protection Act of 1996, Public Law 104–170, and the Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*), as implemented by the Food Safety and Inspection Service through a Memorandum of Understanding with the United States Department of Health and Human Services, Food and Drug Administration, and the United States Environmental Protection Agency.

(8) Carry out prize competition authorities in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated to the Under Secretary for Food Safety, except for authorities delegated to the Chief Financial Officer in §2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(1) of this section.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

(2) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 65 FR 12428, Mar. 9, 2000; 68 FR 27436, May 20, 2003; 74 FR 3402, Jan. 21, 2009; 80 FR 58337, Sept. 29, 2015]

§2.19 Under Secretary for Food, Nutrition, and Consumer Services.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Food, Nutrition, and Consumer Services:

(1) *Related to food and nutrition.* (i) Administer the following legislation:

(A) The Food and Nutrition Act of 2008, as amended (7 U.S.C. 2011 *et seq.*), except for section 25, regarding assistance for community food projects.

(B) Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1751–1769i), except procurement of agricultural commodities and other foods under section 6 thereof.

(C) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790).

(D) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note).

(E) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).

(F) Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007).

(G) Section 4403 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3171 note).

(H) Section 4404 of the Farm Security and Rural Investment Act of 2002 (2 U.S.C. 1161).

(I) Section 4142 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(J) Section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a).

(K) Section 4305 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1755a).

(L) Section 4307 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(M) Section 4208 of the Agriculture Improvement Act of 2018 (7 U.S.C. 2026a).

(N) Section 12614 of the Agriculture Improvement Act of 2018 (7 U.S.C. 6925).

(ii) Administer those functions relating to the distribution and donation of agricultural commodities and products thereof under the following legislation:

(A) Clause (3) of section 416(a) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(a)), except the estimate and announcement of the types and varieties of food commodities, and the quantities thereof, to become available for distribution thereunder;

(B) Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1);

(C) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937, as amended (15 U.S.C. 713c), and related legislation;

(D) Section 9 of the Act of September 6, 1958, as amended (7 U.S.C. 1431b);

(E) Section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), except with respect to donations to Federal penal and correctional institutions;

(F) [Reserved]

(G) Section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a);

(H) Sections 412 and 413(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180(b));

(I) Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note);

(J) Section 1114 of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1431e);

(K) Section 1336 of the Agriculture and Food Act of 1981 (Pub. L. 97–98);

(L) Emergency Food Assistance Act of 1983, as amended (7 U.S.C. 7501 *et seq.*);

(M) Sections 3(b)–(i), 3A and 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note); and

(N) Section 110 of the Hunger Prevention Act of 1988 (7 U.S.C. 612c note).

(iii) Administer those functions relating to the distribution of supplemental nutrition assistance program benefits under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179).

(iv) In connection with the functions assigned in paragraphs (a)(1)(i), (ii) and (iii) of this section, relating to the distribution and donation of agricultural commodities and products thereof and supplemental nutrition assistance program benefits to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and supplemental nutrition assistance program benefits to be so distributed.

(v) Develop food plans for use in establishing supplemental nutrition assistance benefit levels, and assess the nutritional impact of Federal food programs.

(vi) Administer those functions under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612) relating to the eligibility of aliens for benefits under the domestic food assistance programs.

(vii) Administer the following provisions of the Agricultural Act of 2014, Public Law 113–79:

(A) Section 4004(b), relating to a demonstration project regarding the Food Distribution Program on Indian Reservations (7 U.S.C. 2013 note).

(B) Section 4031, relating to a Commonwealth of the Northern Mariana Islands pilot program regarding the Supplemental Nutrition Assistance Program (48 U.S.C. 1841 note).

(C) Section 4032, relating to annual State reporting on verification of Supplemental Nutrition Assistance Program participation (7 U.S.C. 2036c).

(D) Section 4033, relating to service of traditional foods in public facilities (25 U.S.C. 443d).

(E) Section 4214, relating to a pilot project for canned, frozen, or dried fruits and vegetables as part of the Fresh Fruit and Vegetable Program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1769a note).

(viii) Administer section 301 of the National Nutrition Monitoring and Related Research Act of 1990, relating to the Dietary Guidelines for Americans (7 U.S.C. 5341).

(ix) Implement section 242 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6952), relating to establishment of a multiagency task force for the purpose of providing coordination and direction for commodity programs.

(2) *Related to consumer advice.* (i) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(ii) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(iii) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(iv) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(v) Work with the Office of Budget and Program Analysis and the Office of Communications to ensure coordination of USDA consumer affairs and public participation programs, policies and information, and to prevent duplication of responsibilities.

(vi) Serve as a consumer ombudsman and communication link between consumers and the Department.

(vii) Approve the designation of agency Consumer Affairs Contacts.

(3) *Related to human nutrition information.* (i) Develop techniques and equipment to assist consumers in the home and in institutions in selecting food that supplies a nutritionally adequate diet.

(ii) Develop family food plans at different costs for use as standards by families of different sizes, sex-age composition, and economic levels.

(iii) Develop suitable and safe preparation and management procedures to retain nutritional and eating qualities of food served in homes and institutions.

(iv) Develop materials to aid the public in meeting dietary needs, with emphasis on food selection for good nutrition and appropriate cost, and food preparation to avoid waste, maximize nutrient retention, minimize food safety hazards, and conserve energy.

(v) Develop food plans for use in establishing food stamp benefit levels, and assess the nutritional impact of Federal food programs.

(vi) Coordinate nutrition education promotion and professional education projects within the Department.

(vii) Analyze data from food consumption surveys in coordination with the Under Secretary for Research, Education, and Economics to provide a basis for evaluating dietary adequacy.

(viii) Consult with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding household food consumption, individual intake, and dietary adequacy, and implications of the survey on public policy regarding food and nutrition policies (7 U.S.C. 3171–3175).

(ix) In conjunction with the Department of Health and Human Services, administer section 4403 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 5311a).

(x) Enter into contracts, grants, and cooperative agreements in accordance with section 1472 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318).

(4) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning food stamp assistance.

(6) Carry out prize competition authorities in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated to the Under Secretary for Food, Nutrition, and Consumer Services, except for authorities delegated to the Chief Financial Officer in § 2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(2) of this section.

(b) The following authority is reserved to the Secretary of Agriculture:

(1) *Related to food and nutrition.* Authority to appoint the members of the National Advisory Council on Maternal, Infant, and Fetal Nutrition as directed in section 17(k) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1786(k)).

(2) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

[60 FR 56393, Nov. 8, 1995, as amended at 68 FR 27436, May 20, 2003; 74 FR 3402, Jan. 21, 2009; 79 FR 44107, July 30, 2014; 80 FR 58337, Sept. 29, 2015; 85 FR 65506, Oct. 15, 2020]

§ 2.20 Under Secretary for Natural Resources and Environment.

(a) The following delegations of authority are made by the Secretary of

Agriculture to the Under Secretary for Natural Resources and Environment:

(1) *Related to environmental quality.* (i) Administer the implementation of the National Environmental Policy Act for the United States Department of Agriculture (USDA).

(ii) Represent USDA on Regional Response Teams on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), the Oil Pollution Act (OPA), as amended (33 U.S.C. 2701 *et seq.*), Executive Order 12580, 3 CFR, 1987 Comp., p. 193, Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR part 300.

(iii) Represent USDA in contacts with the United States Environmental Protection Agency, the Council on Environmental Quality, and other organizations or agencies on matters related to assigned responsibilities.

(iv) Formulate and promulgate USDA policy relating to environmental activity and natural resources.

(v) Provide staff support for the Secretary in the review of environmental impact statements.

(vi) Provide leadership in USDA for general land use activities including implementation of Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121.

(vii) Take such action as may be necessary, including issuance of administrative orders, and enter into agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order No. 12580, as amended by Executive Order No. 13016, to be exercised only with the concurrence of the General Counsel.

(viii) Exercise the functions of the Secretary of Agriculture authorized in Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. 105–83, relating to the acquisition of the New World Mine and other priority land acquisitions, land exchanges, and other activities.

(ix) Serve on the USDA Hazardous Materials Policy Council.

(x) Recommend actions and policies that enable agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(xi) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(2) *Related to forestry.* (i) Provide national leadership in forestry. (As used here and elsewhere in this section, the term ''forestry'' encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well-being).

(ii) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System.

(iii) Acquire, dispose of, and lease lands and interests in lands as may be authorized for the protection, management, and administration of the National Forest System, including the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by

Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632).

(iv) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or more which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(v) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670*o*.

(vi) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b–559g), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(A) To carry firearms;

(B) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(C) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(D) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(E) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(F) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(vii) Authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(viii) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(c), 205(a)–(d), 211, 317, 402(a)).

(ix) Exercise the administrative appeal review functions of the Secretary of Agriculture for decisions of the Chief of the Forest Service pursuant to 36 CFR parts 214, 218, and 219.

(x) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: Renewable resource management research, renewable resource environmental research; renewable resource protection research; renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(xi) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(xii) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(xiii) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 3105, 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(xiv) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(xv) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(xvi) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(xvii) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(xviii) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(xix) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(xx) Administer Rural Fire Protection and Control Programs (16 U.S.C. 2106c).

(xxi) Provide technical assistance on forestry technology or the implementation of the Conservation Reserve and Softwood Timber Programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(xxii) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(xxiii) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead–Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1013a).

(xxiv) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(A) Administer the forestry aspects of the programs listed in paragraphs (a)(2)(xxiv)(A)(*1*) through (*3*) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands;

(1) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(2) The Eleven Authorized Watershed Improvement Programs and Emergency Flood Prevention Measures Program under the Flood Control Act of 1944 (Pub. L. 78–534); and

(3) The Small Watershed Protection Program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009); and

(B) Exercise responsibility in connection with the forestry aspects of the Resource Conservation and Development Program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(xxv) Provide assistance to the Farm Service Agency in connection with the Agricultural Conservation Program, the Naval Stores Conservation Program, and the Cropland Conversion Program (16 U.S.C. 590g–q).

(xxvi) Provide assistance to the Rural Housing Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923.

(xxvii) Coordinate mapping work of USDA including:

(A) Clearing mapping projects to prevent duplication;

(B) Keeping a record of mapping done by USDA agencies;

(C) Preparing and submitting required USDA reports;

(D) Serving as liaison on mapping with the Office of Management and Budget, Department of Interior, and other departments and establishments;

(E) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(F) Maintaining the mapping records formerly maintained by the Office of Operations.

(xxviii) Administer the radio frequency licensing work of USDA, including:

(A) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(B) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(C) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith;

(D) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use; and

(xxix) Represent USDA in all matters relating to responsibilities and authorities under the Federal Power Act (16 U.S.C. 791a–823).

(xxx) Administer the Youth Conservation Corps Act (16 U.S.C. 1701–1706) for USDA.

(xxxi) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(xxxii) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(xxxiii) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(xxxiv) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287).

(xxxv) Jointly administer gypsy moth eradication activities with the Assistant Secretary for Marketing and Regulatory Programs, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 7759, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 1633), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(xxxvi) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 *et seq.*).

(xxxvii) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.;* 16 U.S.C. 1726b) for USDA consistent with the Department's overall national service program.

(xxxviii) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(xxxix) Establish programs with any bureau of the U.S. Department of the Interior (DOI), or with other agencies within USDA, in support of the Service First initiative for the purpose of promoting customer service and efficiency including delegating to employees of DOI and other USDA agencies the authorities of the Forest Service necessary to carry out projects on behalf of USDA (43 U.S.C. 1703).

(xl) At the request of the Director, Homeland Security Staff (Director), designate law enforcement personnel of the Forest Service to assist the Director in providing for the personal security for the Secretary and the Deputy

Secretary in the National Forest System.

(xli) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(xlii) Administer a program for providing loans to eligible units of local government to finance the purchase of equipment to monitor, remove, dispose of, and replace infested trees located under their jurisdiction and within the borders of quarantined areas (16 U.S.C. 2104a).

(xliii) Enforce and conduct investigations of violations of the Lacey Act, which prohibits importing or exporting any plant or plant product in interstate or foreign commerce in violation of any Federal, State, Tribal, or foreign law regulating plants or plant products (16 U.S.C. 3371–3378).

(xliv) Administer the community wood energy program providing grants to develop community wood energy plans, acquire or upgrade community wood energy systems, and establish or expand biomass consumer cooperatives (7 U.S.C. 8113).

(xlv) Conduct activities that assist the Chief Economist in developing guidelines regarding the development of environmental services markets.

(xlvi) Administer the programs authorized by the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 *et seq.*), except for the Healthy Forests Reserve Program authorized in title V of such act (16 U.S.C. 6571–6578).

(xlvii) Administer Good Neighbor contracts and cooperative agreements with a State to carry out forest, rangeland, and watershed restoration services on National Forest System lands (16 U.S.C. 2113a).

(xlviii) Utilize the Agriculture Conservation Experienced Services (ACES) Program (16 U.S.C. 3851) to provide technical services for conservation-related programs and authorities carried out on National Forest System lands (16 U.S.C. 3851a).

(xlix) Enter into reciprocal fire agreements or contracts with domestic entities. Administer reimbursements received for fire suppression (42 U.S.C. 1856–1856e).

(l) Administer the large airtanker and aerial asset lease program (16 U.S.C. 551c).

(li) Provide technical and other assistance with respect to eligibility of forest products for the ''USDA Certified Biobased Products'' labeling program (7 U.S.C. 8102(g)).

(lii) Cooperate with public or private entities or individuals to perform work on state, county, municipal, or private lands within or near the boundary of National Forest System lands for administration, protection, improvement, reforestation, and other kinds of work the Forest Service is authorized to do on National Forest System lands, and cooperate with public or private entities or individuals to perform the same kinds of work in connection with the use or occupancy of National Forest System lands (16 U.S.C. 572).

(liii) Enter into reciprocal fire agreements with foreign fire organizations. (42 U.S.C. 1856m–1856o).

(liv) Administer the payments to states program (16 U.S.C. 500; 16 U.S.C. 7101–7153); establish, maintain, and appoint members to Resource Advisory Committees (16 U.S.C. 7125).

(lv) Conduct performance-driven research and development, education, and technical assistance for the purpose of facilitating the use of innovative wood products in wood building construction in the United States (7 U.S.C. 7655c) and administer the Wood Innovation Grant program (7 U.S.C. 7655d).

(lvi) Furnish subsistence to employees without consideration as, or deduction from, the compensation of such employees where warranted by emergency conditions connected with the work of the Forest Service (7 U.S.C. 2228).

(3) [Reserved]

(4) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) and title VI of the Robert T. Stafford

Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to agricultural land and water, forests and forest products, rural fire defense, and forestry research.

(6) *Related to surface mining control and reclamation.* Administer responsibilities and functions assigned to the Secretary of Agriculture under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

(7) *Related to environmental response.* (i) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(ii) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(A) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(B) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(C) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(D) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(E) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(F) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(G) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(H) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(I) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(J) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(K) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(L) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(M) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(N) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(O) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), relating to mixed funding agreements.

(iii) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the ''Federal Land Manager'' pursuant to the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(9) *Related to historic preservation.* Administer the implementation of the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*, Executive Order 11593, 3 CFR, 1971–1975 Comp., p. 559, and regulations of the Advisory Council on Historic preservation, 36 CFR part 800, for the Department of Agriculture with authority to name the Secretary's designee to the Advisory Council on Historic Preservation.

(10) Carry out prize competition authorities in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated to the Under Secretary for Natural Resources and Environment, except for authorities delegated to the Chief Financial Officer in § 2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(2) of this section.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to natural resource conservation.* Designation of new project areas in which the resource conservation and development program assistance will be provided.

(2) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

[60 FR 56393, Nov. 8, 1995, as amended at 62 FR 1031, Jan. 8, 1997; 64 FR 32797, June 18, 1999; 64 FR 34967, June 30, 1999; 65 FR 12428, Mar. 9, 2000; 67 FR 59135, Sept. 30, 2002; 68 FR 27437, May 20, 2003; 69 FR 34252, June 21, 2004; 72 FR 36859, July 6, 2007; 74 FR 3403, Jan. 21, 2009; 75 FR 43368, July 23, 2010; 78 FR 40937, July 9, 2013; 79 FR 44107, July 30, 2014; 80 FR 58337, Sept. 29, 2015; 83 FR 22181, May 14, 2018; 85 FR 65506, Oct. 15, 2020; 87 FR 44267, July 26, 2022]; 88 FR 70579, Oct. 12, 2023

§ 2.21 Under Secretary for Research, Education, and Economics.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Research, Education, and Economics (who holds the title of Chief Scientist of the Department).

(1) *Related to research, extension, and education.* (i) Direct, coordinate and provide national leadership and support for research, extension and teaching programs in the food and agricultural sciences to meet major needs and challenges in development of new food and fiber; food and agriculture viability and competitiveness in the global economy; enhancing economic opportunities and quality of life for rural America; food and agricultural system

productivity and development of new crops and new uses; the environment and natural resources; or the promotion of human health and welfare pursuant to the National Agricultural Research, Extension, and Teaching Policy of 1977, as amended (7 U.S.C. 3101 *et seq.*).

(ii) Provide national leadership and support for research, extension, and teaching programs in the food and agricultural sciences to carry out sustainable agriculture research and education; a National Plant Genetic Resources Program; a national agricultural weather information system; and any other provisions pursuant to title XVI of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624, 104 Stat. 3703).

(iii) Exercise the authorities of the Secretary in administering the Agriculture Advanced Research and Development Authority, including awarding grants and entering into contracts, cooperative agreements, and other transactions (7 U.S.C. 3319k).

(iv) Carry out research, technology development, technology transfer, and demonstration projects related to the economic feasibility of the manufacture and commercialization of natural rubber from plants containing hydrocarbons and other critical agricultural materials from native agricultural crops having strategic and industrial importance (7 U.S.C. 178–178n).

(v) Conduct research on the control of undesirable species of honey bees in cooperation with specific foreign governments (7 U.S.C. 284).

(vi) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts (7 U.S.C. 321–326a).

(vii) Administer teaching funds authorized by section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(viii) Administer a Cooperative Agricultural Extension Program in accordance with the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(ix) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(x) Evaluate, assess, and report to congressional agriculture committees on the merits of proposals for agricultural research facilities in the States, and ensure that each research activity conducted by an Agricultural Research Service facility serves a national or multistate need (7 U.S.C. 390 *et seq.*).

(xi) Conduct research concerning domestic animals and poultry, their protection and use, the causes of contagious, infectious, and communicable diseases, and the means for the prevention and cure of the same (7 U.S.C. 391).

(xii) Conduct research related to the dairy industry and to the dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(xiii) Conduct research and demonstrations at Mandan, ND, related to dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of the dairy and livestock industries (7 U.S.C. 421–422).

(xiv) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(xv) Administer and conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, and utilization of plant and animal commodities; problems of human nutrition; development of markets for agricultural commodities; discovery, introduction, and breeding of new crops, plants, and animals, both foreign and native; conservation development; and development of efficient use of farm buildings, homes, and farm machinery except as otherwise delegated in §2.22(a)(1)(ii) and §2.79(a)(2) (7 U.S.C. 427, 1621–1627, 1629, 2201, and 2204).

(xvi) Conduct research on varietal improvement of wheat and feed grains to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(xvii) Administer a program to make competitive grants to assist in the construction, alteration, acquisition, modernization, renovation, or remodeling of agricultural research facilities (7 U.S.C. 390b).

(xviii) Enter into agreements with and receive funds from any State,

other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 3318a).

(xix) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of registration or reregistration of pesticides for minor agricultural use and for use on specialty crops, and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 3157(e)).

(xx) Administer the Agriculture and Food Research Initiative for competitive grants for fundamental and applied research, extension, and education to address food and agricultural sciences; administer a program of making special grants for research, extension, or education activities (7 U.S.C. 3157(b), (c)).

(xxi)–(xxii) [Reserved]

(xxiii) Conduct research related to soil and water conservation, engineering operations, and methods of cultivation to provide for the control and prevention of soil erosion (7 U.S.C. 1010 and 16 U.S.C. 590a).

(xxiv) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and the byproducts thereof (7 U.S.C. 1292).

(xxv) Conduct a Special Cotton Research Program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1444a(c)).

(xxvi) [Reserved]

(xxvii) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(xxviii)–(xxix) [Reserved]

(xxx) Conduct education and extension programs related to nutrition education (7 U.S.C. 2027(a)).

(xxxi) Prepare an annual report to Congress on disbursements of funds for agricultural research and extension at 1890 and 1862 Institutions for programs under the following authorities: 7 U.S.C. 3221; 7 U.S.C. 3222; 7 U.S.C. 343(b) and (c); and 7 U.S.C. 361a *et seq.* (7 U.S.C. 2207d).

(xxxii) Develop and maintain national and international library and information systems and networks and facilitate cooperation and coordination of the agricultural libraries of colleges, universities, USDA, and their closely allied information gathering and dissemination units in conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3125a, and 3126).

(xxxiii) Accept gifts and order disbursements from the Treasury for carrying out of National Agricultural Library (NAL) functions (7 U.S.C. 2264–2265).

(xxxiv) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).

(xxxv) Administer, in cooperation with land-grant colleges and universities where applicable, a rural development research and extension program, a small farm research and extension program, and a rural health and safety education program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

(xxxvi) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(xxxvii) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to agricultural research conducted or funded by the Department involving biotechnology, including the development and implementation of guidelines for oversight of research activities, acting as liaison on all matters and functions pertaining to agricultural research in biotechnology between agencies within the Department and between the Department and other governmental, educational, or private organizations and carrying out any other activities authorized by (7 U.S.C. 3121).

(xxxviii) [Reserved]

(xxxix) Establish and oversee the National Agricultural Research, Extension, Education, and Economics Advisory Board (7 U.S.C. 3123).

(xl) Provide and distribute information and data about Federal, State, local, and other Rural Development Assistance Programs and services available to individuals and organizations. To the extent possible, NAL shall use

telecommunications technology to disseminate such information to rural areas (7 U.S.C. 3125b).

(xli) Assemble and collect food and nutrition educational material, including the results of nutrition research, training methods, procedures, and other materials related to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(xlii) Promote cooperation and coordination between 1862, 1890, 1994, and NLGCA Institutions, HSACUs, and cooperating forestry schools and international partner institutions in developing countries by exercising the Secretary's authority in 7 U.S.C. 3292, including coordinating with the Under Secretary for Trade and Foreign Affairs to place interns from covered institutions in, or in service to benefit, developing countries.

(xliv) Promote and strengthen higher education in the food and agricultural sciences; administer grants to colleges and universities; maintain a national food and agricultural education information system; conduct programs regarding the evaluation of teaching programs and continuing education; administer the National Food and Agricultural Sciences Teaching, Extension, and Research Awards Program to recognize and promote excellence in teaching, extension, and research in the food and agricultural sciences; administer programs relating to secondary education and 2-year postsecondary education, including grants to public secondary schools, institutions of higher education that award an associate's degree, other institutions of higher education, and nonprofit organizations; and report to Congress on the distribution of funds to carry out such teaching programs (7 U.S.C. 3152).

(xlv) Administer a next generation agriculture technology challenge competition to incentivize mobile technology that removes marketplace entry barriers for beginning farmers and ranchers (7 U.S.C. 3158).

(xlvi) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(xlvii) [Reserved]

(xlviii) Administer a National Food and Human Nutrition Research and Extension Program (7 U.S.C. 3171–3173, 3175).

(xlix) Administer and direct an Animal Health and Disease Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191–3201).

(l) Support continuing agricultural and forestry extension and research at 1890 land-grant institutions, including Tuskegee University (7 U.S.C. 3221, 3222, 3222d).

(li) Administer grants to 1890 landgrant colleges, including Tuskegee University, through Federal-grant funds to help finance research facilities and equipment including agricultural libraries (7 U.S.C. 3223).

(lii) Establish and administer competitive grants to Hispanic-serving Institutions for the purpose of promoting and strengthening the ability of Hispanic-serving Institutions to carry out education, applied research, and related community development programs (7 U.S.C. 3241).

(liii) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural research, extension, teaching, and development activities; administer a program of competitive grants for collaborative projects involving Federal scientists or scientists from colleges and universities working with scientists at international agricultural research centers in other nations focusing either on new technologies and programs for increasing the production of food and fiber or training scientists and a program of competitive grants to colleges and universities to strengthen United States economic competitiveness and to promote international market development; establish a program in coordination with the Foreign Agricultural Service to place interns from United States colleges and universities at Foreign Agricultural Service field

offices overseas; and provide a biennial report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on efforts of the Federal Government to coordinate international agricultural research within the Federal Government, and to more effectively link the activities of domestic and international agricultural researchers, particularly researchers of the Agricultural Research Service (7 U.S.C. 3291, 3292b).

(liv) Provide for an agricultural research and development program with the United States/Mexico Foundation for Science (7 U.S.C. 3292a).

(lv) Administer grants to 1890 Institutions, including Tuskegee University, for purposes of awarding scholarships to individuals pursuing careers in the food and agricultural sciences (7 U.S.C. 3222a).

(lvi) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agriculture sciences (7 U.S.C. 3318).

(lvii) Enter into cost-reimbursable agreements with State cooperative institutions or other colleges and universities for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

(lviii) Conduct research and development and implement a program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(lix) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate Aquaculture development plans for the production and marketing of aquacultural species and products; and conducting a program of research, extension and demonstration at aquacultural demonstration centers (7 U.S.C. 3321–22).

(lx) Administer a Cooperative Rangeland Research Program (7 U.S.C. 3331–3336).

(lxi) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(lxii) Design and implement educational programs and distribute materials in cooperation with the cooperative extension services of the States emphasizing the importance of productive farmland, and designate a farmland information center, pursuant to section 1544 of the Farmland Protection Policy Act (7 U.S.C. 4205).

(lxiii) Make competitive grants to land-grant colleges and universities, including 1994 Institutions, to provide identifiable support specifically targeted for Tribal students (7 U.S.C. 3222e).

(lxiv) Administer programs and conduct projects for research, extension, and education on sustainable agriculture (7 U.S.C. 5811–5813).

(lxv) Conduct research and cooperative extension programs to optimize crop and livestock production potential, integrated resource management, and integrated crop management (7 U.S.C. 5821).

(lxvi) Develop and make available handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices; carry out activities related to a national training program for sustainable agriculture (7 U.S.C. 5831, 5832).

(lxvii) Administer competitive grants for the acquisition of special purpose scientific research equipment for use in the food and agricultural sciences programs of eligible institutions (7 U.S.C. 3310a).

(lxviii) Administer a national research program on genetic resources to provide for the collection, preservation, and dissemination of genetic material important to American food and agriculture production (7 U.S.C. 5841–5844).

(lxix) Conduct remote-sensing and other weather-related research (7 U.S.C. 5852).

(lxx) Establish an Agricultural Weather Office and administer a national agricultural weather information system, including a competitive grants program for research in atmospheric sciences and climatology (7 U.S.C. 5852–5853).

(lxxi) Administer a research and extension grant program to States to administer programs for State agricultural weather information systems (7 U.S.C. 5854).

(lxxii) Establish a National Plant Diagnostic Network to monitor and surveil through diagnostics threats to plant health from diseases or pests of concern in the United States, and establish cooperative agreements with land-grant colleges and universities (7 U.S.C. 8914(c)).

(lxxiii) Establish a National Plant Disease Recovery System to engage in strategic long-range planning to recover from high-consequence plant transboundary diseases (7 U.S.C. 8914(d)).

(lxxiv)–(lxxvi) [Reserved]

(lxxvii) Administer research programs and grants for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(lxxviii) In consultation with the Secretary of Energy, administer competitive grants to provide education about carbon utilization and biogas (7 U.S.C. 8115).

(lxxix) Conduct a research initiative known as the Agricultural Genome Initiative, and make grants or enter into cooperative agreements on a competitive basis to carry out the Initiative (7 U.S.C. 5924).

(lxxx) Administer a competitive high priority research and extension grants program in specified subject areas (7 U.S.C. 5925), including pollinator activities (7 U.S.C. 5925(g)) not otherwise delegated to the Under Secretary for Marketing and Regulatory Programs in §2.22(a)(2)(xli); prepare an annual report to Congress regarding pollinator issues (7 U.S.C. 5925(g)(5)).

(lxxxi) [Reserved]

(lxxxii) Administer competitive grants to support research, education, and extension activities regarding organically grown and processed agricultural commodities (7 U.S.C. 5925b).

(lxxxiii) In consultation with the Urban Agriculture and Innovative Production Advisory Committee, administer competitive grants to support research, education, and extension activities for the purposes of facilitating the development of urban, indoor, and other emerging agricultural production, harvesting, transportation, aggregation, packaging, distribution, and markets (7 U.S.C. 5925g).

(lxxxiv) Formulate and carry out the Veterinary Medicine Loan Repayment Act program authorized by the National Veterinary Medical Service Act (7 U.S.C. 3151a).

(lxxxv)–(xc) [Reserved]

(xci) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(xcii) [Reserved]

(xciii) Administer a demonstration grants program for support of an assistive technology program for farmers with disabilities (7 U.S.C. 5933).

(xciv)–(xcvi) [Reserved]

(xcvii) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638(e)–(k)).

(xcviii) Coordinate Departmental policies under the Toxic Substance Control Act (15 U.S.C. 2601–2629).

(xcix) Provide educational and technical assistance in implementing and administering the Conservation Reserve Program authorized in sections 1231–1244 of the Food Security Act of 1985 (Pub. L. No. 99–198, 99 Stat. 1509 (16 U.S.C. 3831–3844)).

(c) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(ci) Coordinate USDA activities delegated under 15 U.S.C. 3710a–3710c.

(cii) Conduct educational and demonstrational work in Cooperative Farm Forestry Programs (16 U.S.C. 568).

(ciii) Administer a cooperative forestry program in accordance with the McIntire-Stennis Cooperative Forestry Act, and administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 582a–582–8).

(civ) Establish and administer the Forestry Student Grant Program to provide competitive grants to assist the expansion of the professional education of forestry, natural resources, and environmental scientists (16 U.S.C. 1649).

(cv) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671–1676).

(cvi) Provide technical, financial, and educational assistance to State foresters and State extension directors on rural forestry assistance (16 U.S.C. 2102).

(cvii) Provide educational assistance to State foresters under the Forest Stewardship Program (16 U.S.C. 2103a).

(cviii) Implement and conduct an educational program to assist the development of Urban and Community Forestry Programs (16 U.S.C. 2105).

(cix) Provide staff support to the Secretary of Agriculture in his or her role as permanent Chair for the Joint Subcommittee on Aquaculture established by the National Aquaculture Act of 1980 and coordinate aquacultural activities within the Department (16 U.S.C. 2805).

(cx) Perform research, development, and extension activities in aquaculture (16 U.S.C. 2804 and 2806).

(cxi) Administer an experienced services program to obtain technical, professional, and administrative services to support the research, education, and economics mission area of the Department (16 U.S.C. 3851).

(cxii) Copy and deliver on demand selected articles and other materials from the Department's collections by photographic reproduction or other means within the permissions, constraints, and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976, (17 U.S.C. 106, 107, and 108).

(cxiii) Authorize the use of the 4-H Club name and emblem (18 U.S.C. 707).

(cxiv) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life, and order disbursements from the Treasury, in accordance with the Act of March 4, 1927 (20 U.S.C. 191 *et seq.*).

(cxv) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(cxvi) [Reserved]

(cxvii) Obtain and furnish Federal excess property to eligible recipients for use in the conduct of research and extension programs (40 U.S.C. 525(c)).

(cxviii) Conduct research demonstration and promotion activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(cxix)–(cxx) [Reserved]

(cxxi) Administer a Cooperative Agricultural Extension Program related to agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy in the District of Columbia (D.C. Code 38–1202.09).

(cxxii) [Reserved]

(cxxiii) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity in the Cooperative Extension Service (part 18 of this title).

(cxxiv) Represent the Department on the Federal Interagency Committee on Education.

(cxxv) Assure the acquisition, preservation, and accessibility of all information concerning food and agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, with the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(cxxvi) Formulate, write, or prescribe bibliographic and technically related standards for the library and information services of USDA (7 U.S.C. 3125a *et seq.*).

(cxxvii) Determine by survey or other appropriate means, the information needs of the Department's scientific, professional, technical, and administrative staffs, its constituencies, and the general public in the areas of food, agriculture, the environment, and other related areas.

(cxxviii) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(cxxix) Represent the Department in international organizational activities

and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

(cxxx) Prepare and disseminate computer files, indexes and abstracts, bibliographies, reviews, and other analytical information tools.

(cxxxi) Arrange for the consolidated purchasing and dissemination of printed and automated indexes, abstracts, journals, and other widely used information resources and services.

(cxxxii) Provide assistance and support to professional organizations and others concerned with library and information science matters and issues.

(cxxxiii) Pursuant to the authority delegated by the Administrator of General Services to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18440, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c), as will ensure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE; the Agricultural Research Center, Beltsville, MD; and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the Act of June 1, 1948, as amended (40 U.S.C. 318 *et seq.*), and the policies, procedures, and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be approved by the Director, Office of Operations, and the General Counsel prior to issuance.

(cxxxiv) Represent the Department on the National Science and Technology Council.

(cxxxv) Administer the Department's Patent Program except as delegated to the General Counsel in §2.31(a)(5).

(cxxxvi) Review cooperative research and development agreements entered into pursuant to 15 U.S.C. 3710a–3710c, with authority to disapprove or require the modification of any such agreement.

(cxxxvii) Establish and administer a 1994 Institutions Endowment Fund and to enter into agreements necessary to do this (Section 533(b) and (c) of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(cxxxviii) Make grants in equal amounts to 1994 Land-Grant Institutions to be used in the same manner as is prescribed for colleges under the Act of August 30, 1890 (7 U.S.C. 321 *et seq.*), and subject to the requirements of such Act (Section 534(a) of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(cxxxix) Make competitive Institutional Capacity Building Grants to assist 1994 Land-Grant Institutions with constructing, acquiring, and remodeling buildings, laboratories, and other capital facilities (including fixtures and equipment) necessary to conduct instructional activities more effectively in agriculture and sciences (Section 535 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(cxl) Make competitive grants to 1994 Land-Grant Institutions to conduct agricultural research that addresses high priority concerns of tribal, national, or multistate significance (Section 536 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(cxli) Implement and administer the Community Food Projects Program under section 25 of the Food and Nutrition Act of 2008 (7 U.S.C. 2034).

(cxlii) In consultation with the Under Secretary for Food, Nutrition, and Consumer Services, administer pilot projects to encourage the use of public-private partnerships committed to addressing food insecurity (7 U.S.C. 2036d).

(cxliii) Coordinate the Department of Agriculture summer intern program pursuant to section 922 of the Federal Agriculture Improvement and Reform Act (7 U.S.C. 2279c).

(cxliv) Develop and carry out a system to monitor and evaluate agricultural research and extension activities conducted or supported by the Department that will enable the Secretary to

measure the impact and effectiveness of research, extension, and education programs according to priorities, goals, and mandates established by law. Conduct a comprehensive review of state-of-the-art information technology systems for use in developing the system (7 U.S.C. 3129).

(cxlv)–(cxlvi) [Reserved]

(cliii) Establish procedures that provide for scientific peer review of each agricultural research grant administered on a competitive basis, and for relevancy and merit review of each agricultural research, extension, or education grant administered on a competitive basis, by the National Institute of Food and Agriculture (7 U.S.C. 7613(a)).

(cl) Provide technical assistance to farmers and ranchers under the Environmental Quality Incentives Program (16 U.S.C. 3830 *et seq.*).

(cli) Ensure that agricultural research conducted by the Agricultural Research Service, and agricultural research, extension, or education activities administered by the National Institute of Food and Agriculture on a competitive basis address a concern that is a priority and has national, multistate, or regional significance (7 U.S.C. 7611).

(clii) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education and, after consultation with appropriate subcabinet officials, establish priorities for agricultural research, extension, and education activities conducted or funded by the Department; promulgate regulations concerning implementation of a process for obtaining stakeholder input at 1862, 1890, and 1994 Institutions and Hispanic-serving agricultural colleges and universities; and ensure that federally supported and conducted agricultural research, extension, and education activities are accomplished in accord with identified management principles (7 U.S.C. 7612).

(cliii) Establish procedures that provide for scientific peer review of each agricultural research grant administered on a competitive basis, and for merit review of each agricultural extension or education grant administered, on a competitive basis, by the National Institute of Food and Agriculture (7 U.S.C. 7613(a)).

(cliv) Consider the results of the annual review performed by the National Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(clv) Establish, in consultation with appropriate subcabinet officials, procedures to ensure scientific peer review of all research activities conducted by the Department (7 U.S.C. 7613(d)).

(clvi) Require a procedure to be established by each 1862, 1890, and 1994 Institution and Hispanic-serving agricultural college and university, for merit review of each agricultural research and extension activity funded and review of the activity in accordance with the procedure (7 U.S.C. 7613(e)).

(clvii)–(clix) [Reserved]

(clx) Coordinate the resources of the Department to develop, commercialize, and promote the use of biobased products, and enter into cooperative agreements with private entities to operate pilot plants and other large-scale preparation facilities under which the facilities and technical expertise of the Agricultural Research Service may be made available (7 U.S.C. 7624).

(clxi) [Reserved]

(clxii) Administer competitive grants for integrated, multifunctional agricultural research, education, and extension activities (7 U.S.C. 7626).

(clxiii) Administer a coordinated program of research, extension, and education to improve the competitiveness, viability, and sustainability of small and medium size dairy, livestock, and poultry operations (7 U.S.C. 7627).

(clxiv) Administer grants to consortia of land-grant colleges and universities to enhance the ability of the consortia to carry out multi-State research projects aimed at understanding and combating diseases of wheat, triticale, and barley caused by Fusarium graminearum and related fungi or Tilletia indica and related fungi (7 U.S.C. 7628).

(clxv) Operate and administer the Food Animal Residue Avoidance Database through contracts, grants, or cooperative agreements with appropriate colleges or universities (7 U.S.C. 7642).

(clxvi) Update on a periodic basis, nutrient composition data and report to Congress the method that will be used to update the data and the timing of the update (7 U.S.C. 7651).

(clxvii) Establish and maintain a Food Safety Research Information Office at the National Agricultural Library to provide to the research community and the general public information on publicly and privately funded food safety research initiatives (7 U.S.C. 7654(a)).

(clxviii) Develop a national program of safe food handling education for adults and young people to reduce the risk of food-borne illness (7 U.S.C. 7655).

(clxix) Conduct a performance evaluation to determine whether federally funded agricultural research, extension, and education programs result in public goods that have national or multistate significance, including through a contract with one or more entities to provide input and recommendations with respect to federally funded agricultural research, extension, and education programs (7 U.S.C. 7671).

(clxx) [Reserved]

(clxxi) Take a census of agriculture in 1998 and every fifth year thereafter pursuant to the Census of Agriculture Act of 1997, Public Law 105–113 (7 U.S.C. 2204g); ensure that the census of agriculture documents the number, location, and economic contributions of socially disadvantaged farmers or ranchers in agricultural production (7 U.S.C. 2279(h)).

(clxxii) Cooperate with other Federal agencies (including the National Science Foundation) in issuing joint requests for proposals, awarding grants, and administering grants under any competitive agricultural research, education, or extension grant program (7 U.S.C. 3319b).

(clxxiii) Administer a program of competitive grants, establish education teams, and establish an online clearinghouse of curricula and training materials and programs, all for training, education, outreach, and technical assistance initiatives for the benefit of beginning farmers and ranchers (7 U.S.C. 2279d).

(clxxiv) Administer agricultural research, education, and extension activities (including through competitive grants), using any authority available to the Secretary, to reduce the vulnerability of the United States food and agricultural system to chemical or biological attack, to continue partnerships with institutions of higher education and other institutions to help form stable, long-term programs to enhance the biosecurity of the United States, to make competitive grants to universities and qualified research institutions for research on counterbioterrorsims, and to counter or otherwise respond to chemical or biological attack (7 U.S.C. 3351).

(clxxv) Administer a program of competitive grants to colleges and universities for expansion and security upgrades to enhance the security of agriculture against bioterrorism threats (7 U.S.C. 3352).

(clxxvi) Administer programs for distance education grants and resident instruction grants to eligible institutions in insular areas that have demonstrable capacity to carry out teaching and extension programs in the food and agricultural sciences (7 U.S.C. 3361–3363).

(clxxvii) [Reserved]

(clxxviii) Administer a program of cooperative research (including through competitive award of grants and cooperative agreements to colleges and universities) and extension projects on carbon cycling in soils and plants, the exchange of other greenhouse gases from agriculture, and the carbon sequestration benefits of conservation practices (7 U.S.C. 6711).

(clxxix) [Reserved]

(clxxx) Administer a program of grants to the Girl Scouts of the United States of America, the Boy Scouts of America, the National 4-H Council, and the National FFA Organization to establish pilot projects to expand the programs carried out by the organizations in rural areas and small towns (7 U.S.C. 7630).

(clxxxi) Oversee implementation of the termination of Federal schedule A civil service appointments of State agricultural extension employees at land-grant colleges and universities (section 7220 of Pub. L. 107–171).

(clxxxii) Administer a program of grants to the Food and Agricultural Policy Research Institute (section 10805 of Pub. L. 107–171).

(clxxxiii) Administer grants to assist the land-grant university in the District of Columbia to acquire, alter, or repair facilities or relevant equipment necessary for conducting agricultural research (7 U.S.C. 3222b–1).

(clxxxiv) Administer grants to assist the land-grant colleges and universities in insular areas to acquire, alter, or repair facilities or relevant equipment necessary for conducting agricultural research; and to support tropical and subtropical agricultural research, including pest and disease research (7 U.S.C. 3222b–2).

(clxxxv) Enter into agreements necessary to administer an Hispanic-Serving Agricultural Colleges and Universities Fund; enter into agreements necessary to administer a program of making annual payments to Hispanic-serving agricultural colleges and universities; administer an institutional capacity-building grants program for Hispanic-serving agricultural colleges and universities; administer a competitive grants program to fund fundamental and applied research and extension at Hispanic-serving agricultural colleges and universities and to award competitive grants to Hispanic-serving agricultural colleges and universities to provide for training in the food and agricultural sciences of Hispanic agricultural workers and Hispanic youth working in the food and agricultural sciences (7 U.S.C. 3243).

(clxxxvi) Administer the New Era Rural Technology Program to make grants for technology development, applied research, and training to aid in the development of an agriculture-based renewable energy workforce (7 U.S.C. 3319e).

(clxxxvii) Administer a competitive grants program to assist NLGCA Institutions in maintaining and expanding capacity to conduct education, research, and outreach activities relating to agriculture, renewable resources, and other similar disciplines (7 U.S.C. 3319i).

(clxxxviii) [Reserved]

(clxxxix) Administer a competitive research and extension grants program to improve the farm management knowledge and skills of agricultural producers and establish and maintain a national, publicly available farm financial management database to support improved farm management (7 U.S.C. 5925f).

(cxc) Administer the Specialty Crop Research Initiative (7 U.S.C. 7632).

(cxci) Exchange, sell, or otherwise dispose of animals, animal products, plants, and plant products, and use the sale or other proceeds to acquire such items or to offset costs related to the maintenance, care, or feeding of such items (7 U.S.C. 2241a).

(cxcii) Establish and administer a pilot program at the Beltsville Agricultural Research Center and National Agricultural Library to lease non-excess property (7 U.S.C. 3125a note).

(cxciii) Lease land at the Grazinglands Research Laboratory at El Reno, Oklahoma, pursuant to section 7503 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(cxciv) Administer a competitive research and education grants program relating to antibiotics and antibiotic-resistant bacteria (7 U.S.C. 3202).

(cxcv) Administer a competitive grants program to establish and maintain a Farm and Ranch Stress Assistance Network (7 U.S.C. 5936).

(cxcvi) [Reserved]

(cxcvii) Administer a natural products research program (7 U.S.C. 5937).

(cxcviii) Administer a Sun Grants Program (7 U.S.C. 8114).

(cxcix) [Reserved]

(cc) Administer a competitive grant program to support the development and expansion of advanced training

programs in agricultural biosecurity planning and response for food science professionals and veterinarians (7 U.S.C. 8913).

(cci) Administer the Biomass Research and Development Initiative (7 U.S.C. 8108(e)); consult and coordinate, as appropriate, with the Under Secretary for RD and other mission areas of the Department as deemed necessary in carrying the authorities delegated herein; serve as the designated point of contact referenced in 7 U.S.C. 8108 for the Department for purposes of administering the Biomass Research and Development Initiative.

(ccii) Administer a competitive grants program to encourage basic and applied research and the development of qualified agricultural countermeasures (7 U.S.C. 8921).

(cciii) Administer a competitive grants program to promote the development of teaching programs in agriculture, veterinary medicine, and disciplines closely allied to the food and agriculture system to increase the number of trained individuals with an expertise in agricultural biosecurity (7 U.S.C. 8922).

(cciv) Administer a program of providing grants to Alaska Native serving institutions and Native Hawaiian serving institutions for the purpose of promoting and strengthening the ability of those institutions to carry out education, applied research, and related community development programs (7 U.S.C. 3156).

(ccv) Administer a competitive grant program for national food safety training, education, extension, outreach, and technical assistance (7 U.S.C. 7625).

(ccvi) Administer a food insecurity nutrition incentive program (7 U.S.C. 7517).

(ccvii) Administer a food and agriculture service learning grant program (7 U.S.C. 7633).

(ccviii) Administer a veterinary services grant program (7 U.S.C. 3151b).

(ccix) Enter into grants, contracts, cooperative agreements, or other legal instruments with former Department of Agriculture agricultural research facilities (7 U.S.C. 3315(b)).

(ccx) Administer a forestry and forestry products research and extension initiative (7 U.S.C. 7655b).

(ccxi) Submit to Congress an annual report describing agricultural research, extension, and education activities carried out by the Federal Government (7 U.S.C. 7614c(f)).

(ccxii) Enter into cooperative agreements with institutions of higher education regarding the dissemination of agricultural and food law research, legal tools, and information (7 U.S.C. 3125a–1).

(ccxiii) Consult with the Foundation for Food and Agriculture Research regarding the identification of existing and proposed Federal intramural and extramural research and development programs relating to the purposes of the Foundation and the coordination of Foundation activities with those programs for the purpose of minimizing duplication of existing efforts and avoiding conflicts (7 U.S.C. 5939(d)(1)(B)).

(2) *Related to committee management.* Establish or reestablish regional, state and local advisory committees for the activities authorized. This authority may not be redelegated.

(3) *Related to defense and emergency preparedness.* Administer the responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning scientific and educational programs; estimates of supplies of agricultural commodities and evaluation of requirements therefor; coordination of damage assessment; food and agricultural aspects of economic stabilization, economic research, and agricultural statistics; and the coordination of energy programs.

(4) Related to rural development activities. Provide guidance and direction for the accomplishment of activities authorized under Section V of the Rural Development Act of 1972, as amended (7 U.S.C. 2661 *et seq.*), for programs under the control of the Under Secretary for Research, Education, and Economics, coordinating the policy aspects thereof with the Under Secretary for Rural Development.

(5) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the

functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(6) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(7) *Related to national food and human nutrition research.* (i) Administer a National Food and Human Nutrition Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term ''research'' includes:

(A) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(B) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(C) Research on the factors affecting food preference and habits (7 U.S.C. 3171–3173, 3175).

(ii) The authority in paragraph (a)(7)(i) of this section includes the authority to:

(A) Appraise the nutritive content of the U.S. food supply;

(B) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(C) Coordinate nutrition education research projects within the Department; and

(D) Maintain data generated on food composition in a National Nutrient Data Bank.

(iii) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(A) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(B) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups; and

(C) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(iv) [Reserved]

(v) Co-chair with the Assistant Secretary for Health, Department of Health and Human Services, the Interagency Board for Nutrition Monitoring and Related Research for the development and coordination of a Ten-Year Comprehensive Plan as required by Pub. L. No. 101–445, 7 U.S.C. 5301 *et seq.*

(8) *Related to economic research and statistical reporting.* (i) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(ii) Conduct economic and social science research and analyses relating to:

(A) Food and agriculture situation and outlook;

(B) The production, marketing, and distribution of food and fiber products (excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers;

(C) Basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs;

(D) Natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and

(E) Rural people and communities, as authorized by title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

(iii) [Reserved]

(iv) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board covering official state and national estimates (7 U.S.C. 476, 951, and 2204).

(v) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1903, and 2072).

(vi) Improve statistics in the Department; maintain liaison with OMB and other Federal agencies for coordination of statistical methods and techniques.

(vii) Investigate and make findings as to the effect upon the production of food and upon the agricultural economy of any proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(viii) Review economic data and analyses used in speeches by Department personnel and in materials prepared for release through the press, radio, and television.

(ix) Coordinate all economic analysis and review all decisions involving substantial economic policy implications.

(x) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global and agricultural system. Such work may be carried out by:

(A) Exchanging research materials and results with the institutions or persons;

(B) Engaging in joint or coordinated research;

(C) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension; and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Secretary of Agriculture;

(D) Stationing representatives at such institutions or organizations in foreign countries; or

(E) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Foreign Agricultural Service, USDA, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Secretary of Agriculture (7 U.S.C. 3291(a)).

(xi) Collect and, not less frequently than once every 3 years report, data and analysis on farmland ownership, tenure, transition, and entry of beginning farmers and ranchers and socially disadvantaged farmers and ranchers (7 U.S.C. 2204i).

(xii) Enter into contracts, grants, or cooperative agreements to further research and statistical reporting programs in the food and agricultural sciences (7 U.S.C. 3318).

(xiii) Enter into cost-reimbursable agreements relating to agricultural research and statistical reporting (7 U.S.C. 3319a).

(xiv) Conduct surveys and analysis and publish reports relating to organic production, handling, distribution, retail, and trend studies (including consumer purchasing patterns); develop surveys and report statistical analysis on organically produced agricultural products (7 U.S.C. 5925c).

(xv) Assist the Under Secretary for Marketing and Regulatory Programs with respect to Dairy Product Mandatory Reporting (7 U.S.C. 1637–1637b).

(xvi) Include in each issuance of projections of net farm income an estimate of the net farm income earned by commercial producers in the United

States that will in addition show the estimate of net farm income attributable to commercial producers of livestock, loan commodities, and agricultural commodities other than loan commodities (7 U.S.C. 7998).

(xvii) Ensure that studies carried out by the Economic Research Service document the number, location, and economic contributions of socially disadvantaged farmers or ranchers in agricultural production (7 U.S.C. 2279(h)).

(xviii) Coordinate implementation of section 10016 of the Agricultural Act of 2014 regarding locally or regionally produced agricultural food products (7 U.S.C. 2204h).

(9) *Related to immigration.* Serve as the designee of the Secretary pursuant to Section 212(e) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1182(e) and 22 CFR 41.63(2)(3).

(10) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(11) *Related to scientific integrity.* (i) Provide to the Secretary information on topics that can benefit from scientific input to ensure informed decision-making at the highest levels of Government.

(ii) Facilitate the coordination and collaboration within the Department on high priority science issues that will benefit from intra-Departmental collaboration, including coordinating the assessment of the relevance, quality, performance, and impact of the Department's efforts in science.

(iii) Build partnerships within the scientific community by serving as a point of contact for interactions with other agencies of science, universities, and other external members of the scientific community for the purpose of leveraging and promoting relationships to explore common scientific interests and shared goals.

(iv) Develop mechanisms to address scientific integrity within the Department.

(v) Serve as Chair of the USDA Science Council.

(12) *Related to coordination of agricultural research, education, and extension programs and activities.* Coordinate the agricultural research, education, and extension activities of the Department pursuant to sections 251(c)(2) and 251(d)(2) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6971(c)(2), (d)(2)).

(13) Carry out prize competition authorities in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated to the Under Secretary for Research, Education, and Economics, except for authorities delegated to the Chief Financial Officer in § 2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(3) of this section.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to science and education.*

(i)–(iii) [Reserved]

(iv) Final concurrence in Equal Employment Opportunity Programs within the cooperative extension programs submitted under part 18 of this title.

(2) *Related to economic research and statistical reporting.*

(i) Final approval and issuance of the crop and livestock reports.

(ii) Final action on rules and regulations for the agricultural statistics board.

(3) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

[60 FR 56393, Nov. 8, 1995]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 2.21, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov.*

§ 2.22 Under Secretary for Marketing and Regulatory Programs.

(a) The following delegations of authority are made by the Secretary to

the Under Secretary for Marketing and Regulatory Programs:

(1) *Related to agricultural marketing.* (i) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), including payments to State Departments of Agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(ii) Conduct marketing efficiency research and development activities directly applicable to the conduct of the Wholesale Market Development Program, specifically:

(A) Studies of facilities and methods used in physical distribution of food and other farm products;

(B) Studies designed to improve handling of all agricultural products as they are moved from farms to consumers; and

(C) Application of presently available scientific knowledge to the solution of practical problems encountered in the marketing of agricultural products (7 U.S.C. 1621–1627b).

(iii) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(iv) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(v) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(vi) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(vii) Cooperate with other Departmental agencies in the development and recommendation of policies for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(viii) Exercise the functions of the Secretary of Agriculture with respect to the following legislation:

(A) U.S. Cotton Standards Act (7 U.S.C. 51–65);

(B) Cotton futures provisions of the Internal Revenue Code of 1954 (26 U.S.C. 4854, 4862–4865, 4876, and 7263);

(C) Cotton Statistics and Estimates Act, as amended (7 U.S.C. 471–476), except as otherwise assigned;

(D) Naval Stores Act (7 U.S.C. 91–99);

(E) Tobacco Inspection Act (7 U.S.C. 511–511q);

(F) Wool Standard Act (7 U.S.C. 415b-415d);

(G) Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, 602, 608a-608e, 610, 612, 614, 624, 671–674);

(H) Cotton Research and Promotion Act (7 U.S.C. 2101–2118), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(I) Export Apple and Pear Act (7 U.S.C. 581–590);

(J) Export Grape and Plum Act (7 U.S.C. 591–599);

(K) Titles I, II, IV, and V of the Federal Seed Act, as amended (7 U.S.C. 1551–1575, 1591–1611);

(L) Perishable Agricultural Commodities Act (7 U.S.C. 499a-499s);

(M) Produce Agency Act (7 U.S.C. 491–497);

(N) Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517);

(O) Tobacco Statistics Act (7 U.S.C. 501–508);

(P) Section 401(a) of the Organic Act of 1944 (7 U.S.C. 415e);

(Q) Agricultural Fair Practices Act (7 U.S.C. 2301–2306);

(R) Wheat Research and Promotion Act (7 U.S.C. 1292 note), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(S) Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371–2372, 2401–2404, 2421–2427, 2441–2443, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583), except as delegated to the Judicial Officer;

(T) Subtitle B of title I and section 301(4) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513, 4514(4)), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(U) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(V) [Reserved]

(W) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(X) Beef Research and Information Act, as amended (7 U.S.C. 2901–2918), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in §§ 2.26(a)(1)(xiv) and (a)(3)(x);

(Y) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(Z) Egg Products Inspection Act relating to the Shell Egg Surveillance Program, voluntary laboratory analyses of egg products, and the Voluntary Egg Grading Program (21 U.S.C. 1031–1056);

(AA) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof;

(BB) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755);

(CC) [Reserved]

(DD)Act of May 23, 1980, regarding inspection of dairy products for export (21 U.S.C. 693);

(EE) The Pork Promotion, Research and Consumer Information Act of 1985 (7 U.S.C. 4801–4819), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x));

(FF) The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(GG) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(HH) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538);

(II) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(JJ) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r);

(KK) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products;

(LL) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(MM) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.15(a)(1)(x);

(NN) Lime Research, Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairsin § 2.15(a)(1)(x);

(OO) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.215(a)(1)(x);

(PP) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.215(a)(1)(x);

(QQ) Producer Research and Promotion Board Accountability (104 Stat. 3927);

(RR) Consistency with International Obligations of the United States (7 U.S.C. 2278);

(SS) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522), provided that

the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services;

(TT) Pesticide Recordkeeping (7 U.S.C. 136i–1) with the provision that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with other Federal agencies;

(UU) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406);

(VV) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in §2.15(a)(1)(x); and

(WW) The Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in §2.15(a)(1)(x).

(XX) Commodity Promotion and Evaluation (7 U.S.C. 7401);

(YY) The Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in §2.15(a)(1)(x);

(ZZ) The Canola and Rapeseed Research, Promotion, and Consumer Information Act (7 U.S.C. 7441–7452), except as delegated to theUnder Secretary for Trade and Foreign Agricultural Affairs in §2.15(a)(1)(x);

(AAA) The National Kiwifruit Research, Promotion, and Consumer Information Act (7 U.S.C. 7461–7473), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in §2.15(a)(1)(x);

(BBB) The Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7481–7491), except as delegated to the Under Secretary for Trade and Foreign Agricultural Affairs in §2.15(a)(1)(x).

(CCC) Local Agriculture Market Program (7 U.S.C. 1627c), in coordination with the Under Secretary for Rural Development.

(DDD) [Reserved]

(EEE) Exemption of Certified Organic Products from Assessment (7 U.S.C. 7401).

(FFF) Country of Origin Labeling (7 U.S.C. 1638–1638(d)).

(GGG) Hass Avocado Promotion, Research, and Consumer Information Act of 2000 (7 U.S.C. 7801–7813).

(HHH) Section 7407 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 5925c), with respect to the collection and distribution of comprehensive reporting of prices relating to organically produced agricultural products.

(III) Livestock Mandatory Reporting (7 U.S.C. 1635–1636i).

(JJJ) Section 375 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j).

(KKK) Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note).

(LLL) Section 1502 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8772).

(MMM) Section 12108 of the Agriculture Improvement Act of 2018 (7 U.S.C. 1622 note).

(NNN) Section 10105 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7655a).

(OOO) Section 10107 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1622b).

(PPP) Section 4206 of the Agriculture Improvement Act of 2018 (7 U.S.C. 7518).

(QQQ) Section 4213(c) of the Agricultural Act of 2014 (7 U.S.C. 1755b(c)).

(RRR) Section 12306 of the Agricultural Act of 2014 (7 U.S.C. 1632c).

(SSS) Section 506 of the Trade and Development Act of 2000 (7 U.S.C. 7101 note).

(TTT) Section 12513 of the Agriculture Improvement Act of 2018 (7 U.S.C. 1632d).

(ix) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Assistant Secretary for Marketing and Regulatory Programs, and charge user fees therefor, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

(x) [Reserved]

(xi) Administer a program for Dairy Product Mandatory Reporting (7 U.S.C. 1637–1637b), with the assistance of the Under Secretary for Research, Education, and Economics.

(xii) Assist the Under Secretary for Trade and Foreign Agricultural Affairs with implementing section 3205 of the Food, Conservation, and Energy Act of 2008 (22 U.S.C. 7112 note) regarding the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products.

(xiii) Assist the Under Secretary for Research, Education, and Economics with implementing section 10016 of the Agricultural Act of 2014 regarding locally or regionally produced agricultural food products (7 U.S.C. 2204h).

(xiv) Administer the U.S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Agricultural Marketing Services programs.

(xv) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701, *et seq.*) and section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1), and payment and related services with respect to export programs and barter operations.

(xvi) Administer the Economic Adjustment Assistance for Textile Mills program (7 U.S.C.

(xvii) In coordination with the Under Secretary for Farm Production and Conservation, administer payments under the Special Competitive Provisions for Extra Long Staple Cotton (7 U.S.C. 9038).

(2) *Related to animal and plant health inspection*. Exercise the functions of the Secretary of Agriculture under the following authorities:

(i) Administer the Foreign Service personnel system for employees of the Animal and Plant Health Inspection Service in accordance with 22 U.S.C. 3922, except that this delegation does not include the authority to represent the Department of Agriculture in interagency consultations and negotiations with other foreign affairs agencies regarding joint regulations, nor the authority to approve joint regulations issued by the Department of State relating to administration of the Foreign Service;

(ii) The Terminal Inspection Act, as amended (7 U.S.C. 7760);

(iii) The Honeybee Act, as amended (7 U.S.C. 281–286);

(iv) Section 18 of the Federal Meat Inspection Act, as amended, as it pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 618);

(v) The responsibilities of the United States under the International Plant Protection Convention;

(vi) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159);

(vii) Horse Protection Act (15 U.S.C. 1821–1831);

(viii) 28 Hour Law, as amended (49 U.S.C. 80502);

(ix) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902);

(x) Purebred Animal Duty Free Entry Provisions of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, part 1, Item 100.01);

(xi) Virus-Serum-Toxin Act (21 U.S.C. 151–159).

(xii) Conduct diagnostic and related activities necessary to prevent, detect, control or eradicate foot-and-mouth disease and other foreign animal diseases (21 U.S.C. 113a);

(xiii) The Agricultural Marketing Act of 1946, sections 203, 205, as amended (7 U.S.C. 1622, 1624), with respect to voluntary inspection and certification of animal products; inspection, testing, treatment, and certification of animals; and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine;

(xiv) Talmadge Aiken Act (7 U.S.C. 1633) with respect to cooperation with States in control and eradication of plant and animal diseases and pests;

(xv) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 note; 2814).

(xvi) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544);

(xvii) Executive Order 11987, 3 CFR, 1977 Comp., p. 116;

(xviii) Section 101(d), Organic Act of 1944 (7 U.S.C. 398);

(xix) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813);

(xx) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378);

(xxi) Title III (and title IV to the extent that it relates to activities under title III,) of the Federal Seed Act, as amended (7 U.S.C. 1581–1610);

(xxii) Authority to prescribe the amounts of commuted traveltime allowances and the circumstances under which such allowances may be paid to employees covered by the Act of August 28, 1950 (7 U.S.C. 2260);

(xxiii) The Act of March 2, 1931 (7 U.S.C. 8351–8352);

(xxiv) The Act of December 22, 1987 (7 U.S.C. 8353);

(xxv) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists of national and international institutions in such countries (7 U.S.C. 3291(a)(3));

(xxvi) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended;

(xxvii) The provisions of 35 U.S.C. 156;

(xxviii) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c); and

(xxix) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(xxx) Sections 901–905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note).

(xxxi) Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772).

(xxxii) Animal Health Protection Act (7 U.S.C. 8301–8317).

(xxxiii) Section 10504 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8318).

(xxxiv) Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e and 2279f).

(xxxv) The responsibilities of the United States related to activities of the Office of International des Epizooties.

(xxxvi) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(xxxvii) Section 7524 of the Food, Conservation, and Energy Act of 2008 (21 U.S.C. 113a note), except for the suspension, revocation, or other impairment of a permit issued under that section.

(xxxviii) Section 10202 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7761).

(xxxix) Section 10204 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7701 note).

(xl) Section 14216 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(xli) Section 1672(g)(3) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925(g)(3)) regarding honey bee pest, pathogen, health, and population status surveillance.

(xlii) Section 12309 of the Agricultural Act of 2014 regarding produce represented as grown in the United States (19 U.S.C. 1304a).

(xliii) Section 11013 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8322).

(xliv) In coordination with the Under Secretary for Farm Production and Conservation, Section 2408 relating to the Feral Swine Eradication and Control Pilot Program (7 U.S.C. 8351 note),

(xlv) Section 12203(b) of the Agriculture Improvement Act of 2018 relating to diseases and pests of concern (7 U.S.C. 8914(b)).

(xlvi) Section 12601 of the Agriculture Improvement Act of 2018 relating to baiting of migratory game birds (16 U.S.C. 704 note).

(3) *Related to grain inspection, packers and stockyards.* (i) Exercise the authority of the Secretary of Agriculture contained in the U.S. Grain Standards Act, as amended (7 U.S.C. 71–87h).

(ii) Exercise the functions of the Secretary of Agriculture contained in the

Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to inspection and standardization activities relating to grain.

(iii) Administer the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181–229).

(iv) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1655, 1681–1681t) with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

(v) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(vi) Administer responsibilities and functions assigned to the Secretary in section 11006 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 228 note), with respect to the Packers and Stockyards Act, 1921.

(4) *Related to committee management.* Establish and reestablish regional, State, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(5) *Related to defense and emergency preparedness.* (i) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(ii) Title II, Subtitles B and C, of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (7 U.S.C. 8401 note, 8401, 8411).

(6) *Related to biotechnology.* Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology, and act as liaison on all matters and functions pertaining to the regulation of biotechnology between agencies within the Department and between the Department and governmental and private organizations. Provided, that with respect to biotechnology matters affecting egg products, the Assistant Secretary shall consult and coordinate activities of Department agencies with the Under Secretary for Food Safety.

(7) *Related to environmental response.* With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate

money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(8) *Related to compliance with environmental laws.* With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(9) *Related to the Capper-Volstead Act.* Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

(10) *Related to hazardous materials management.* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA agencies under his or her authority to comply with the intent, purposes, and standards of environmental laws for pollution prevention, control, and abatement.

(iii) Consult with the United States Environmental Protection Agency and other appropriate Federal agencies in developing pollution prevention, control, and abatement policies and programs relating to agencies under his or her authority.

(11) Carry out prize competition authorities in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated to the Under Secretary for Marketing and Regulatory Programs, except for authorities delegated to the Chief Financial Officer in § 2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(3) of this section.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Relating to agricultural marketing.

(i) Promulgation, with the Secretary of the Treasury of joint regulations under section 402(b) of the Federal Seed Act, as amended (7 U.S.C. 1592(b)).

(ii) Appoint members of the National Dairy Promotion and Research Board established by section 113(b) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4504(b)).

(iii) Appoint members of the National Processor Advertising and Promotion Board established by section 1999H(b)(4) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6407(b)).

(iv) Appoint members of the Cotton Board established by section 7(a) of the Cotton Research and Promotion Act, as amended (7 U.S.C. 2106(a));

(v) Appoint members of the Egg Board established by section 8(a) of the Egg Research and Consumer Information Act (7 U.S.C. 2707(a));

(vi) Appoint members of the Floraboard established by section 1707(1) of the Floral Research and Consumer Information Act (7 U.S.C. 4306(1));

(vii) Appoint members of the Honey Board established by section 7(c)(1) of the Honey Research, Promotion, and Consumer Information Act, as amended (7 U.S.C. 4606(c));

(viii) Appoint members of the Lime Board established by section 1955(b)(2) of the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6204(b));

(ix) Appoint members of the Mushroom Council established by section 1925(b)(1)(B) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6104(b));

(x) Appoint members of the Pecan Marketing Board established by section 1910(b)(8)(E) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6005(b));

(xi) Appoint members of the National Potato Promotion Board established by section 308(a)(4) of the Potato Research and Promotion Act as amended (7 U.S.C. 2617(a));

(xii) Appoint members of the National Watermelon Promotion Board established by section 1647(c) of the Watermelon Research and Promotion Act (7 U.S.C. 4906(c));

(xiii) Appoint members of the PromoFlor Council established by section 5(b) of the Fresh Cut Flowers and Fresh Cut Greens Act of 1993 (7 U.S.C. 6804(b));

(xiv) Appoint members of the National Kiwifruit Board established by section 555(c)(1) of the National Kiwifruit Research, Promotion, and Consumer Information Act (7 U.S.C. 7464(c));

(xv) Appoint members of Popcorn Board established by section 575(b)(1) of the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7484(b));

(xvi) Appoint members of the Wheat Industry Council established by section 1706(a) of the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3405(a));

(xvii) Appoint members of the Cattlemen's Beef Promotion and Research Board established by section 5(1) of the Beef Research and Information Act as amended (7 U.S.C. 2904(1));

(xviii) Appoint members of the National Pork Board established by section 1619(a)(1) of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4808(a));

(xix) Appoint members of the United Soybean Board established by section 1969(b)(1) of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6304(b));

(xx) Appoint members of the National Sheep Promotion, Research, and Information Board established by section 5(b) of the Sheep Promotion, Research, and Information Act (7 U.S.C. 7104(b)(1);

(xxi) Appoint members of the National Canola and Rapeseed Board established by section 535(b)(1) of the Canola and Rapeseed Research, Promotion, and Consumer Information Act (7 U.S.C. 7444(b));

(xxii) Appoint members of boards established by section 515(b)(2)(A) of the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7414(b)).

(2) *Related to animal and plant health inspection.* (i) Determination that an emergency or extraordinary emergency exists under the Animal Health Protection Act (7 U.S.C. 8306, 8316).

(ii) Determination that an emergency or extraordinary emergency exists under the Plant Protection Act (7 U.S.C. 7715, 7772).

(iii) Approval of requests for apportionment of reserves for the control of outbreaks of insects, plant diseases, and animal diseases to the extent necessary to meet emergency conditions (31 U.S.C. 1512).

(iv) The suspension, revocation, or other impairment of a permit issued under section 7524 of the Food, Conservation, and Energy Act of 2008 (21 U.S.C. 113a note).

(3) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

[60 FR 56393, Nov. 8, 1995, as amended at 61 FR 25776, May 23, 1996; 61 FR 68541, Dec. 30, 1996; 62 FR 40254, July 28, 1997; 65 FR 12428, Mar. 9, 2000; 65 FR 49471, Aug. 14, 2000; 68 FR 27439, May 20, 2003; 70 FR 55706, Sept. 23, 2005; 74 FR 3405, Jan. 21, 2009; 76 FR 4802, Jan. 27, 2011; 79 FR 44109, July 30, 2014; 80 FR 58337, Sept. 29, 2015; 83 FR 22181, May 14, 2018; 83 FR 61311, Nov. 29, 2018; 85 FR 65509, Oct. 15, 2020; 87 FR 44267, July 26, 2022]

EDITORIAL NOTE: At 83 FR 61311, Nov. 29, 2018, § 2.22 was amended by adding (a)(1)(xvi), however paragraph (a)(xvi) was not provided in the text, this amendment could not be incorporated due to inaccurate amendatory instruction.

§ 2.23 Assistant Secretary for Congressional Relations.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Congressional Relations:

(1) *Related to congressional affairs.* (i) Exercise responsibility for coordination of all congressional matters in the Department.

(ii) Maintain liaison with the Congress and the White House on legislative Matters of concern to the Department.

(2)*Related to intergovernmental affairs.* (i) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(A) National Association of State Departments of Agriculture;

(B) Office of Intergovernmental Relations (Office of Vice President);

(C) Advisory Commission on Intergovernmental Relations;

(D) Council of State Governments;

(E) National Governors Conference;

(F) National Association of Counties;

(G) National League of Cities;

(H) International City Managers Association;

(I) U.S. Conference of Mayors; and

(J) Such other State and Federal agencies, departments and organizations as are necessary in carrying out the responsibilities of this office.

(ii) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(iii) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to state and local governments of proposed changes in Department programs that affect such governments.

(iv) Act as the department representative for Federal executive board matters.

(v) Oversee the Center for Faith Based and Neighborhood Partnerships.

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 68 FR 27439, May 20, 2003; 69 FR 34252, June 21, 2004; 80 FR 58337, Sept. 29, 2015; 88 FR 70579, Oct. 12, 2023]

§ 2.24 Assistant Secretary for Administration.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Administration:

(1)–(3) [Reserved]

(4) *Related to human resources management.* (i) Formulate and issue Department policy, standards, rules, and regulations relating to human resources management.

(ii) Provide human resources management procedural guidance and operational instructions.

(iii) Set standards for human resources data systems.

(iv) Inspect and evaluate human resources management operations and issue instructions or take direct action to insure conformity with appropriate

laws, Executive Orders, Office of Personnel Management (OPM) rules and regulations, and other appropriate rules and regulations.

(v) Exercise final authority in all human resources matters, including individual cases, that involve the jurisdiction of more than one General Officer or agency head, or otherwise as deemed appropriate.

(vi) Receive, review, and recommend action on all requests for the Secretary's approval in human resources matters.

(vii) Authorize and make final decisions on adverse actions, except in those cases where the Assistant Secretary for Administration has participated.

(viii) Represent the Department in human resources matters in all contacts outside the Department.

(ix) Exercise specific authorities in the following operational matters:

(A) Waive repayment of training expenses where an employee fails to fulfill service agreement.

(B) Establish or change standards and plans for awards to private citizens.

(C) Execute, change, extend, or renew:

(*1*) Labor-Management Agreements.

(*2*) Certifications of supervisory/managerial and non-labor union employee and professional organizations or associations.

(D) Represent the Department in contacts with the national offices of labor organizations in fulfilling the Department's national consultation obligations under 5 U.S.C. 7113.

(E) Change a position (with no material change in duties) from one pay system to another.

(F) Grant restoration rights, and release employees with administrative reemployment rights.

(G) Authorize any mass dismissals of employees in the Washington, DC, metropolitan area.

(H) Approve ''normal line of promotion'' cases in the excepted service where not in accordance with time-in-grade criteria.

(I) Make the final decision on all classification appeals filed with the Department of Agriculture.

(J) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions.

(K) Authorize all employment actions (except LWOP) for the following positions:

(*1*) Schedule C.

(*2*) Non-career Senior Executive Service or equivalent.

(*3*) Administrative Law Judge.

(L) Authorize and make final decisions on adverse actions for positions in GS–1—15 or equivalent.

(M) Authorize and make final decisions on adverse actions for positions in the career Senior Executive Service or equivalent.

(N) Approve the details of Department employees to the White House.

(O) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service.

(P) Authorize long-term training in programs which require Department-wide competition.

(Q) Initiate and take adverse action in cases involving a violation of the merit system.

(R) Any other human resources operational matter.

(x) As used in this section, the term human resources includes:

(A) Position management.

(B) Position classification.

(C) Employment.

(D) Pay administration.

(E) Automation of human resources data and systems.

(F) Hours of duty.

(G) Performance management.

(H) Promotions.

(I) Employee development.

(J) Incentive Programs.

(K) Leave.

(L) Retirement.

(M) Human resources program management accountability and evaluation.

(N) Social security.

(O) Life insurance.

(P) Health benefits.

(Q) Unemployment compensation.
(R) Labor management relations.
(S) Intramanagement consultation.
(T) [Reserved]
(U) Discipline.
(V) Appeals.
(W) Drug Testing Program.
(X) Worklife Program.
(Y) Transit Subsidy Program.

(xi) Maintain, review, and update Departmental delegations of authority.

(xii) Authorize organizational changes.

(xiii) Formulate and promulgate departmental organizational objectives and policies.

(xiv) Approve coverage and waiver of individual law enforcement and firefighter positions under the special retirement provisions of the Civil Service Retirement System and the Federal Employees Retirement System.

(xv) Provide for diversity and inclusion, as follows:

(A) Establish, direct, and provide policy and oversight for a Departmentwide Special Emphasis Program (SEP) including: Women, African Americans, Hispanics, Asian/Pacific Islanders, Native Americans, Disabled, and Gay/Lesbian/Bisexual/Transgender.

(B) Provide oversight and support for Departmental SEP recognition programs.

(C) Direct and oversee the Department-wide SEPM Council.

(D) Administer Federal Equal Opportunity Recruitment Program.

(xvi) Oversee and manage the Department's administrative grievance program.

(xvii) Make final decisions in those cases where an agency head has appealed the recommended decision of a grievance examiner.

(xviii) Administer the administrative appeals process related to the inclusion of positions in the testing designated position listing in the Department's Drug-Free Workplace Program and designate the final appeal officer for that Program.

(xix) Formulate and issue Department policy, standards, rules, and regulations relating to the Senior Scientific Research Service (7 U.S.C. 7657).

(xx) Provide human resources operational services for the following:

(A) The Secretary of Agriculture.

(B) The general officers of the Department.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) The Office of the Assistant Secretary for Civil Rights.

(E) Any other offices or agencies of the Department as may be agreed.

(xxi) Redelegate, as appropriate, any authority delegated under paragraphs (a)(4)(i) through (a)(4)(xx) to general officers of the Department and heads of Departmental agencies.

(xxii) Exercise the authority to noncompetitively convert to an appointment in the competitive service a recent graduate or student who is a United States citizen and has been awarded and successfully completed a scholarship program granted to the individual by the Department through the 1890 National Scholars Program or the 1994 Tribal Scholars Program, provided the individual meets the requirements for such conversion and meets Office of Personnel Management qualification standards, as determined by the Assistant Secretary for Administration (7 U.S.C. 2279j).

(5) *Related to small and disadvantaged business utilization.* Provide general administrative support to the Office of Small and Disadvantaged Business Utilization, consistent with the other delegations of authority to the Assistant Secretary for Administration in this section.

(6) *Related to procurement and property management.* (i) Exercise full Departmentwide contracting and procurement authority.

(ii) Promulgate policies, standards, techniques, and procedures, and represent the Department, in the following:

(A) Acquisition, including, but not limited to, the procurement of supplies, services, equipment, and construction.

(B) Socioeconomic programs relating to contracting.

(C) Selection, standardization, and simplification of program delivery processes utilizing contracts.

(D) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments.

(E) Motor vehicle and aircraft fleet and other vehicular transportation.

(F) Transportation of things (traffic management).

(G) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, ''Federal Compliance With Pollution Control Standards,'' 3 CFR, 1978 Comp., p. 243).

(H) Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*).

(I) Development and implementation of sustainable operations actions including establishing and achieving greenhouse gas emission reduction goals, reducing energy intensity, increasing renewable energy use, increasing water efficiency, reducing petroleum use and increasing alternative fuel use, increasing recycling and waste diversion, preventing pollution, reducing use of toxic chemicals, procuring sustainable products and services, achieving sustainable principles for new and existing buildings, promoting electronic stewardship, and continuing environmental management system use. Maintain liaison with the Office of the Federal Environmental Executive, the Council on Environmental Quality, the Office of Management and Budget (OMB), the Department of Energy, and other Government agencies in these matters.

(J)–(K) [Reserved]

(L) Implementation of the policies and procedures set forth in OMB Circular No. A–76, Performance of Commercial Activities.

(iii) Exercise the following special authorities:

(A) Designate the Departmental Debarring Officer to perform the functions of 48 CFR part 9, subpart 9.4 related to procurement activities, except for commodity acquisitions on behalf of the Commodity Credit Corporation (7 CFR part 1407); with authority to redelegate suspension and debarment authority for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c).

(B) Conduct liaison with the Office of the Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18.

(C) Maintain custody and permit appropriate use of the official seal of the Department.

(D) Establish policy for the use of the official flags of the Secretary and the Department.

(E) Coordinate collection and disposition of personal property of historical significance.

(F) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes making such verifications or certifications as may be required by 26 CFR 1.6050M–1 and making the election allowed by 26 CFR 1.6050M–1(d)(5)(1).

(G) Promulgate regulations for the management of contracting and procurement for information technology and telecommunication equipment, software, services, maintenance and related supplies.

(H) Represent the Department in working with the Government Accountability Office (GAO), the General Services Administration, OMB, and other organizations or agencies on matters related to assigned responsibilities.

(I) Serve as the designated Chief Acquisition Officer for the Department pursuant to section 1702 of title 41, United States Code.

(iv) Serve as the Acquisition Executive in the Department to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular No. A–109, Major Systems Acquisitions. This includes the authority to:

(A) Ensure that OMB Circular No. A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized.

(B) Review the program management of each major system acquisition.

(C) Designate the program manager for each major systems acquisition.

(D) Designate any Departmental acquisition as a major system acquisition under OMB Circular No. A–109.

(v) Pursuant to Executive Order 12931, ''Federal Procurement Reform,'' 3 CFR, 1994 Comp., p. 925, and sections 16, 22, and 37 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418b, and 433, designate the Senior Procurement Executive for the Department and delegate responsibility for the following:

(A) Prescribing and publishing Departmental acquisition policies, advisories, regulations, and procedures.

(B) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, agreements, and other transactions.

(C) Designating contracting officers.

(D) Establishing clear lines and limitations of contracting authority through written delegations of authority.

(E) Approving any Departmental and component agency procurement systems and processes.

(F) Managing and enhancing career development of the Department's acquisition workforce.

(G) Participating in the development of Governmentwide procurement policies, regulations, and standards, and determining specific areas where Governmentwide performance standards should be established and applied.

(H) Developing unique Departmental standards as required.

(I) Overseeing the development of procurement goals, guidelines, and innovation.

(J) Measuring and evaluating procurement office performance against stated goals.

(K) Advising the Secretary whether goals are being achieved.

(L) Prescribing standards for agency Procurement Executives.

(M) Redelegating, suspending, or revoking, as appropriate, the authority in paragraph (a)(6)(v)(A) of this section to agency Procurement Executives or other qualified agency officials with no power of further redelegation.

(N) Redelegating, suspending, or revoking, as appropriate, the authorities in paragraphs (a)(6)(v)(B), (C), (D), (F), and (G) of this section to agency Procurement Executives or other qualified agency officials with the power of further redelegation.

(vi) Represent the Department in establishing standards for acquisition transactions within the electronic data interchange environment.

(vii) Designate the Departmental Task Order Ombudsman pursuant to 41 U.S.C. 253j.

(viii) Designate the Departmental Remedy Coordination Official pursuant to 41 U.S.C. 255 to determine whether payment to any contractor should be reduced or suspended based on substantial evidence that the request of the contractor for advance, partial, or progress payment is based on fraud.

(ix) Review and approve exemptions for USDA contracts, subcontracts, grants, agreements, and loans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, ''Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans,'' 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the EPA (2 CFR 1532.1140).

(x) Transfer excess research equipment to eligible educational institutions or certain non-profit organizations for the conduct of technical and scientific education and research activities under section 11(i) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(i)) (7 CFR part 2812).

(xi) Promulgate policy and obtain and furnish Federal excess personal property in accordance with section 923 of Public Law 104–127 (7 U.S.C. 2206a), to support research, educational, technical and scientific activities or for related programs, to:

(A) Any 1994 Institutions (as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (Pub. L. 103–382; 7 U.S.C. 301 note)).

(B) Any Institutions eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, *et seq.*) including Tuskegee University.

(C) Any Hispanic-serving Institutions (as defined in sections 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

(xii) Make available to organizations excess or surplus computers or other technical equipment of the Department for the purpose of distribution to cities, towns, or local government entities in rural areas (7 U.S.C. 2206b).

(xiii) Issue regulations and directives to implement or supplement the Federal Acquisition Regulations (48 CFR Chapters 1 and 4).

(xiv) Issue regulations and directives to implement or supplement the Federal Property Management Regulations (41 CFR chapter 101) and the Federal Management Regulation (41 CFR chapter 102).

(xv) Serve as USDA Senior Sustainability Officer under Executive Order 13514, ''Federal Leadership in Environmental, Energy, and Economic Performance'' (74 FR 52117, Oct. 8, 2009) responsible for developing and achieving greenhouse gas emission reduction targets, developing and implementing a Strategic Sustainability Performance Plan, achieving sustainable practice goals in Executive Order 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management,'' 3 CFR, 2007 Comp., p. 191, and reporting USDA's progress to OMB and the Council on Environmental Quality.

(xvi) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401, *et seq.*), designate the Department's Advocate for Competition with the responsibility for section 20 of the Act (41 U.S.C. 418), including:

(A) Reviewing the procurement activities of the Department.

(B) Developing new initiatives to increase full and open competition.

(C) Developing goals and plans and recommending actions to increase competition.

(D) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services.

(E) Promoting the acquisition of commercial items.

(F) Designating an Advocate for Competition for each procuring activity within the Department.

(xvii) *Related to compliance with environmental laws and sustainable operating requirements.* (A) Serve as Chair of the USDA Sustainable Operations Council.

(B) Represent USDA in consulting or working with the EPA, the Council on Environmental Quality, the Domestic Policy Council, and others to develop policies relating to hazardous materials management and Federal facilities compliance with applicable pollution control laws.

(C) Monitor, review, evaluate, and oversee hazardous materials management program activities and compliance Department-wide.

(D) Monitor, review, evaluate, and oversee USDA agency expenditures for hazardous materials management program accomplishments.

(E) Represent USDA on the National Response Team and exercise responsibility for USDA response efforts for hazardous substance releases and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, *et seq.*); the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*); Oil Pollution Act, as amended (33 U.S.C. 2701, *et seq.*); Executive Order 12580, ''Superfund Implementation,'' 3 CFR, 1987 Comp., p. 193; Executive Order 12777, ''Implementation of section 311 of the Federal Water Pollution Control Act of October 18, 1972, as amended, and the Oil Pollution Act of 1990,'' 3 CFR, 1991 Comp., p. 351, and the National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300.

(F) Approve disbursements from the New World Mine Response and Restoration Account, approve the New World Mine Response and Restoration Plan, and make quarterly reports to Congress under Sections 502(d) and (f) of Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Public Law 105–83.

(G) Ensure that the Hazardous Materials Management Program Department-wide is accomplished with regard to, and in compliance with, Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' 3 CFR, 1994 Comp. p. 859.

(H) Take such action as may be necessary, with the affected agency head and with the concurrence of the General Counsel, including issuance of administrative orders and agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order 12580, ''Superfund Implementation,'' 3 CFR, 1987 Comp., p. 193, as amended by Executive Order 13016, ''Amendment to Executive Order No. 12580,'' 3 CFR, 1996 Comp., p. 214.

(I) Represent USDA on the EPA Brownfields Federal Partnership and coordinate USDA support for Brownfields redevelopment and establish policy and guidance for the implementation of the June 2003 amendment to Executive Order 12580, ''Superfund Implementation,'' 3 CFR, 1987 Comp., p. 193 (Executive Order 13308, ''Further Amendment to Executive Order 12580, As Amended, Superfund Implementation,'' 3 CFR, 2003 Comp., p. 239).

(xviii) *Related to occupational safety and health.* (A) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive Orders and other policy and procedural issuances related to occupational safety and health and workers' compensation programs within the Department.

(B) Represent the Department in all rulemaking, advisory, or legislative capacities on any groups, committees, or Governmentwide activities that affect the Department's Occupational Safety and Health Management Program; and serve as the USDA Designated Safety and Health Official.

(C) Determine and provide Departmentwide technical services and regional staff support for the safety and health programs.

(D) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's occupational safety and health programs.

(E) Administer the Department's Occupational Health and Preventive Medicine Program, as well as design and operate employee assistance and workers' compensation activities.

(F) Provide education and training on a Departmentwide basis for safety and health-related issues and develop resource and operational manuals.

(xix) In coordination with the Chief Financial Officer, implement the debarment authorities in section 14211 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 2009j), in connection with procurement activities.

(xx) Provide services, including procurement of supplies, services, and equipment, with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department, except the Inspector General.

(C) Any other offices or agencies of the Department as may be agreed, including as a Working Capital Fund activity.

(7) [Reserved]

(8) *Related to homeland security.* (i) Serve as the principal advisor to the Secretary on national security, including emergency management, agriculture and food defense, and foreign investments in U.S. agriculture.

(ii) Coordinate activities of the Department, including policies, processes, budget needs, and oversight relating to national security, including emergency management, biodefense, agriculture and food defense, and foreign investments in U.S. agriculture.

(iii) Act as the primary liaison on behalf of the Department with other Federal departments and agencies in activities relating to national security,

including emergency management, integrated laboratory networks, agriculture and food defense, foreign investments in U.S. agriculture, national intelligence collection priorities, and interagency coordination and data sharing.

(iv) Coordinate in the Department the gathering of information relevant to early warning and awareness of threats and risks to the food and agriculture critical infrastructure sector; and share that information with, and provide assistance with interpretation and risk characterization of that information to, the intelligence community (as defined in 5 U.S.C. 3003), law enforcement agencies, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Health and Human Services, and State fusion centers (as defined in section 210A(j) of the Homeland Security Act of 2002 (6 U.S.C. 124h(j)).

(v) Establish and maintain an effective defensive Counterintelligence Program to counter Foreign Intelligence Entity (FIE) threats to Departmental sensitive information and assets that includes identification and risk assessment to sensitive assets, development and implementation of mitigation strategies, integration of counter-FIE efforts across the Department, sharing of threat information and warnings, and promotion of counterintelligence training awareness.

(vi) Liaise with the Intelligence Community to assist in the development of periodic assessments and intelligence estimates, or other intelligence products, that support the defense of the food and agriculture critical infrastructure sector and risks associated with foreign investments in U.S. agriculture.

(vii) Coordinate the conduct, evaluation, and improvement of exercises to identify and eliminate gaps in preparedness and response.

(viii) Produce a Department-wide centralized strategic coordination plan to provide a high-level perspective of the operations of the Department relating to homeland and national security, including emergency management and agriculture and food defense.

(ix) Establish and carry out an interagency Agriculture and Food Threat Awareness Partnership Program, including by entering into cooperative agreements or contracts with Federal, State, or local authorities (7 U.S.C. 6922).

(x) Administer the Department's Emergency Preparedness Program. This includes:

(A) Coordinate the delegations and assignments made to the Department under the Defense Production Act of 1950, 50 U.S.C. App. 2061, *et seq.;* the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.;* and by Executive Orders 12148, ''Federal Emergency Management'' (3 CFR, 1979 Comp., p. 412), 12656, ''Assignment of Emergency Preparedness Responsibilities'' (3 CFR, 1988 Comp., p. 585), and 13603, ''National Defense Resources Preparedness'' (3 CFR, 2012 Comp., p. 225), or any successor to these Executive Orders, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any all hazards incident.

(B) Manage the Department Emergency Operations Center at Headquarters and the Secretary's alternative facilities; provide senior staff with international, national, and regional situational awareness reports; and provide and maintain current information systems technology and National Security Systems to support USDA executive crisis management capability.

(C) Provide facilities and equipment to facilitate inter-agency coordination during emergencies.

(D) Activate the USDA incident management system in accordance with the National Response Framework and the National Incident Management System in the event of a major incident; and provide oversight and coordination of the Department's Emergency Support Functions as outlined in the National Response Framework.

(E) Develop and promulgate policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning, both

national and international, and guidance to USDA State and County Emergency Boards.

(F) [Reserved]

(G) Provide representation and liaison for the Department in contacts with other Federal entities and organizations, including the National Security Council's functional directorates, Homeland Security Council, Office of Management and Budget, Department of Homeland Security, Federal Emergency Management Agency, Office of the Director of National Intelligence, Department of State, Federal Bureau of Investigation, and Department of Defense concerning matters of a national security, multilateral weapons conventions, natural disasters, other emergencies, and agriculture/food-related international civil emergency planning and related activities.

(H) Act as the primary USDA representative for anti-terrorism activities and coordinates and oversees USDA's agroterrorism defense activities and programs.

(I) [Reserved]

(J) Provide guidance and direction regarding radiological emergency preparedness programs and the implementation of the National Response Framework's Nuclear/Radiological Incident Annex to Departmental staff offices, mission areas, and agencies.

(K) Provide program leadership and coordination for USDA's radiological emergency preparedness requirements with respect to Emergency Management and Assistance (44 CFR parts 350 through 352).

(L) Represent USDA on the Federal Radiological Preparedness Coordinating Committee (FRPCC) and Regional Assistance Committees (RACs) and assist them in carrying out their functions.

(M) Support USDA in its management of the Department's emergency response program with respect to radiological emergency response activities.

(N) [Reserved]

(xi)[Reserved]

(xii) Serve as the primary point of contact for Government Accountability Office (GAO) and Office of the Inspector General (OIG) audits of USDA homeland and national security activities.

(xiii) Coordinate interaction between Department agencies and private sector businesses and industries in emergency planning and public education under Department authorities delegated or assigned under the National Response Framework, National Infrastructure Protection Plan, Defense Production Act of 1950, 50 U.S.C. App. 2061, *et seq.*, and Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*

(xiv) Oversee the Department's ability to collect and disseminate information and prepare for an agricultural disease emergency, agroterrorism act, or other threat to agricultural biosecurity, and coordinate such activities among agencies and offices within the Department (7 U.S.C. 8912).

(xv) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in providing security guidance to the Food and Agricultural Sector nationwide. This includes the following duties:

(A) Provide guidance to USDA agencies and the Food and Agricultural Sector in matters of security through use of assessments and development of mitigation strategies.

(B) Represent and act as liaison for the Department in contacts with other Federal security entities and organizations, including the Interagency Security Committee and the Department of Homeland Security.

(C) Provide guidance and direction to ensure agriculture/food security are fully integrated in USDA's security preparations, which are reported to and coordinated with the White House.

(D) Provide assistance to the USDA agencies in preparation for and during a disaster to identify critical assets and possible alternate storage locations.

(xvi) Provide oversight and coordination of the development and administration of the Department Continuity Program. This includes:

(A) Provide guidance and direction regarding continuity of operations to the Office of the Secretary, Departmental staff offices, mission areas, and agencies.

(B) Represent and act as liaison for the Department in contacts with other

Federal entities and organizations concerning matters of assigned continuity program responsibilities.

(C) Oversee Department continuity of operations and emergency relocation facility planning, development, equipping, and preparedness to ensure that resources are in a constant state of readiness.

(xvii) Establish procedures to prevent unnecessary access to classified national security information (CNSI) including procedures that require that need for access to CNSI is established before initiating security clearance procedures; and ensure that the number of persons granted access CNSI is limited to the minimum consistent with operational and security requirements:

(A) Direct and administer USDA's CNSI program pursuant to E.O. 13526, ''Classified National Security Information'' (75 FR 707, 3 CFR, 2010 Comp., p. 298), or subsequent orders.

(B) Establish and maintain Information Security policies and procedures for classifying, declassifying, safeguarding, and disposing of CNSI and materials.

(C) Investigate or delegate authority to investigate any potential compromises of CNSI and take corrective action for violations or infractions under section 5.5(b), of E.O. 13526 or any subsequent order.

(D) Develop and maintain oversight of all facilities throughout USDA where CNSI is or will be safeguarded, discussed, or processed including sole authority to liaison with the Central Intelligence Agency concerning guidance, approval, requirements, and oversight of USDA secure facilities.

(xviii) Control within USDA the acquisition, use, and disposal of material and equipment that can be a source of ionizing radiation.

(A) Promulgate policies and procedures for ensuring the safety of USDA employees, the public, and the environment resulting from USDA's use of ionizing radiation sources.

(B) Maintain and ensure compliance with the Nuclear Regulatory Commission regulations (Title 10, Code of Federal Regulations) and license(s) issued to USDA for the acquisition, use, and disposal of radioactive materials.

(xix) Provide administrative supervision to the unit that grants, denies, or revokes security clearances for USDA employees and contractors.

(9) *Related to operations support to the Department of Agriculture headquarters complex, George Washington Carver Center, and leased facilities in the Washington metro area.* (i) Provide services relating to facilities management and daily operational support for agencies and offices occupying USDA's headquarters complex, George Washington Carver Center, and, in coordination with the General Services Administration (GSA), USDA leased facilities in the Washington, DC metropolitan area, as well as at emergency relocation sites and certain critical facilities specified by the Assistant Secretary for Administration in the following areas:

(A) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real property, including control of space assignments, and architecture and engineering design oversight.

(B) Sustainable Operations leadership and management in the areas of internal energy efficiency, conservation and recycling in support of Executive Orders 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management,'' 3 CFR, 2007 Comp., p. 193, and 13514, ''Federal Leadership in Environmental, Energy, and Economic Performance'' (74 FR 52117, Oct. 8, 2009).

(C) Occupational health, safety, and related functions; and environmental compliance pursuant to Executive Order 12088, ''Federal Compliance with Pollution Control Standards,'' 3 CFR, 1978 Comp., p. 243, to ensure actions are taken for the prevention, control, and abatement of environmental pollution.

(ii) Provide centralized Departmental business services including:

(A) Printing, copy reproducing, offset composing, mail management and delivery, and automated mailing lists.

(B) USDA Nationwide mail management policy.

(C) Operation of a disability resource center for all USDA agencies in the Washington, DC metropolitan area and nationwide in the areas of accessible technologies and reasonable accommodations.

(D) General supplies, shipping and receiving, warehouse and labor services.

(E) Operation of a USDA Consolidated Forms and Publications Distribution Center for storage and nationwide distribution of USDA program forms and publications.

(F) Excess personal property operations with disposition responsibility for all USDA agencies in the Washington, DC metropolitan area.

(G) Operation of a GSA authorized Federal excess property Sales Center for USDA property and other government agencies in the Washington, DC metropolitan area via Memorandum of Understanding (MOU).

(iii) [Reserved]

(iv) Provide management and oversight of the Secretary's People's Garden initiative and the USDA Visitor's Center for education and outreach to USDA and the public.

(v) Represent the Department in contacts with other organizations or agencies on matters related to assigned responsibilities.

(vi) Provide services, including travel support, conference management, and general administrative support including coordination of office renovations and moves (within USDA Whitten Building), with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department, except the Inspector General.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) The Office of the Assistant Secretary for Civil Rights.

(E) Any other offices or agencies of the Department as may be agreed.

(vii) Prepare responses to requests under the Freedom of Information Act with authority to take actions as required by law or regulation for the office and agencies reporting to the Assistant Secretary for Administration.

(viii) Administer the records management program in support of Departmental Administration, and prepare and coordinate responses to management audits by the Inspector General and the Government Accountability Office, with authority to take actions as required by law or regulation for the offices and agencies reporting to the Assistant Secretary for Administration.

(10) [Reserved]

(11) *Related to safety, security, and protection.* (i) Promulgate Departmental policies, standards, techniques, and procedures; and represent the Department in maintaining the security of physical facilities and providing security guidance to the Food and Agricultural Sector nationwide. This includes the following activities:

(A) Lead and coordinate the development and maintenance of a mission critical facility inventory with agency involvement to ensure proper security countermeasures are implemented in the Department's most critical infrastructure.

(B) Provide guidance to USDA agencies in matters of physical security through use of physical security assessments and development of mitigation strategies.

(C) Conduct physical security investigations and compliance reviews Department-wide.

(D) Review and provide coordinated technical physical security assessments for all new construction of laboratories, data centers, germplasm repositories, and other mission critical infrastructure during the design phase, and all leased facilities prior to contract award.

(E) Oversee and manage physical security aspects of the Common Identification Card (LincPass) Program to ensure National Institute of Standards and Technology (NIST) and General Services Administration (GSA) compliancy within the National Capital Region and the physical access to USDA facilities.

(F) Provide enterprise connectivity to agency physical access control systems that provide cost leveraging and provisioning/de-provisioning nationwide.

(ii) Promulgate Departmental regulations, standards, techniques, and procedures and represent the Department in managing and maintaining a comprehensive physical and technical security program including access control, management of special police officer and guard services, executive driving,

parking, ID badging in accordance with HSPD–12, occupant emergency and warden services at the USDA Headquarters Complex, George Washington Carver Center and, in coordination with GSA, USDA leased facilities in the Washington, DC metropolitan area, as well as at emergency relocation sites and certain critical facilities specified by the Assistant Secretary for Administration.

(iii) Carry out protection operations for the Secretary, Deputy Secretary, and other individuals as specified in Section 12520 of the Agriculture Improvement Act of 2018, including by authorizing law enforcement officers or special agents to carry firearms; conduct criminal investigations into potential threats to the security of individuals protected under Section 12520; make arrests without a warrant for any offense against the United States committed in the presence of the law enforcement officer or special agent; perform protective intelligence work, including identifying and mitigating potential threats and conducting advance work to review security matters relating to sites and events; and coordinate with local law enforcement authorities (7 U.S.C. 2279k).

(12) *Related to Office of Administrative Law Judges.* (i) Assign, after appropriate consultation with other general officers, to the Office of Administrative Law Judges proceedings not subject to 5 U.S.C. 556 and 557, involving the holdings of hearings and performance of related duties pursuant to the applicable rules of practice, when the Assistant Secretary for Administration determines that because of the nature of the proceeding it would be desirable for the proceeding to be presided over by an Administrative Law Judge and that such duties and responsibilities would not be inconsistent with those of an Administrative Law Judge.

(ii) Provide administrative supervision of the Office of Administrative Law Judges.

(iii) Maintain overall responsibility and control over the Hearing Clerk's activities which include the custody of and responsibility for the control, maintenance, and servicing of the original and permanent records of all USDA administrative proceedings conducted under the provisions of 5 U.S.C. 556 and 557:

(A) Receiving, filing and acknowledging the receipt of complaints, petitions, answers, briefs, arguments, and all other documents that may be submitted to the Secretary or the Department of Agriculture in such proceedings.

(B) Receiving and filing complaints, notices of inquiry, orders to show cause, notices of hearing, designations of Administrative Law Judges or presiding officers, answers, briefs, arguments, orders, and all other documents that may be promulgated or issued by the Secretary or other duly authorized officials of the Department of Agriculture in such proceedings.

(C) Supervising the service upon the parties concerned of any documents that are required to be served, and where required, preserving proof of service.

(D) Keeping a docket record of all such documents and proceedings.

(E) Filing a stenographic record of each administrative hearing where a transcript is required.

(F) Preparing for certification and certifying under the Secretary's facsimile signature, material on file in the Hearing Clerk's office.

(G) Performing any other clerical duties with respect to the documents relative to such proceedings as may be required to be performed.

(H) Cooperating with the Office of Operations in the letting of contracts for stenographic and reporting services; and forwarding vouchers to appropriate agencies for payment.

(I) Receiving and compiling data, views or comments filed in response to notices of proposed standards or rules or regulations.

(J) Performing upon request the following services with respect to any hearings in such proceedings:

(*1*) Arranging for suitable hearing place.

(*2*) Arranging for stenographic reporting of hearings and handling details in connection therewith.

(13) *Other general.* (i) Carry out prize competition authorities in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated

to the Assistant Secretary for Administration, except for authorities delegated to the Chief Financial Officer in § 2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(3) of this section.

(ii) Provide Departmentwide coordination for efforts to improve customer service.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to financial systems and budget formulation and execution.*

(i) Final approval of the Department's program and financial plans.

(ii) [Reserved]

(2) *Related to human resources management.* Make final determinations in the following areas:

(i) Separation of employees for security reasons.

(ii) Restoration to duty of employees following suspension from duty for security reasons.

(iii) Reinstatement or restoration to duty or the employment of any person separated for security reasons.

(iv) Issuance of temporary certificates to occupy sensitive positions.

(3) *Other general.* (i) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

(ii) [Reserved]

[75 FR 43368, July 23, 2010, as amended at 77 FR 14951,14952, Mar. 14, 2012; 78 FR 40937, July 9, 2013; 79 FR 44109, July 30, 2014; 80 FR 58337, Sept. 29, 2015; 83 FR 61311, Nov. 29, 2018; 85 FR 65510, Oct. 15, 2020; 87 FR 44267, July 26, 2022; 88 FR 70579, Oct. 12, 2023]

§ 2.25 Assistant Secretary for Civil Rights.

(a) The following delegations of authority are made by the Secretary to the Assistant Secretary for Civil Rights:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery, compliance, and equal employment opportunity, with emphasis on the following:

(i) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs.

(ii) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment.

(iii) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department.

(iv) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department.

(v) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded or conducted by the Department.

(vi) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Analyze and evaluate program participation data and equal employment opportunity data, and make its analyses available to other appropriate Departmental entities, including the Office of Advocacy and Outreach and affected agencies and mission areas.

(4) Provide leadership and coordinate the Department-wide programs of public notification regarding the availability of USDA programs and employment opportunities on a nondiscriminatory basis.

(5) Coordinate with the Department of Justice on matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of General Counsel.

(6) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those

matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of General Counsel.

(7) Order proceedings and hearings in the Department pursuant to §§15.9(e) and 15.86 of this title, which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department pursuant to §15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary with his or her recommended findings and proposed action.

(10) Authorize the taking of action pursuant to §15.8(a) of this title relating to compliance by ''other means authorized by law.''

(11) Make determinations required by §15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(12) Make determinations that program complaint investigations performed under §15.6 of this title establish a proper basis for findings of discrimination and that actions taken to correct such findings are adequate.

(13) Investigate (or make determinations that program complaint investigations establish a proper basis for final determinations), make final determinations on both the merits and required corrective action, and, where applicable, make recommendations to the Secretary that relief be granted under 7 U.S.C. 6998(d) notwithstanding the finality of National Appeals Division decisions, as to complaints filed under parts 15a, 15b, and 15d of this title.

(14) Conduct civil rights investigations and compliance reviews Department-wide.

(15) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(16) Related to Equal Employment Opportunity (EEO). Is designated as the Department's Director of Equal Employment Opportunity with authority:

(i) To perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority:

(A) To make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO program.

(B) To provide EEO services for managers and employees.

(C) To make final agency decisions, or enter into settlement agreements on EEO complaints by Department employees or applicants for employment and order such corrective measures in response to such complaints as may be considered necessary, except that in qualifying cases as described in §2.31(a)(18) the Assistant Secretary for Civil Rights must first obtain legal sufficiency review and concurrence by the General Counsel before extending settlement offers or entering into settlement agreements. Corrective measures may include recommending to the Office of Human Resources Management and the affected agency or office that appropriate disciplinary action be taken when an employee has been found to have engaged in a discriminatory practice.

(ii) Administer the Department's EEO program.

(iii) Oversee and manage the EEO counseling function for the Department.

(iv) Process formal EEO complaints by employees or applicants for employment.

(v) Investigate Department EEO complaints and make final decisions on EEO complaints, except in those cases where the Assistant Secretary for Civil Rights (or a person directly supervised by the Assistant Secretary for Civil Rights) has participated in the events that gave rise to the matter.

(vi) Order such corrective measures in EEO complaints as may be considered necessary. Corrective measures

may include recommending to the Office of Human Resources Management and the affected agency or office that appropriate disciplinary action be taken when an employee has been found to have engaged in a discriminatory practice.

(vii) Provide liaison on EEO matters concerning complaints and appeals with the Department agencies and Department employees.

(viii) Conduct EEO evaluations and develop policy regarding EEO programs.

(ix) Provide liaison on EEO programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

(17) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority, and provide timely notice of such appeals to the Office of General Counsel and the Civil Rights Director of the affected agency.

(18) Make final determinations, or enter into settlement agreements, on discrimination complaints in federally conducted programs subject to the Equal Credit Opportunity Act. This delegation includes the authority to make compensatory damage awards whether pursuant to a final determination or in a settlement agreement under the authority of the Equal Credit Opportunity Act and the authority to obligate agency funds, including Commodity Credit Corporation and Federal Crop Insurance Corporation funds to satisfy such an award.

(19) Make final determinations in proceedings under part 15f of this title where review of an administrative law judge decision is undertaken.

(20) Provide civil rights and equal employment opportunity support services, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) Any other offices or agencies of the Department as may be agreed.

(21) *Related to Alternative Dispute Resolution.*

(i) Designate the senior official to serve as the Department Dispute Resolution Specialist pursuant to section 3 of the Administrative Dispute Resolution Act, Public Law 101–552, as amended (5 U.S.C. 571 note), and provide leadership, direction, and coordination for the Department's conflict prevention and resolution activities.

(ii) Issue Departmental regulations, policies, and procedures relating to the use of Alternative Dispute Resolution (ADR) to resolve employment complaints and grievances, workplace disputes, program complaints alleging civil rights violations, and contract and procurement disputes.

(iii) Provide ADR services for:

(A) The Secretary of Agriculture.

(B) The general officers of the Department.

(C) The offices and agencies reporting to the Assistant Secretary for Administration.

(D) Any other office or agency of the Department as may be agreed.

(iv) Develop and issue standards for mediators and other ADR neutrals utilized by the Department.

(v) Coordinate ADR activities throughout the Department.

(vi) Monitor agency ADR programs and report at least annually to the Secretary on the Department's ADR activities.

(22) Prepare, submit, and make publicly available the civil rights report required by section 14010 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 2279–2).

(23) Redelegate, as appropriate, any authority delegated under paragraphs (a)(1) through (22) of this section to general officers of the Department and heads of Departmental agencies.

(24) Award grants and enter into cooperative agreements, as appropriate, under the following authorities only for the purpose of conducting outreach efforts in connection with the duties and powers delegated to the Assistant Secretary for Civil Rights under this section:

(i) Grants and cooperative agreements under section 2501(a)(3) of the

Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279(a)(3));

(ii) Cooperative agreements under section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318(b));

(iii) Grants and cooperative agreements under section 1472(c) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318(c));

(iv) Cooperative agreements under section 607(b)(4) of the Rural Development Act of 1972 (7 U.S.C. 2204b(b)(4)); and

(v) Cooperative agreements under section 714 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 (7 U.S.C. 6962a).

(25) Carry out prize competition authorities in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated to the Assistant Secretary for Civil Rights, except for authorities delegated to the Chief Financial Officer in § 2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(1) of this section.

(26) As directed by section 12403(a) of the Agriculture Improvement Act of 2018, conduct civil rights impact analyses in accordance with Departmental Regulation 4300–004 issued on October 17, 2016, with respect to the Department's employment, federally conducted programs and activities, and federally assisted programs and activities.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

(2) [Reserved]

[77 FR 14953, Mar. 14, 2012, as amended at 78 FR 40937, July 9, 2013; 79 FR 44109, July 30, 2014; 80 FR 58337, Sept. 29, 2015; 85 FR 65512, Oct. 15, 2020]

§ 2.26 Director, Office of the Executive Secretariat.

(a) *Delegations.* The following delegations of authority are made by the Secretary to the Director, Office of the Executive Secretariat:

(1) Exercise responsibility for all correspondence control and related records management functions for the Office of the Secretary;

(2) Provide administrative, editorial, and project management support services to the immediate Office of the Secretary.

(b) [Reserved]

[87 FR 44269, July 26, 2022]

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

EDITORIAL NOTE: Nomenclature changes to subpart D of part 2 appear at 60 FR 66713, Dec. 26, 1995.

§ 2.27 Office of Administrative Law Judges.

(a) The following designations are made by the Secretary of Agriculture to the Office of Administrative Law Judges:

(1) Administrative law judges (formerly hearing examiners) are designated pursuant to 5 U.S.C. 556(b)(3) to hold hearings and perform related duties in proceedings subject to 5 U.S.C. 556 and 557, arising under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*); the Commodity Exchange Act as amended (7 U.S.C. 1 *et seq.*); the Perishable Agricultural Commodities Act, as amended (7 U.S.C. 499a *et seq.*); the Federal Seed Act, as amended (7 U.S.C. 1551 *et seq.*); the (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131 *et seq.*); the Packers and Stockyards Act, 1921, as amended and supplemented (7 U.S.C. 181 *et seq.*); the Forest Resources Conservation and Shortage Relief of 1990 (16 U.S.C. 630 *et seq.*); and any other acts providing for hearings to which the provisions of 5 U.S.C. 556 and 557, are applicable. Pursuant to the applicable rules of practice, the administrative law judges shall make initial decisions in adjudication and rate proceedings subject to 5 U.S.C. 556 and 557. Such decisions shall become final without further proceedings unless there is an appeal to the Secretary by a party to the proceeding in accordance with

the applicable rules of practice: Provided, however, that no decision shall be final for purposes of judicial review except a final decision of the Secretary upon appeal. As used herein, ''Secretary'' means the Secretary of Agriculture, the Judicial Officer, or other officer or employee of the Department delegated, pursuant to the Act of April 4, 1940 (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), ''regulatory functions'' as that term is defined in the 1940 Act, in acting as final deciding officer in adjudication and rate proceedings subject to 5 U.S.C. 556 and 557. Administrative Law Judges are delegated authority to hold hearings and perform related duties as provided in the Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act, set forth in part 1, subpart I of this title.

(2) [Reserved]

(b) The Chief Administrative Law Judge is delegated the following administrative responsibilities subject to the guidance and control of the Assistant Secretary for Administration (*See* § 2.24(a)(12)):

(1) Exercise general responsibility and authority for all matters related to the administrative activities of the Office of Administrative Law Judges; and

(2) Direct the functions of the Hearing Clerk as set out in § 2.24(a)(12)(iii).

[60 FR 56393, Nov. 8, 1995, as amended at 75 FR 43380, July 23, 2010]

§ 2.28 Chief Financial Officer.

(a) The Chief Financial Officer, under the supervision of the Secretary of Agriculture, is responsible for executing the duties enumerated for agency Chief Financial Officers in the Chief Financial Officers Act of 1990, Public Law 101–576, 31 U.S.C. 902, and additional specified duties, including:

(1) Report directly to the Secretary regarding financial management matters.

(2) Oversee all financial management activities relating to the programs and operations of the Department and component agencies.

(3) Develop and maintain an integrated accounting and financial system for the Department and component agencies, including financial reporting and internal controls, which—

(i) Complies with applicable accounting principles, standards, and requirements, and internal control standards;

(ii) Complies with such policies and requirements as may be prescribed by the Director of the Office of Management and Budget (OMB);

(iii) Complies with any other requirements applicable to such systems; and

(iv) Provides for complete, reliable, consistent, and timely information which is prepared on a uniform basis and which is responsive to the financial information needs of Department management and for the development and reporting of cost information, the integration of accounting and budgeting information, and the systematic measurement of performance.

(4) Make recommendations to the Secretary regarding the selection of the Deputy Chief Financial Officer of the Department, and selection of principal financial officers of component agencies of the Department.

(5) Direct, manage, and provide policy guidance and oversight of Department financial management personnel, activities, and operations, including:

(i) Prepare and annually revise a Departmental plan to:

(A) Implement the 5-year financial management plan prepared by the Director of OMB under 31 U.S.C. 3512(a)(3); and

(B) Comply with the requirements established for agency financial statements under 31 U.S.C. 3515 and with the requirements for audits of Department financial statements established in 31 U.S.C. 3521(e) and (f).

(ii) Develop Departmental financial management budgets, including the oversight and recommendation of approval of component agency financial management budgets.

(iii) Recruit, select, and train personnel to carry out Departmental financial management functions.

(iv) Approve and manage Departmental, and approve component agency, financial management systems design or enhancement projects.

(v) Implement and approve Departmental, and approve component agency, asset management systems, including systems for cash management,

credit management, debt collection, and property and inventory management and control.

(6) Prepare and transmit, by not later than 60 days after the submission of the audit report required by 31 U.S.C. 3521(f), an annual report to the Secretary and the Director of OMB, which shall include:

(i) A description and analysis of the status of financial management of the Department.

(ii) The annual financial statements prepared under 31 U.S.C. 3521.

(iii) The audit report transmitted to the Secretary under 31 U.S.C. 3521.

(iv) A summary of the reports on internal accounting and administrative control systems submitted to the President and the Congress under the amendments made by the Federal Managers' Financial Integrity Act of 1982 (31 U.S.C. 1113, 3512).

(v) Other information the Secretary considers appropriate to inform fully the President and the Congress concerning the financial management of the Department.

(7) Monitor the financial execution of the budget of the Department in relation to projected and actual expenditures, and prepare and submit to the Secretary timely performance reports.

(8) Review, on a biennial basis, the fees, royalties, rent, and other charges imposed by the Department for services and things of value it produces, and make recommendations on revising those charges to reflect costs incurred by the Department in providing those services and things of value.

(9) Access all records, reports, audits, reviews, documents, papers, recommendations, or other material that are the property of the Department or that are available to the Department, and that relate to programs and operations with respect to which the Chief Financial Officer has responsibilities, except that this grant allows no access greater than that permitted under any other law to records, reports, audits, reviews, documents, papers, recommendations, or other material of the Office of Inspector General.

(10) Request such information or assistance as may be necessary for carrying out the duties and responsibilities granted by the Chief Financial Officers Act of 1990 (Pub. L. 101–576), from any Federal, State, or local governmental entity.

(11) To the extent and in such amounts as may be provided in advance by appropriations acts, enter into contracts and other arrangements with public agencies and with private persons for the preparation of financial statements, studies, analyses, and other services, and making such payments as may be necessary to carry out the duties and prerogatives of the Chief Financial Officer.

(12) Designate the Department's Comptroller of the Department Working Capital Fund.

(13) Establish Departmental policies, standards, techniques, and procedures applicable to all USDA agencies for the following areas:

(i) Development, maintenance, review and approval of all departmental, and review and approval of component agency, internal control, fiscal, financial management and accounting systems including the financial aspects of payment management and property systems.

(ii) Selection, standardization, and simplification of program delivery processes utilizing grants, cooperative agreements and other forms of Federal assistance.

(iii) Review and approval of Federal assistance, internal control, fiscal, accounting and financial management regulations and instructions proposed or issued by USDA agencies for conformity with Departmental requirements.

(iv) Section 5301 of the Anti–Drug Abuse Act of 1988 (21 U.S.C. 862) as it relates to grants, loans, and licenses.

(14) Establish policies related to the Department Working Capital Fund.

(15) Approve regulations, procedures and rates for goods and services financed through the Department Working Capital Fund which will impact the financial administration of the Fund.

(16) Exercise responsibility and authority for operating USDA's financial and subsidiary management systems and related administrative systems including: Departmentwide payroll and personnel information systems, statistics, administrative payments, billings and collections, and related reporting

systems that are either requested by the agencies or required by the Department.

(17) Manage the National Finance Center (NFC).

(18) Provide management support services for the NFC, and by agreement with agency heads concerned, provide such services for other USDA tenants housed in the same facility. As used herein, such management support services shall include:

(i) Personnel services, as listed in §2.24(a)(4)(x), and organizational support services, with authority to take actions required by law or regulation to perform such services; and

(ii) Procurement, property management, space management, communications, messenger, paperwork management, and related administrative services, with authority to take actions required by law or regulation to perform such services.

(19) Exercise responsibility and authority for all matters related to the Department's accounting and financial operations including such activities as:

(i) Financial administration, including accounting and related activities.

(ii) Reviewing financial aspects of agency operations and proposals.

(iii) Furnishing consulting services to agencies to assist them in developing and maintaining accounting and financial management systems and internal controls, and for other purposes consistent with delegations in paragraph (a)(13) of this section.

(iv) Reviewing and monitoring agency implementation of Federal assistance policies.

(v) Reviewing and approving agencies' accounting systems documentation including related development plans, activities, and controls.

(vi) Monitoring agencies' progress in developing and revising accounting and financial management systems and internal controls.

(vii) Evaluating agencies' financial systems to determine the effectiveness of procedures employed, compliance with regulations, and the appropriateness of policies and practices.

(viii) Promulgation of Department schedule of fees and charges for reproductions, furnishing of copies and making searches for official records pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(ix) Monitoring USDA implementation of section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862) as it relates to grants, loans, and licenses.

(20) Establish Department and approve component agency programs, policies, standards, systems, techniques and procedures to improve the management and operational efficiency and effectiveness of the USDA including:

(i) Increased use of operations research and management science in the areas of productivity and management.

(ii) All activities financed through the Department Working Capital Fund.

(21) Develop Departmental policies, standards, techniques, and procedures for the conduct of reviews and analysis of the utilization of the resources of State and local governments, other Federal agencies and of the private sector in domestic program operations.

(22) Represent the Department in contacts with OMB, General Services Administration, GAO, Department of the Treasury, Office of Personnel Management, Department of Health and Human Services, Department of Labor, Environmental Protection Agency, Department of Commerce, Congress of the United States, State and local governments, universities, and other public and private sector individuals, organizations or agencies on matters related to assigned responsibilities.

(23) Establish policies related to travel by USDA employees.

(24) Provide budget, accounting, fiscal, and related financial management services, with authority to take action required by law or regulation to provide such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department, except the Inspector General.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration as a Working Capital Fund activity.

(iv) Any other offices or agencies of the Department as may be agreed.

(25) Develop, promulgate, and coordinate Department-wide policy concerning nonprocurement debarment and suspension.

(26) Prepare and submit to Congress reports on conferences sponsored or held by the Department or attended by employees of the Department (7 U.S.C. 2255b).

(27) Administer the debarment authorities in section 14211 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 2209j) in coordination with the Director, Office of Contracting and Procurement.

(28) Redelegate, as appropriate, any authority delegated under paragraphs (a)(1) through (27) of this section to general officers of the Department and heads of Departmental agencies.

(29) Provide Departmentwide guidance on implementation of prize competition authority in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719); develop guidelines to ensure that judges appointed for prize competitions under that authority are fairly balanced and operate in a transparent manner (15 U.S.C. 3719(k)(3)).

(30) Settle claims not otherwise provided for under 31 U.S.C. 3702(a) or another provision of law.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

(2) [Reserved]

[79 FR 44110, July 30, 2014, as amended at 80 FR 58338, Sept. 29, 2015; 83 FR 61311, Nov. 29, 2018]

§ 2.29 Chief Economist.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Chief Economist:

(1) *Related to economic analysis.* (i) Coordinate economic analyses of, and review Department decisions involving, policies and programs that have substantial economic implications.

(ii) Review and assess the economic impact of all significant regulations proposed by any agency of the Department.

(iii) Review economic data and analyses used in speeches and Congressional testimony by Department personnel and in materials prepared for release through the press, radio, and television.

(2) *Related to risk assessment.* (i) Responsible for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the FEDERAL REGISTER as required by section 304 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 2204e).

(ii) Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

(3) *Related to food and agriculture outlook and situation.* (i) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department.

(ii) Oversee and clear for consistency analytical assumptions and results of all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(4) *Related to weather and climate.* (i) Advise the Secretary on climate and weather activities, and coordinate the development of policy options on weather and climate.

(ii) Coordinate all weather and climate information and monitoring activities within the Department and provide a focal point in the Department for weather and climate information and impact assessment.

(iii) Arrange for appropriate representation to attend all meetings, hearings, and task forces held outside the Department which require such representation.

(iv) Designate the Executive Secretary of the USDA Weather and Climate Program Coordinating Committee.

(v) Coordinate with the Director of the National Drought Mitigation Center and the Administrator of the National Oceanic and Atmospheric Administration to enhance the collection of data to improve the accuracy of the United States Drought Monitor (7 U.S.C. 5856).

(5) *Related to interagency commodity estimates committees.* (i) Establish Interagency Commodity Estimates Committees for Commodity Credit Corporation price-supported commodities, for major products thereof, and for commodities where a need for such a committee has been identified, in order to bring together estimates and supporting analyses from participating agencies, and to develop official estimates of supply, utilization, and prices for commodities, including the effects of new program proposals on acreage, yield, production, imports, domestic utilization, price, income, support programs, carryover, exports, and availabilities for export.

(ii) Designate the Chairman, who shall also act as Secretary, for all Interagency Commodity Estimates Committees.

(iii) Assure that all committee members have the basic assumptions, background data and other relevant data regarding the overall economy and market prospects for specific commodities.

(iv) Review for consistency of analytical assumptions and results all proposed decisions made by Commodity Estimates Committees prior to any release outside the Department.

(6) [Reserved]

(7) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

(8) *Related to agricultural labor affairs.* Exercise the following functions of the Secretary under the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1101 *et seq.*):

(i) Pursuant to section 214(c) of INA (8 U.S.C. 1184(c)), provide consultation to the Attorney General and the Secretary of Labor concerning the question of the importation of aliens as nonimmigrant temporary agricultural workers, known as ''H–2A'' workers, under 8 U.S.C. 1101(a)(15)(H)(ii)(a);

(ii) Pursuant to section 218(e) of the INA (8 U.S.C. 1188 note), provide consultation to the Attorney General and the Secretary of Labor concerning all regulations to implement 8 U.S.C. 101(a)(15)(H)(ii)(a) and 1188 providing for the importation of H–2A workers;

(iii) Pursuant to section 210(h) of the INA (8 U.S.C. 1160(h)), promulgate regulations to define ''seasonal agricultural services'' for purposes of the Special Agricultural Worker (SAW) Program;

(iv) Pursuant to section 210A(a) of the INA (8 U.S.C. 1161(a)), determine jointly with the Secretary of Labor the number (if any) of additional special agricultural workers, known as ''replenishment agricultural workers'' (RAWs), who should be admitted to the United States or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 to meet a shortage of workers to perform seasonal agricultural services in the United States during each such fiscal year;

(v) Pursuant to section 210A(a)(7) of the INA (8 U.S.C. 1161(a)(7)), determine jointly with the Secretary of Labor emergency requests to increase the shortage number;

(vi) Pursuant to section 210A(a)(8) of the INA (8 U.S.C. 1161(a)(8)), determine jointly with the Secretary of Labor requests to decrease the number of mandays of seasonal agricultural services required of RAWs to avoid deportation and for naturalization under section 210A(d)(5)(A) and (B) of the INA (8 U.S.C. 1161(d)(5)(A) and (B));

(vii) Pursuant to section 210A(b)(1) of the INA (8 U.S.C. 1161(b)(1)), calculate jointly with the Secretary of Labor and annual numerical limitation on the number of RAWs who may be admitted or otherwise acquire the status of aliens lawfully admitted for temporary residence during fiscal years 1990 through 1993 under section 210A(c)(1) of the INA (8 U.S.C. 1161(c)(1)); and

(viii) Pursuant to section 210A(b)(2) of the INA (8 U.S.C. 1161(b)(2)), establish jointly with the Secretary of

Labor the information that must be reported by any person or entity who employs SAWs or RAWs in seasonal agricultural services during fiscal years 1989 through 1992, and to designate jointly with the Secretary of Labor the official to whom the person or entity must furnish such certification.

(9) *Related to the Capper-Volstead Act.* Serve as Chairman of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade. The Chairman is authorized to call upon any agency of the Department for support in carrying the functions of the Committee (7 U.S.C. 292).

(10) *Related to committee management.* Establish and reestablish regional, state, and local advisory committees for activities under his or her authority. This authority may not be redelegated.

(11) *Related to energy.* (i) Advise the Secretary and other policy-level officials of the Department on energy policies and programs, including legislative and budget proposals.

(ii) Serve as or designate the Department representative at hearings, conferences, meetings and other contacts with respect to energy and energy-related matters, including liaison with the Department of Energy, the Environmental Protection Agency and other governmental agencies and departments.

(iii)–(iv) [Reserved]

(v) Provide Department leadership in:

(A) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(B) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(C) Reviewing and evaluating Departmental energy and energy-related programs and programs progress;

(D) Developing agricultural and rural components of national energy policy plans; and

(E) Preparing reports on energy and energy-related polices and programs required under Acts of Congress and Executive orders, including those involving testimony and reports on legislative proposals.

(vi) Provide Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from other departments or agencies of the Federal Government pursuant to interagency agreements.

(vii) Administer a competitive biodiesel fuel education grants program (7 U.S.C. 8106).

(viii) Implement a memorandum of understanding with the Secretary of Energy regarding cooperation in the application of hydrogen and fuel cell technology programs for rural communities and agricultural producers.

(12) *Related to climate change.*

(i) Coordinate policy analysis, long-range planning, research, and response strategies relating to climate change issues.

(ii) Provide liaison with other Federal agencies, through the Office of Science and Technology Policy, regarding climate change issues.

(iii) Inform the Department of scientific developments and policy issues relating to the effects of climate change on agriculture and forestry, including broader issues that affect the impact of climate change on the farms and forests of the United States.

(iv) Recommend to the Secretary alternative courses of action with which to respond to such scientific developments and policy issues.

(v) Ensure that recognition of the potential for climate change is fully integrated into the research, planning, and decisionmaking processes of the Department.

(vi) Coordinate global climate change studies.

(vii) Coordinate the participation of the Department in interagency climate-related activities.

(viii) Consult with the National Academy of Sciences and private, academic, State, and local groups with respect to climate research and related activities.

(ix) Represent the Department to the Office of Science and Technology Policy on issues related to climate change.

(x) Represent the Department on the Intergovernmental Panel on Climate Change.

(xi) Review all Department budget items relating to climate change issues, including specifically the research budget to be submitted by the Secretary to the Office of Management and Budget.

(13) *Related to environment.*

(i) Coordinate implementation of section 1245 of the Food Security Act of 1985 regarding environmental services markets (16 U.S.C. 3845).

(ii) [Reserved]

(14) *Related to agreements.*

(i) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

(ii) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

(iii) Make competitive grants to, or enter into cooperative agreements with, agricultural and food policy research centers (7 U.S.C. 3155).

(iv) Carry out the duties of the Food Loss and Waste Reduction Liaison, including entering into contracts or cooperative agreements with the research centers of the Research, Education, and Economics mission area, institutions of higher education, or non-profit organizations (7 U.S.C. 6924).

(15) Carry out prize competition authorities in section 24 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719) related to functions otherwise delegated to the Chief Economist, except for authorities delegated to the Chief Financial Officer in § 2.28(a)(29) and authorities reserved to the Secretary in paragraph (b)(1) of this section.

(16) *Related to Pest Management and Policy.* (i) Coordinate USDA policy relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y) (7 U.S.C. 7653).

(ii) Conduct a multiple crop and pesticide use survey as authorized by section 10109 of the Agricultural Improvement Act of 2018.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) Approval of prize competitions that may result in the award of more than $1,000,000 in cash prizes under section 24(m)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719(m)(4)(B)).

(2) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 63 FR 66979, Dec. 4, 1998; 64 FR 40735, July 28, 1999; 68 FR 27442, May 20, 2003; 73 FR 56706, Sept. 30, 2008; 74 FR 3405, Jan. 21, 2009; 77 FR 14952, Mar. 14, 2012; 78 FR 40938, July 9, 2013; 79 FR 44111, July 30, 2014; 80 FR 58338, Sept. 29, 2015; 83 FR 61311, Nov. 29, 2018; 85 FR 65512, Oct. 15, 2020]

§ 2.30 Director, Office of Budget and Program Analysis.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Director, Office of Budget and Program Analysis:

(1) Serve as the Department's Budget Officer and exercise general responsibility and authority for all matters related to the Department's budgeting affairs including:

(i) Resource administration, including all phases of the acquisition, and distribution of funds and staff years.

(ii) Legislative and regulatory reporting and related activities.

(2) Provide staff assistance for the Secretary, general officers, and other Department and agency officials.

(3) Formulate and promulgate Departmental budgetary, legislative and regulatory policies and procedures.

(4) Represent the Department in contacts with the Office of Management and Budget, the Government Accountability Office, the Department of the Treasury, Congressional Committees on Appropriations, and other organizations and agencies on matters related to his or her responsibility.

(5) Coordinate and/or conduct policy and program analyses on agency operations and proposals to assist the Secretary, general officers and other Department and agency officials in formulating and implementing USDA policies and programs.

(6) Review and analyze legislation, regulations, and policy options to determine their impact on USDA programs and policy objectives and on the Department's budget.

(7) Monitor ongoing studies with significant program or policy implications.

(8) Exercise responsibility for coordinating and overseeing the implementation of the Government Performance and Results Act of 1993, Public Law 103–62, and the GPRA Modernization Act of 2010, Public Law 111–352, at the Department.

(9) Administer the Departmental forms, reports, and directives management programs.

(b) The following authority is reserved to the Secretary of Agriculture: Final approval of the Department's program and financial plans.

[79 FR 44111, July 30, 2014, as amended at 87 FR 44269, July 26, 2022]

§ 2.31 General Counsel.

(a) *Related to legal services.* The General Counsel, as the chief law officer of the Department, is legal advisor to the Secretary and other officials of the Department and responsible for providing legal services for all the activities of the Department. The delegations of authority by the Secretary of Agriculture to the General Counsel include the following:

(1) Consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the Federal Tort Claims Act, as amended (28 U.S.C. 2671–2680), and the regulations of the Attorney General contained in 28 CFR part 14; delegate the authority to consider, ascertain, adjust, determine, compromise, and settle, pursuant to the Federal Tort Claims Act as amended (28 U.S.C. 2671–2680) and the regulations of the Attorney General contained in 28 CFR part 14, claims less than $2500 that allege the negligence or wrongful act of an employee of a USDA agency; and consider, ascertain, adjust, determine compromise, and settle claims pursuant to section 920 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127 (7 U.S.C. 2262a).

(2) Certify documents as true copies of those on file in the Department.

(3) Sign releases of claims of the United States against private persons for damage to or destruction of property of the department, except those claims cognizable under the Contract Disputes Act of 1978 (41 U.S.C. 601 *et seq.*).

(4) Responsible for the overall management and operation of the Law Library, furnishing complete legal and legislative library services to the Office of the General Counsel and the Department.

(5) Make determinations as to whether employees of the Department may retain commercial rights in inventions; prepare patent applications and prosecute the same before the Patent Office.

(6) Represent the Department in formal rulemaking and adjudicatory proceedings held in connection with the administration of the Department's activities, and decide whether initial decisions of the administrative law judges shall be appealed by the Department to the Secretary.

(7) Represent the Department in connection with legal issues that arise in its relations with the Congress, the General Accounting Office, or other agencies of the Government.

(8) [Reserved]

(9) In civil actions arising out of the activities of the Department, present the Department's case to the Attorney General and U.S. attorneys and, upon request of the Department of Justice, assist in the preparation and trial of such cases and in the briefing and argument of such cases at the appellate level.

(10) Review cases having criminal aspects and refer them to the Department of Justice.

(11) Act as liaison between the Department and the Department of Justice.

(12) Perform the following legal services:

(i) Render legal opinions on questions arising in the conduct of the Department's activities;

(ii) Prepare or review regulations;

(iii) Draft proposed legislation;

(iv) Prepare or review contracts, mortgages, deeds, leases, and other documents; and

(v) Examine titles to land to be acquired or accepted as security for loans.

(13) Perform such other legal services as may be required in the administration of the Department's activities, including the defense program.

(14) Serve as a member of the Capper-Volstead Act Committee to identify cases of undue price enhancement by associations of producers and issue complaints requiring such associations to show cause why an order should not be made directing them to cease and desist from monopolization or restraint of trade (7 U.S.C. 292).

(15) Settle claims for damage to, or loss of, privately owned property pursuant to the provisions of 31 U.S.C. 3723.

(16) Serve on the USDA Hazardous Materials Policy Council.

(17) On a non-exclusive basis, assert in litigation the deliberative process privilege and other legally recognized privileges.

(18) Conduct legal sufficiency reviews and concur before a proposed settlement offer is made to an opposing party for all informal and formal Equal Employment Opportunity (EEO), Office of Special Counsel (OSC), or Merit Systems Protection Board (MSPB) complaints that:

(i) Require a payment of compensatory damages or attorney's fees resulting in costs to the Department totaling $50,000 or more; or

(ii) Are brought by, or allege discriminatory conduct by, any political appointee; or

(iii) Place any political appointee on a detail outside the Department or on an Intergovernmental Personnel Act (IPA) agreement for one year or more if the Department retains the obligation to pay the employee's salary and benefits during the duration of the detail or IPA agreement.

(19) Review monetary settlement agreements of any dollar amount negotiated by USDA offices or agencies upon request except that legal sufficiency review conducted by and concurrence from the Office of the General Counsel is required prior to execution for all proposed settlement agreements negotiated by USDA offices or agencies totaling $500,000 or more, including attorney's fees. This required review is in addition to existing delegations of authority and processes for USDA offices' or agencies' processing of settlement agreements. This required review does not apply to:

(i) Settlements pursuant to the Federal Tort Claims Act, which the Office of the General Counsel handles pursuant to paragraph (a)(1) of this section;

(ii) Settlements for personnel matters, which the Office of the General Counsel handles pursuant to paragraph (a)(18) of this section;

(iii) Settlement of contract claims, which contracting officers handle pursuant to the Contract Disputes Act (41 U.S.C. 601 *et seq.*) and Federal Acquisition Regulation (48 CFR parts 1 through 99); or

(iv) Settlement of USDA offices' or agencies' debt collection actions.

(20) Conduct legal sufficiency reviews and concur with all proposed agency contracts or other transactions to retain outside counsel or for the provision of legal services regardless of whether an agency has specific statutory authority to retain outside counsel or legal services. The following services do not require legal sufficiency review and concurrence from the Office of the General Counsel: Contracts for the provision of services in relation to USDA office's and agencies' Freedom of Information Act activities; contracts for the performance of trademark searches or other trademark or copyright related services; or contracts for the performance of patent prosecution or other related patent services.

(21) Enter into cooperative agreements with nongovernmental organizations and educational institutions related to public interest and agricultural law for the purpose of agricultural and public service programs, sponsorships, convenings, and trainings (7 U.S.C. 2204b(b)(4)).

(b) *Related to ethics.* The following delegation of authority is made by the Secretary to the General Counsel: Provide administrative supervision for the Office of Ethics.

(c) *Related to the Freedom of Information Act.* (1) Serve as the Chief Freedom of Information Act Officer for the Department; oversee general officers and agency heads in efficient and appropriate compliance with the provisions of the Freedom of Information Act (5 U.S.C. 552); monitor implementation of

5 U.S.C. 552 throughout the agency and keep the Secretary and the Attorney General informed regarding agency performance in its implementation; recommend to the Secretary necessary adjustments to agency practices, policies, personnel, and funding to improve implementation of 5 U.S.C. 552; review and report to the Attorney General, through the Secretary, as the Attorney General may direct; and, facilitate public understanding of the purposes of the statutory exemptions contained in 5 U.S.C. 552.

(2) Manage the Freedom of Information Act operations for the Research, Education, and Economics mission area, the Trade and Foreign Agricultural Affairs mission area, and all staff offices of the Department.

(d) *Related to records management.* Administer the Departmental records management program.

[60 FR 56393, Nov. 8, 1995, as amended at 61 FR 49237, Sept. 19, 1996; 65 FR 12429, Mar. 9, 2000; 70 FR 23927, May 6, 2005; 70 FR 30610, May 27, 2005; 78 FR 40938, July 9, 2013; 79 FR 44112, July 30, 2014; 83 FR 22184, May 14, 2018; 85 FR 65512, Oct. 15, 2020; 87 FR 44269, July 26, 2022; 89 FR 80074, Oct. 2, 2024]

§ 2.32 Chief Information Officer.

(a) *Delegations.* The Chief Information Officer is responsible for executing the duties enumerated in Public Law 104–106 for agency Chief Information Officers, and additional specified duties, as follows:

(1) Report directly to the Secretary of Agriculture regarding information technology matters.

(2) Oversee all information technology and information resource management activities relating to the programs and operations of the Department and component agencies. This oversight includes approving information technology investments, monitoring and evaluating the performance of those investments and information resource management activities, approval of all architectures and components thereto and determining whether to continue, modify, or terminate an information technology program or project.

(3) Provide advice and other assistance to the Secretary and other senior management personnel to ensure that information technology acquired and managed for the Department consistent with chapter 35 of title 44, United States Code (Coordination of Federal Information Policy).

(4) Develop, implement, and maintain a sound and integrated Departmentwide information technology architecture.

(5) Promote the effective and efficient design and operation of all major information resources management processes for the Department, including improvements to work processes of the Department.

(6) Approve the acquisition or procurement of information technology resources by, or on behalf of, any Department agency or office.

(7) Collaborate with Department procurement personnel with respect to information technology acquisition strategy and policy.

(8) Function as the Major Information Technology Systems Executive in USDA to integrate and unify the management process for the Department's major information technology system acquisitions and to monitor implementation of the policies and practices set forth in Office of Management and Budget (OMB) Circular No. A–109, Major Systems Acquisitions, for information technology. This includes the authority to:

(i) Ensure that OMB Circular No. A–109 is effectively implemented for information technology systems in the Department and that the management objectives of the Circular are realized.

(ii) Review the program management of each major information technology system acquisition.

(iii) Approve the appointment of the program manager for each major information technology systems acquisition.

(iv) Designate any Departmental information technology acquisition as a major system acquisition under OMB Circular No. A–109.

(9) On an annual basis:

(i) Assess Departmentwide personnel requirements regarding knowledge and skill in information resources management, and the adequacy of such requirements, to achieve the performance goals established for information resources management.

(ii) Develop strategies and specific plans for hiring, training, and professional development at the executive and management level to meet personnel information technology personnel requirements.

(iii) Report to the Assistant Secretary for Administration on progress made in improving information resources management capability.

(10) Function as the senior official to carry out the responsibilities of the Department under chapter 35 of title 44, United States Code (Coordination of Federal Information Policy), including:

(i) Ensure that the information policies, principles, standards, guidelines, rules and regulations prescribed by OMB are appropriately implemented within the Department.

(ii) Review proposed Department reporting and record keeping requirements, including those contained in rules and regulations, to ensure that they impose the minimum burden upon the public and have practical utility for the Department.

(iii) Develop and implement procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs.

(iv) Assist OMB in the performance of its functions assigned under the E-Government Act of 2002 (Pub. L. 107–347), including review of Department and Agency activities for compliance.

(v) Assist OMB in the performance of its functions assigned under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), including review of Department and Agency activities for compliance.

(11) The Chief Information Officer is also responsible for the following:

(i) Provide Departmentwide guidance and direction in planning, developing, documenting, and managing applications software projects in accordance with Federal and Department information processing standards, procedures, and guidelines.

(ii) Provide Departmentwide guidance and direction in all aspects of information technology, including: Feasibility studies; economic analyses; systems design; acquisition of equipment, software, services, and timesharing arrangements; systems installation; systems performance and capacity evaluation; information technology investment governance; cybersecurity; and privacy. Monitor these activities for agencies' major systems development efforts to assure effective and economic use of resources and compatibility among systems of various agencies when required.

(iii) Manage the Enterprise Data Centers, with the exception of the National Finance Center; and oversee the delivery of Enterprise Data Center goods and services, with authority to take actions required by law or regulation to perform such services as a Working Capital Fund activity.

(iv) Manage a comprehensive set of end user office automation services and oversee the delivery of goods and services associated with end user office automation services, including desktop computers, enterprise networking support, handheld devices, and voice telecommunications, with authority to take actions required by law or regulation to perform such services as a Working Capital Fund activity.

(v) Manage the Agricultural Security Operations Center to enable the Department to effectively monitor, detect, analyze, protect, report, and respond against known cyber vulnerabilities, attacks, and exploitations.

(vi) Manage the Department's Certification and Accreditation process to ensure the Department and agencies have successfully conducted periodic risk assessments of its systems; grant the authority to operate for systems that have successfully completed the Certification and Accreditation process; and rescind or suspend the authority to operate for systems subject to repeated and/or significant security issues.

(vii) Ensure that OMB Circular No. A–16, Coordination of Geographic Information and Related Spatial Data Activities, is effectively implemented in the Department and that the management objectives of the Circular are realized; and providing Departmentwide guidance and direction in governing, developing, implementing, and maintaining a sound and integrated geospatial architecture.

(viii) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to ensure full consideration and evaluation of advanced technology; designate the Executive Secretary for the Remote Sensing Coordination Committee; and coordinate administrative, management, and budget information relating to the Department's remote sensing activities including:

(A) Inter- and intra-agency meetings, correspondence, and records;

(B) Budget and management tracking systems; and

(C) Inter-agency contacts and technology transfer.

(ix) Review and evaluate information technology activities related to delegated functions to assure that they conform to all applicable Federal and Department information technology management policies, plans, standards, procedures, and guidelines.

(x) Design, develop, implement, and revise systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources.

(xi) Manage all aspects of the USDA Telecommunications Program including planning, development, acquisition, and use of equipment and systems for voice, data, and communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies.

(xii) Manage Departmental telecommunications contracts.

(xiii) Provide technical advice throughout the Department.

(xiv) Implement a program for applying information resources management technology to improve productivity in the Department.

(xv) Plan, develop, install, and operate computer-based systems for message exchange, scheduling, computer conferencing, televideo technologies, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices.

(xvi) Represent the Department in contacts with the Government Accountability Office, the General Services Administration, OMB, the National Institute of Standards and Technology, and other organizations or agencies on matters related to delegated responsibilities.

(12) Implement policies established pursuant to paragraphs (a)(1) through (a)(11) of this section by:

(i) Disposing of information technology that is acquired by a Department agency in violation of procedures or standards for the Department Information Systems Technology Architecture.

(ii) Establishing information technology and information resources management performance standards for mission area Chief Information Officers, information resources managers, and project managers to be used in the performance appraisal process.

(iii) Approving the selection of mission area Chief Information Officers and mission area major information technology system project managers in accordance with OMB policies.

(iv) Providing recommendations to mission area heads for the removal or replacement of information technology project managers, when, in the opinion of the Chief Information Officer, applicable laws and policies are being violated, or, when the cost, schedule, or performance of an information technology project would indicate management deficiencies.

(v) Withdrawing agencies' authority to obligate funds on Information Technology programs or projects if the agency violates the Chief Information Officer policies, standards, or Department Information Systems Technology Architecture.

(vi) Requiring mission areas to validate and verify major information technology systems through the use of an existing contract for such purpose designated by the Chief Information Officer.

(vii) Requiring approval by the Chief Information Officer of any proposed acquisition of information technology (whether through the award or modification of a procurement contract, a cooperative or other agreement with a non-Federal party, or an interagency agreement) to ensure technical conformance to the Department technical architecture.

(viii) Providing guidance to USDA regarding implementation of Section 508 of the Rehabilitation Act, as well as on-going consultative assistance regarding information technology accessibility, and reviewing progress made toward achieving information technology accessibility for USDA employees and individuals with disabilities.

(13) *Related to the Privacy Act.* Appoint a Department Privacy Act Officer; oversee general officers and agency heads in the development and implementation of policies issued pursuant to the provisions of the Privacy Act, 5 U.S.C. 552a; and provide consultation and guidance regarding those policies.

(14) Administer the Controlled Unclassified Information (CUI) Program for the Department pursuant to E.O. 13556, ''Controlled Unclassified Information'' (75 FR 68675, 3 CFR, 2011 Comp., p. 267) and 32 CFR part 2002.

(b) [Reserved]

[85 FR 65512, Oct. 15, 2020, as amended at 88 FR 70580, Oct. 12, 2023]

§ 2.33 Inspector General.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Inspector General:

(1) Advise the Secretary and General officers in the planning, development, and execution of Department policies and programs.

(2) At the request of the Director, Homeland Security Staff (Director), determine the availability of law enforcement personnel of the Office of Inspector General to assist the Director in providing for the personal security for the Secretary and the Deputy Secretary.

(3) Serve as liaison official for the Department for all audits of USDA performed by the General Accounting Office.

(4) In addition to the above delegations of authority, the Inspector General, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to the Inspector General Act of 1978, Pub. L. No. 95–452, 5 U.S.C. App.

(b) The following authority is reserved to the Secretary of Agriculture: Approving the implementation in the Office of Inspector General of administrative policies or procedures that contravene standard USDA administrative policies as promulgated by the Assistant Secretary for Administration.

[60 FR 56393, Nov. 8, 1995, as amended at 72 FR 36859, July 6, 2007]

§ 2.34 Director, National Appeals Division.

The Director, National Appeals Division, under the general supervision of the Secretary or Deputy Secretary, has specific duties, responsibilities, and authorities pursuant to subtitle H of the Department of Agriculture Reorganization Act of 1994, Public Law 103–354 (7 U.S.C. 6991 *et seq.*), including:

(a) Deciding appeals from adverse decisions, made by an officer or employee of an agency of the Department designated by the Secretary, that are adverse to participants. The term ''agency'' shall include the following and any predecessor agency: the Farm Service Agency; the Commodity Credit Corporation (with respect to domestic programs); the Federal Crop Insurance Corporation; the Rural Housing Service; the Rural Business-Cooperative Service; the Natural Resources Conservation Service; and a State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)); and

(b) The authority to appoint such hearing officers and other employees as are necessary for the administration of the activities of the Division.

(c) Prepare a report each year on the number of requests for equitable relief and the disposition of such requests for inclusion in the report of the Secretary to Congress on equitable relief requests made to the Department under farm and conservation programs (7 U.S.C. 7996(g)(2).

[60 FR 56393, Nov. 8, 1995, as amended at 68 FR 27442, May 20, 2003; 79 FR 44112, July 30, 2014]

§ 2.35 Judicial Officer.

(a) Pursuant to the Act of April 4, 1940, as amended (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. app.), the Secretary of Agriculture makes the following delegations of authority to the Judicial Officer. The Judicial Officer is authorized to:

(1) Act as final deciding officer in adjudicatory proceedings subject to 5 U.S.C. 556 and 557;

(2) Act as final deciding officer in adjudicatory proceedings which are or may be subject to the ''Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes'' set forth in part 1, subpart H, of this title;

(3) Act as final deciding officer in adjudicatory proceedings which are or may be subject to the ''Rules of Practice Governing Cease and Desist Proceedings Under Section 2 of the Capper-Volstead Act'' set forth in part 1, subpart I, of this title;

(4) Act as final deciding officer in adjudicatory proceedings subject to the ''Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986'' set forth in part 1, subpart L, of this title;

(5) Act as final deciding officer in adjudicatory proceedings subject to the ''Rules of Practice Governing Adjudication of Sourcing Area Applications and Formal Review of Sourcing Areas Pursuant to the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620, *et seq.*)'' set forth in part 1, subpart M, of this title;

(6) Act as final deciding officer in rate proceedings under the Packers and Stockyards Act, as amended and supplemented (7 U.S.C. 181–229);

(7) Act as final deciding officer in reparation proceedings under statutes administered by the United States Department of Agriculture;

(8) Act as final deciding officer in appeals under section 63 of the Plant Variety Protection Act (7 U.S.C. 2443), and in reexamination proceedings under section 91 of the Plant Variety Protection Act, as amended (7 U.S.C. 2501);

(9) Act as final deciding officer in adjudicatory proceedings under section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii);

(10) Issue rules of practice applicable to proceedings conducted under section 359i of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1359ii);

(11) Act as final deciding officer in adjudicatory proceedings subject to the ''Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders'' set forth in sections 900.50 through 900.71 of this title;

(12) Act as final deciding officer in adjudicatory proceedings subject to the ''Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted from Research, Promotion, and Information Programs'' set forth in part 1200, subpart B, of this title; and

(13) Act as final deciding officer in adjudicatory proceedings subject to ''Appeals of Quality Control ('QC') Claims'' set forth in part 283 of this title.

(b) The delegation of authority from the Secretary of Agriculture to the Judicial Officer in paragraph (a) of this section shall not be construed to limit the authority of the Judicial Officer to perform any functions, in addition to those identified in the Act of April 4, 1940, as amended (7 U.S.C. 450c–450g), which may be assigned by the Secretary of Agriculture to the Judicial Officer.

(c) As used in this section, the term *Judicial Officer* shall mean any person or persons so designated by the Secretary of Agriculture.

[68 FR 27443, May 20, 2003, as amended at 75 FR 43380, July 23, 2010]

§ 2.36 Director, Office of Communications.

(a) *Delegations.* The following delegations of authority are made by the Secretary of Agriculture to Director, Office of Communications:

(1) *Related to public affairs.* (i) Advise and counsel general officers on public affairs matters to the Department.

(ii) Organize and direct the activities of a public affairs office to include press relations of the secretary of agriculture and other executive functions and services for general officers of the Department.

(2) *Related to information activities.* (i) Advise the secretary and general officers in the planning, development, and execution of Department policies and programs.

(ii) Direct and coordinate the overall formulation and development of policies, programs, plans, procedures,

standards and organization structures and staffing patterns for the information activities of the Department and its agencies, both in Washington and in the field.

(iii) Exercise final review and approval of all public information material prepared by the Department and its agencies and select the most effective method and audience for distributing this information.

(iv) Serve as the central public information authority in the USDA, with authority to determine policy for all USDA and Agency communication activities, as well as emergency public information and messaging communication activities, in order to provide leadership and centralized operational direction for all USDA public information activities and ensure all materials shall effectively support USDA policies and programs, including the defense program.

(v) Serve as the central printing authority in the USDA, with authority to represent the USDA with Joint Committee on Printing of the Congress, the Government Printing Office, and other Federal and State agencies on information matters.

(vi) Cooperate with and secure the cooperation of commercial, industrial and other nongovernmental agencies and concerns regarding information work as required in the execution of the Department's programs.

(vii) Plan and direct communication research and training for the Department and its agencies.

(viii) [Reserved]

(ix) Supervise and provide leadership and final clearance for the planning, production, and distribution of visual information material for the department and its agencies in Washington, D.C., and the field, and provide such information services as may be deemed necessary.

(x) Maintain overall responsibility and control over the preparation of the ''Agricultural Decisions.''

(xi) Administer, direct and coordinate publications and user fee authority granted under section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a; and publish any appropriate regulations necessary to the exercise of this authority.

(xii) Serve as the central authority to determine policy, plans, procedures, and standards for the Department and agency strategic communications plans; request, receive, review, and approve agency communications plans; and provide centralized communication strategies for the Secretary and agencies, including the creativity, production, and oversight of communication products.

(xiii) When required, support and coordinate staffing of a JIC as identified in the NIMS, and if required, establish and administer a JIC to provide a structure for developing and delivering incident-related coordinated messages.

(xiv) Serve as the central authority to determine policy, plans, procedures, guidelines, and standards for the creation and use of logos/marks by the Department's mission areas, staff offices or agencies, not otherwise provided for by specific laws and regulations, and excluding the Official USDA Seal and Official USDA Symbol.

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 74 FR 19373, Apr. 29, 2009; 76 FR 66601, 66602, Oct. 27, 2011]

§ 2.37 Director, Office of Small and Disadvantaged Business Utilization.

(a) In compliance with the Small Business Act, the Director, Office of Small and Disadvantaged Business Utilization is designated as the Department's Director of Small and Disadvantaged Business Utilization, who shall report directly to the Secretary of Agriculture or the Deputy Secretary of Agriculture. The Director of Small and Disadvantaged Business Utilization has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(1) Administer the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority businesses including women-owned business, and the small business, small minority business, and small women-owned business subcontracting programs.

(2) Provide Departmentwide liaison and coordination of activities related to small, small disadvantaged, and women-owned businesses with the Small Business Administration and others in the public and private sector.

(3) Develop policies and procedures required by the applicable provision of the Small Business Act, as amended, to include the establishment of goals.

(4) Implement and administer programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(5) In compliance with the Veterans Benefits Act of 2003 (Pub. L. 108–183) amending the Small Business Act, implement and administer procurement programs for small business concerns owned and controlled by service-disabled veterans.

(b) The following additional authorities are delegated by the Secretary of Agriculture to the Director, Office of Small and Disadvantaged Business Utilization:

(1) In compliance with the Javits-Wagner-O'Day Act (41 U.S.C. 8501 *et seq.*), implement and administer the Department's AbilityOne program for purchases from qualified nonprofit agencies for the blind or for the severely disabled.

(2) [Reserved]

[79 FR 44112, July 30, 2014]

§ 2.38 Director, Office of Partnerships and Public Engagement.

(a) *Delegations.* The following delegations of authority are made by the Secretary of Agriculture to the Director, Office of Partnerships and Public Engagement:

(1) Related to Advocacy and Outreach:

(i) Ensure that small farms and ranches, beginning farmers or ranchers, and socially disadvantaged farmers or ranchers have access to, and equitable participation in, programs and services of the Department pursuant to section 226B(c) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6934(c)).

(ii) Oversee the Advisory Committee for Beginning Farmers and Ranchers.

(iii) Oversee the operations of the Office of Small Farms Coordination.

(iv) Administer section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279), as amended, except for the beginning farmer and rancher development program in subsection (d) and authorities related to the Census of Agriculture and economic studies in subsection (j) of that section.

(v) Oversee the Minority Farmer Advisory Committee pursuant to section 14008 of FCEA (7 U.S.C. 2279 note).

(vi) Administer the low-income migrant and seasonal farmworker grants program under section 2281 of the Food, Agriculture, Conservation, and Trade Act of 1990 (42 U.S.C. 5177a).

(vii) Consult with appropriate entities regarding integration of farmworker interests into Department programs, including assisting farmworkers in becoming agricultural producers or landowners, and research, program improvements, and agricultural education opportunities for low-income and migrant seasonal farmworkers.

(viii) Administer the grants program under section 14204 of FCEA (7 U.S.C. 2008q–1) to improve the supply, stability, safety, and training of the agricultural labor force.

(ix) Administer and coordinate a USDA outreach program in collaboration with USDA agencies.

(x) Administer section 2501A of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1), including the authority to coordinate Department policy for the issuance of receipts under subsection (e) of that section.

(xi) Provide strategic planning and performance measurement, coordinate outreach activities, monitor goals and objectives, and evaluate programs, of Department programs and activities involving small farms or ranches and beginning or socially disadvantaged farmers or ranchers.

(xii) [Reserved]

(xiii) Administer the USDA/1890 Liaison Officer Program.

(xiv) Administer the Hispanic Serving Institutions National Program, including through the use of cooperative agreements under 7 U.S.C. 3318(b).

(xv) Serve as a lead agency in carrying out student internship programs (7 U.S.C. 2279c).

(xvi) Coordinate outreach to Asian Americans and Pacific Islanders.

(2) [Reserved]

(3) Oversee the Military Veterans Agricultural Liaison (7 U.S.C. 6919).

(4) [Reserved]

(5) Oversee the Women in Agriculture Initiative.

(6) With the exception of competitive grant programs administered by the National Institute of Food and Agriculture, or any youth employment opportunity programs such as Pathways or Job Corp, serve as the Department lead for strategic planning and coordinating youth outreach activities of USDA agencies' programs (including, but not limited to, 4–H; Science, Technology, Engineering and Math (STEM) programs; information and cyber technology student programs, Future Farmers of America (FFA) activities; summer high school internships; and youth gardening programs); development of program evaluation metrics and consistent messaging for youth outreach activities; and monitoring goals and objectives.

(7) Oversee the Agricultural Youth Organization Coordinator (7 U.S.C. 6934b).

(8) Exercise the authority of the Secretary related to Tribal Promise Zones under section 12510 of the Agriculture Improvement Act of 2018 (25 U.S.C. 4301 note).

(b) [Reserved]

[83 FR 61312, Nov. 29, 2018, as amended at 85 FR 65514, Oct. 15, 2020; 87 FR 44269, July 26, 2022; 88 FR 70580, Oct. 12, 2023]

§ 2.39 Director, Office of Tribal Relations.

(a) *Delegations.* The following delegations of authority are made by the Secretary to the Director, Office of Tribal Relations.

(1) Serve as the Department's primary point of contact for tribal issues.

(2) Advise the Secretary on policies related to Indian tribes.

(3) Serve as the official with principal responsibility for the implementation of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' including the provision of Department-wide guidance and oversight regarding tribal consultation, coordination, and collaboration.

(4) Coordinate the Department's programs involving assistance to American Indians and Alaska Natives.

(5) Enter into cooperative agreements to improve the coordination and effectiveness of Federal programs, services, and actions affecting rural areas (7 U.S.C. 2204b(b)(4)); and to provide outreach and technical assistance to socially disadvantaged farmers and ranchers and veteran farmers and ranchers (7 U.S.C. 2279(c)(4)).

(6) Consult with the Administrator, Foreign Agricultural Service on the implementation of section 3312 of the Agriculture Improvement Act of 2018 (7 U.S.C. 5608) to support greater inclusion of Tribal agricultural food products in Federal trade activities.

(7) In coordination with the Under Secretary for Rural Development, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

(8) Oversee the Tribal Advisory Committee (7 U.S.C. 6921).

(9) Administer the USDA/1994 Land Grant Institutions (Tribal Colleges) Programs.

(10) Enter into cooperative agreements with associations of institutions of higher education for the purpose of participation in internship programs for graduate and undergraduate students in support of the 1994 Tribal College Program and carry out the related authorities and responsibilities outlined in 7 U.S.C. 2279c.

(b) [Reserved]

[87 FR 44269, July 26, 2022, as amended at 88 FR 70580, Oct. 12, 2023; 89 FR 80074, Oct. 2, 2024]

Subpart E [Reserved]

Subpart F—Delegations of Authority by the Under Secretary for Farm Production and Conservation

EDITORIAL NOTE: Nomenclature changes to subpart F of part 2 appear at 60 FR 66713, Dec. 26, 1995.

§ 2.40 Deputy Under Secretary for Farm Production and Conservation.

Pursuant to § 2.16(a), subject to reservations in § 2.16(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made to the Deputy Under Secretary for Farm Production and Conservation, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Farm Production and Conservation: Provided, that this authority shall be exercised by the respective Deputy Under Secretary in the order in which he or she has taken office as a Deputy Under Secretary.

[83 FR 22184, May 14, 2018]

§ 2.41 Chief Operating Officer, Farm Production and Conservation Business Center.

(a) *Delegations.* Pursuant to § 2.16(a), subject to the reservations in § 2.16(b)(1), the following delegations of authority are made by the Under Secretary for Farm Production and Conservation to the Chief Operating Officer, Farm Production and Conservation Programs Business Center:

(1) Provide to the Farm Service Agency, Natural Resources Conservation Service, and Risk Management Agency management support services including information technology, financial management, human resources, procurement, property management, and related business and administrative processes.

(2) Administer responsibilities and functions assigned under the Defense Production Act of 1950 (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning agricultural production; food processing, storage, and distribution; distribution of farm equipment and fertilizer; rehabilitation and use of food, agricultural, and related agribusiness facilities; CCC resources; and farm credit and financial assistance.

(3) Conduct fiscal, accounting and claims functions relating to CCC programs for which the Foreign Agricultural Service has been delegated authority under § 2.601 and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(4) Administer Section 15353(a) of the Food, Conservation, and Energy Act of 2008, Public Law 110–246 relating to information reporting for Commodity Credit Corporation transactions.

(5) Coordinate and prevent duplication of aerial photographic work of the Department, including:

(i) Clearing photography projects;

(ii) Assigning symbols for new aerial photography, maintaining symbol records, and furnishing symbol books;

(iii) Recording departmental aerial photography flow and coordinating the issuance of aerial photography status maps of latest coverage;

(iv) Promoting interchange of technical information and techniques to develop lower costs and better quality;

(v) Representing the Department on committees, task forces, work groups, and other similar groups concerned with aerial photography acquisition and reproduction;

(vi) Providing a Chairperson for the Photography Sales Committee of the Department;

(vii) Coordinating development, preparation, and issuance of specifications for aerial photography for the Department;

(viii) Coordinating and performing procurement, inspection, and application of specifications for USDA aerial photography;

(ix) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(6) Administer a Century Farms Program as authorized by section 12508 of the Agriculture Improvement Act of 2018 (7 U.S.C. 2266a).

(7) Establish programs with any bureau of the U.S. Department of the Interior (DOI), or with other agencies within USDA, in support of the Service First initiative for the purpose of promoting customer service and efficiency, including delegating to employees of DOI and other USDA agencies the authorities of the Farm Production

and Conservation Business Center necessary to carry out projects on behalf of USDA (43 U.S.C. 1703).

(b) [Reserved]

[83 FR 61312, Nov. 29, 2018, as amended at 85 FR 65514, Oct. 15, 2020; 89 FR 80075, Oct. 2, 2024]

§ 2.42 Administrator, Farm Service Agency.

(a) *Delegations.* Pursuant to § 2.16(a)(1) and (2) and (a)(6) through (8), subject to the reservations in § 2.16(b)(1), the following delegations of authority are made by the Under Secretary for Farm Production and Conservation to the Administrator, Farm Service Agency:

(1) Formulate policies and administer programs authorized by the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1282 *et seq.*).

(2) Formulate policies and administer programs authorized by the Agricultural Act of 1949, as amended (7 U.S.C. 1441 *et seq.*), except the provisions of section 416(a)(1), (a)(2) and (b) of the Agricultural Act of 1949, as amended, unless specifically provided herein.

(3)–(4) [Reserved]

(5) *Related to defense and emergency preparedness.* (i) [Reserved]

(ii) Administer functions delegated by the President to the Secretary under Executive Order 13603, ''National Defense Resources Preparedness'' (3 CFR, 2012 Comp., p. 225), and Executive Order 12742, ''National Security Industrial Responsiveness'' (3 CFR, 1991 Comp., p. 309), including administration of an Agriculture Priorities and Allocations System.

(6) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201 *et seq.*).

(7) [Reserved]

(8) Conduct assigned activities under the Strategic and Critical Materials Stockpiling Act, as amended (50 U.S.C. 98 *et seq.*).

(9) Supervise and direct Farm Service Agency State and county offices and designate functions to be performed by Farm Service Agency State and county committees.

(10) Administer the Dairy Indemnity Program under the Act of August 13, 1968, as amended (7 U.S.C. 4551 *et seq.*).

(11) Administer procurement, processing, handling, distribution, disposition, transportation, payment, and related services with respect to surplus removal and supply operations which are carried out under section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), the Act of August 19, 1958, as amended (7 U.S.C. 1431 note), and section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a-1), except as delegated to the Under Secretary for Food, Nutrition, and Consumer Services in § 2.19 and to the Under Secretary for Trade and Foreign Agricultural Affairs in § 2.16(a)(3), and assist the Food and Consumer Service and the Agricultural Marketing Service in the procurement, handling, payment, and related services under section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), the Act of June 28, 1937, as amended (7 U.S.C. 713c), the National School Lunch Act, as amended (42 U.S.C. 1751 *et seq.*), section 8 of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1777), section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a), and section 4(a) of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note), and section 1114 of the Agriculture and Food Act of 1981 (7 U.S.C. 1431e).

(12)–(13) [Reserved]

(14) Administer the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3501 *et seq.*) except those functions delegated in § 2.21(a)(8)(xi).

(15) Administer energy management activities as assigned.

(16) Conduct producer referenda of commodity promotion programs under the Beef Research and Information Act, as amended (7 U.S.C. 2901 *et seq.*) and the Agricultural Promotion Programs Act of 1990, as amended (7 U.S.C. 6001 *et seq.*).

(17) Conduct field operations of diversion programs for fresh fruits and vegetables under section 32 of the Act of August 29, 1935.

(18) [Reserved]

(19) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(20) Formulate and carry out the Conservation Reserve Program, including the implementation of technical

assistance, under the Food Security Act of 1985, as amended (16 U.S.C. 1231 *et seq.*), and the functions of the Grassland Reserve Program transferred to the Conservation Reserve Program.

(21) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(22) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petition for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(23) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended

by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(24)–(26) [Reserved]

(27) Formulate and administer regulations regarding program ineligibility resulting from convictions under Federal or State law of planting, cultivating, growing, producing, harvesting, or storing a controlled substance, as required under section 1764 of the Food Security Act of 1985 (21 U.S.C. 881a).

(28) Administer the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) except for the authority contained in the following sections:

(i) [Reserved]

(ii) Section 306 (7 U.S.C. 1926), relating to all programs in that section;

(iii) Section 306A (7 U.S.C. 1926a) and section 306B (7 U.S.C. 1926b), relating to the Emergency Community Water Assistance Grant Programs, and section 306D (7 U.S.C. 1926d), relating to water systems for rural Alaskan Native Villages;

(iv) Section 306C (7 U.S.C. 1926c) to administer the water and waste facility loans and grants to alleviate health risks;

(v) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), regarding assets and programs related to rural development;

(vi) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development loans;

(vii) Section 310B (7 U.S.C. 1932), regarding various Rural Development programs;

(viii) Section 310C (7 U.S.C. 1933), relating to housing program interest rates;

(ix) Section 310G (7 U.S.C. 1936a), relating to the use of rural development loans and grants for other purposes, and section 353A (7 U.S.C. 2001a), relating to the servicing of community facilities loans;

(x) Section 364 (7 U.S.C. 2006f) and section 365 (7 U.S.C. 2008);

(xi) Administrative provisions of subtitle D of the Consolidated Farm and Rural Development Act related to Rural Utilities Service, Rural Business-Cooperative Service, and Rural Housing Service activities.

(xii) Section 375 (7 U.S.C. 2008j), relating to the National Sheep Industry Improvement Center.

(xiii) Sections 379 (7 U.S.C. 2008n) through 379G (7 U.S.C. 2008u) and subtitles E through I (7 U.S.C. 2009–2009dd-7) relating to rural development programs and activities.

(29) Collect, service, and liquidate loans made or insured by the Farm Service Agency, or its predecessor agencies.

(30) Administer the Rural Rehabilitation Corporation Trust Liquidation Act (40 U.S.C. 440 *et seq.*), and trust, liquidation, and other agreements entered into pursuant thereto.

(31) Establish programs with any bureau of the U.S. Department of the Interior (DOI), or with other agencies within USDA, in support of the Service First initiative for the purpose of promoting customer service and efficiency, including delegating to employees of DOI and other USDA agencies the authorities of the Farm Service Agency necessary to carry out projects on behalf of USDA (43 U.S.C. 1703).

(32) Administer Farmers Home Administration or any successor agency assets conveyed in trust under the Participation Sales Act of 1966 (12 U.S.C. 1717).

(33) Administer the emergency loan and guarantee programs under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606), the Disaster Relief Act of 1969 (Pub. L. No.

91–79), Pub. L. No. 92–385, approved August 16, 1972, and the Emergency Livestock Credit Act of 1974 (Pub. L. No. 93–357), as amended.

(34) Administer loans to homestead or desertland entrymen and purchasers of land in reclamation projects or to an entryman under the desertland law (7 U.S.C. 1006a and 1006b).

(35) [Reserved]

(36) Service, collect, settle, and liquidate:

(i) Deferred land purchase obligations of individuals under the Wheeler-Case Act of August 11, 1939, as amended (16 U.S.C. 590y), and under the item, ''Water Conservation and Utilization projects'' in the Department of the Interior Appropriation Act, 1940 (53 Stat. 719), as amended;

(ii) Puerto Rican Hurricane Relief loans under the Act of July 11, 1956 (70 Stat. 525); and

(iii) Loans made in conformance with section 4 of the Southeast Hurricane Disaster Relief Act of 1965 (79 Stat. 1301).

(37) Administer loans to Indian tribes, tribal corporations, and purchasers of highly fractionated land (25 U.S.C. 488–492).

(38) Administer the State Agricultural Loan Mediation Program under title 5 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101 *et seq.*).

(39) Administer financial assistance programs relating to Economic Opportunity Loans to Cooperatives under part A of title III and part D of title I and the necessarily related functions in title VI of the Economic Opportunity Act of 1964, as amended (42 U.S.C. 2763–2768, 2841–2855, 2942, 2943(b), 2961), delegated by the Director of the Office of Economic Opportunity to the Secretary of Agriculture by documents dated October 23, 1964 (29 FR 14764), and June 17, 1968 (33 FR 9850), respectively.

(40) Exercise all authority and discretion vested in the Secretary by section 331(c) of the Consolidated Farm and Rural Development Act, as amended by section 2 of the Farmers Home Administration Improvement Act of 1994, Pub. L. No. 103–248 (7 U.S.C. 1981(c)), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel, for the conduct of litigation and refer such actions; and

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farm Service Agency.

(41)–(42) [Reserved]

(43) Determine the type and quantity of commodities that are available for programming under section 416(b) of the Agricultural Act of 1949 (7 U.S.C. 1431(b)), and the Food for Progress Act of 1985 (7 U.S.C. 1736o), and arrange for the processing, packaging, transportation, handling and delivery to port of such commodities in connection therewith.

(44) [Reserved]

(45) Administer all programs of the Commodity Credit Corporation that provide assistance with respect to the production of agricultural commodities or the income of producers, including disaster assistance and the domestic marketing of such commodities, except as may otherwise be reserved by the Under Secretary for Farm Production and Conservation , and similar programs (including commodity quality development programs) consigned by statute to the Secretary of Agriculture unless otherwise delegated.

(46) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Administrator, Farm Service Agency:

(i) The equitable relief provisions of section 1613 (7 U.S.C. 7996).

(ii) The tracking of benefits under section 1614 (7 U.S.C. 7997).

(47) Administer programs for Apple Loans and Emergency Loans for Seed Producers under section 203(f) and 253, respectively, of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 1421 note, Pub. L. 106–224).

(48) Administer evaluations of direct and guaranteed loan programs under

section 5301 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1992 note).

(49) Formulate and carry out the Grassroots Source Water Protection Program, authorized by the Food Security Act of 1985, as amended (16 U.S.C. 3839bb–2).

(50) Administer cooperative agreements authorized under 7 U.S.C. 2204b(b)(4) as follows:

(i) Administer cooperative agreements with respect to conservation programs;

(ii) Administer cooperative agreements with Federal agencies, State, local, and tribal governments, nongovernmental organizations, and educational institutions related to outreach and technical assistance for programs carried out by the Farm Service Agency, and, where such cooperative agreements focus on outreach activities to beginning, underserved, or veteran producers, coordinate with the Director, Office of Advocacy and Outreach to reduce potential duplication.

(51) Administer the feedstock flexibility program for bioenergy producers under section 9010 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8110) and the biomass crop assistance program under section 9011 of that Act (7 U.S.C. 8111).

(52)–(53) [Reserved]

(54) Implement the authority in section 1241 of the Food Security Act of 1985 (16 U.S.C. 3841) to accept and use voluntary contributions of non-Federal funds in support of natural resources conservation programs under subtitle D of title XII of that Act with respect to authorities delegated to the Administrator, Farm Service Agency.

(55) In coordination with the Director, Office of Advocacy and Outreach, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(56) Administer the following provisions of the Food, Conservation, and Energy Act of 2008, Public Law 110–246:

(i) [Reserved]

(ii) Section 1609 relating to the tracking of benefits.

(iii)–(iv) [Reserved]

(iv) Section 1613 relating to the durum wheat quality program.

(v) Section 1621 relating to direct reimbursement payments to geographically disadvantaged farmers or ranchers.

(vi)–(vii) [Reserved]

(viii) Section 14212 relating to the closure or relocation of county or field offices of the Farm Service Agency.

(ix) [Reserved]

(57) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(58) Administer the following provisions of the Agricultural Act of 2014, Public Law 113–79, as amended:

(i) Sections 1401–1410 relating to a margin protection program for dairy producers (7 U.S.C. 9051–9060), and section 1431 relating to a dairy product donation program (7 U.S.C. 9071).

(ii) Section 1612 relating to the tracking of benefits (7 U.S.C. 9095).

(iii) Section 12314 relating to the Pima Agriculture Cotton Trust Fund (7 U.S.C. 2101 note), in coordination with the Administrator, Foreign Agricultural Service.

(iv) Section 12315 relating to the Agriculture Wool Apparel Manufacturers Trust Fund (7 U.S.C. 7101 note), in coordination with the Administrator, Foreign Agricultural Service.

(59) Enter into cooperative agreements under section 1472(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3318(b)) for the purpose of implementing section 1614(c)(3) of the Agricultural Act of 2014 (7 U.S.C. 9097(c)).

(60) Administer the funds made available to the Office of the Secretary under Title I of Subdivision B, Further Supplemental Appropriations for Disaster Relief Requirements Act, 2018, Public Law 115–123.

(61) Administer the Organic Certification Cost Share Programs authorized under the Federal Crop Insurance Act (7 U.S.C. 1524(b)(4)(C)(ii), and under the Farm Security and Rural Investment Act, as amended by the Agricultural Act of 2014 (7 U.S.C. 6523).

(62) Determine the agricultural commodities acquired under price support programs which are available for export.

(63) Administer the following provisions of the Agriculture Improvement Act of 2018, Public Law 116–334:

(i) Section 5413 relating to reporting on farm loans (7 U.S.C. 2008x).

(ii) Section 12304 relating to the National Beginning Farmer and Rancher Coordinator (7 U.S.C. 6934a).

(iii) Section 12612 relating to a national agriculture imagery program (7 U.S.C. 2204j).

(iv) Section 12615 relating to the eligibility for farm operators on heirs' property to obtain a farm loan number (7 U.S.C. 2266b).

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Farm Production and Conservation:

(1) Designating counties and areas for emergency programs under Pub. L. No. 85–58, as amended.

(2) Making and issuing notes to the Secretary of the Treasury for the purposes of the Agricultural Credit Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929).

[60 FR 56393, Nov. 8, 1995, as amended at 61 FR 25776, May 23, 1996; 61 FR 37552, July 18, 1996; 62 FR 1031, Jan. 8, 1997; 62 FR 19901, Apr. 24, 1997; 68 FR 27443, May 20, 2003; 69 FR 34254, June 21, 2004; 71 FR 35491, June 21, 2006; 71 FR 51421, Aug. 30, 2006; 74 FR 3406, Jan. 21, 2009; 75 FR 43380, July 23, 2010; 78 FR 40938, July 9, 2013; 79 FR 44112, July 30, 2014; 80 FR 58338, Sept. 29, 2015; 83 FR 22184, May 14, 2018; 83 FR 61313, Nov. 29, 2018; 85 FR 65514, Oct. 15, 2020; 87 FR 44269, July 26, 2022; 89 FR 80075, Oct. 2, 2024]

§ 2.43 Chief, Natural Resources and Conservation Service.

(a) *Delegations.* Pursuant to § 2.16(a)(3), subject to reservations in § 2.16(b) of this chapter, the following delegations of authority are made by the Under Secretary for Farm Production and Conservation to the Chief of the Natural Resources Conservation Service:

(1) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(i) Quality in the natural resource base for sustained use;

(ii) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(iii) Quality in the standard of living based on community improvement and adequate income.

(2) Provide national leadership in evaluating and coordinating land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*), including the Farms for the Future Program authorized by sections 1465–1470 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 4201 note), except as otherwise delegated to the Administrator, Agricultural Research Service in § 2.65(a)(80) and the Director, National Institute of Food and Agriculture in § 2.66(a)(76).

(3) Administer the basic program of soil and water conservation under Public Law 74–46, as amended, and related laws (16 U.S.C. 590a–f, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(i) Technical and financial assistance to land users in carrying out locally adapted soil and water conservation programs primarily through soil and water conservation districts in the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, and Federally recognized Native American tribes, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(A) Comprehensive planning assistance in nonmetropolitan districts;

(B) Assistance in the field of income-producing recreation on rural non-Federal lands;

(C) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land

management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(D) Assistance in developing programs relating to natural beauty; and

(E) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*1*) To the Farm Service Agency in the development and technical servicing of certain programs, such as the Agricultural Conservation Program and other such similar conservation programs;

(*2*) To the Rural Housing Service in connection with their loan and land disposition programs.

(ii) Soil Surveys, including:

(A) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(B) Conducting soil surveys for resource planning and development; and

(C) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps.

(iii) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. IV of 1940 (5 U.S.C. App.);

(iv) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead–Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(v) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(4) Administer the Watershed Protection and Flood Prevention Programs, including:

(i) The eleven authorized watershed projects authorized under the Flood Control Act of 1944 (Pub. L. 78–534), except for responsibilities assigned to the Forest Service;

(ii) The emergency flood control work under 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service;

(iii) The Cooperative River Basin Surveys and Investigations Programs under 16 U.S.C. 1006, except for responsibilities assigned to the Forest Service;

(iv) The pilot watershed projects under 16 U.S.C. 590a–f, and 16 U.S.C. 1001–1009, except for responsibilities assigned to the Forest Service;

(v) The Watershed Protection and Flood Prevention Program under 16 U.S.C. 1001–1010, including rehabilitation of water resource structural measures constructed under certain Department of Agriculture programs under 16 U.S.C. 1012, except for responsibilities assigned to the Rural Housing Service and the Forest Service.

(vi) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(vii) The Emergency Conservation Program and the Emergency Watershed Protection Program under sections 401–405 of the Agricultural Credit Act of 1978, 16 U.S.C. 2201–2205, except for the provisions of sections 401 and 402, 16 U.S.C. 2201–2202, as administered by the Farm Service Agency.

(5) Establish programs with any bureau of the U.S. Department of the Interior (DOI), or with other agencies within USDA, in support of the Service First initiative for the purpose of promoting customer service and efficiency, including delegating to employees of DOI and other USDA agencies the authorities of the Natural Resources and Conservation Service necessary to carry out projects on behalf of USDA (43 U.S.C. 1703).

(6) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Rural Utilities Service.

(7) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(8) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 *et seq.*), except for responsibilities assigned to other USDA agencies.

(9) Administer Rural Clean Water Program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*).

(10) Monitor actions and progress of USDA in complying with Executive Order 11988, Flood Plain Management, 3 CFR, 1977 Comp., p. 117, and Executive Order 11990, Protection of Wetlands, 3 CFR, 1977 Comp., p. 121, regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(11) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(12) Administer section 202(c) of the Colorado River Basin Salinity Control Act, 43 U.S.C. 1592(c) including:

(i) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(ii) Conduct salinity control studies of irrigated salt source areas;

(iii) Provide technical and financial assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(iv) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(v) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(vi) Enter into and administer contracts with program participants and waive cost-sharing requirements when such cost-sharing requirements would result in a failure to proceed with needed on-farm measures.

(13) Administer natural resources conservation authorities, including authorities related to programs of the Commodity Credit Corporation that provide assistance with respect to natural resources conservation, under Title XII of the Food Security Act of 1985 (the Act), as amended (16 U.S.C. 3801 *et seq.*), including the following:

(i) Technical assistance related to the conservation of highly erodible lands and wetlands pursuant to sections 1211–1224 of the Act (16 U.S.C. 3811–3824);

(ii) Technical assistance related to the Conservation Reserve Program authorized by sections 1231–1235 of the Act (16 U.S.C. 3831–3835);

(iii) The Wetlands Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237F of the Act (16 U.S.C. 3837–3837f) prior to February 7, 2014, the transition authority under section 2703 of the Agricultural Act of 2014, and the Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act, Public Law 103–75;

(iv) The Conservation Security Program authorized by sections 1238–1238C of the Act (16 U.S.C. 3838–3838c) and the Conservation Stewardship Program authorized by sections 1240I–1240L–1 (16 U.S.C. 3839aa–21—3839aa–25).

(v) The Farmland Protection Program authorized by sections 1238H–1238I of the Act (16 U.S.C. 3838h–3838i) prior to February 7, 2014, and the transition authority under section 2704 of the Agricultural Act of 2014;

(vi) The Farm Viability Program authorized by section 1238J of the Act (16 U.S.C. 3838j) prior to February 7, 2014, and the transition authority under section 2704 of the Agricultural Act of 2014;

(vii) The Environmental Quality Incentives Program authorized by sections 1240–1240H of the Act (16 U.S.C. 3839aa–3839aa–8), the Agricultural Water Enhancement Program authorized by section 1240H of the Act (16 U.S.C. 3839aa–9) prior to February 7, 2014, and section 2706 of the Agricultural Act of 2014;

(viii) The conservation of private grazing lands authorized by section 1240M of the Act (16 U.S.C. 3839bb);

(ix) The Wildlife Habitat Incentives Program authorized by section 1240N of the Act (16 U.S.C. 3839bb–1) prior to February 7, 2014 and Section 2707 of the Agricultural Act of 2014;

(x) The program for soil erosion and sedimentation control in the Great Lakes basin authorized by section 1240P of the Act (16 U.S.C. 3839bb–3) prior to February 7, 2014, and section 2708 of the Agricultural Act of 2014;

(xi) The Chesapeake Bay Watershed Program authorized by section 1240Q of the Act (16 U.S.C. 3839bb–4) prior to February 7, 2014, and section 2709 of the Agricultural Act of 2014;

(xii) The delivery of technical assistance under section 1242 of the Act (16 U.S.C. 3842), including the approval of persons or entities outside of USDA to provide technical services;

(xiii) The authority for partnerships and cooperation provided by section 1243 of the Act (16 U.S.C. 3843) prior to February 7, 2014, and section 2710 of the Agricultural Act of 2014; and

(xiv) The incentives for certain farmers and ranchers and Indian tribes and the protection of certain proprietary information related to natural resources conservation programs as provided by section 1244 of the Act (16 U.S.C. 3844), except for responsibilities assigned to the Administrator, Farm Service Agency.

(xv) The Agriculture Conservation Experienced Services Program authorized by section 1252 of the Act (16 U.S.C. 3851).

(xvi) The authority under sections 1261–1262 of the Act (16 U.S.C. 3861–3862) to establish and utilize State Technical Committees.

(xvii) Those portions of the Grassland Reserve Program under sections 1238N–1238Q of the Act (16 U.S.C. 3838n–3838q) prior to February 7, 2014, and section 2705 of the Agricultural Act of 2014 that are or become the responsibility of the Under Secretary for Farm Production and Conservation.

(xiii) The authority in section 1241 of the Act (16 U.S.C. 3841) to accept and use voluntary contributions of non-Federal funds in support of natural resources conservation programs under subtitle D of title XII of the Act with respect to authorities delegated to the Chief, Natural Resources Conservation Service.

(xix) The Agricultural Conservation Easement Program authorized by sections 1265–1265D of the Act (16 U.S.C. 3865–3865d).

(xx) The Regional Conservation Partnership Program authorized by sections 1271–1271F of the Act (16 U.S.C. 3871–3871f).

(xxi) The Voluntary Public Access and Habitat Incentive Program authorized by section 1240R of the Act (16 U.S.C. 3839bb–5).

(xxii) A wetlands mitigation banking program authorized by section 1222(k) of the Act (16 U.S.C. 3822(k)).

(14) Approve and transmit to the Congress comprehensive river basin reports.

(15) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(16) Administer the state and private forest landscape-scale restoration program (16 U.S.C. 2109a).

(17) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301 *et seq.*).

(18) Administer the agricultural management assistance provisions of section 524(b) of the Federal Crop Insurance Act, as amended (7 U.S.C. 1524(b)), except for responsibilities assigned to the Administrator, Risk Management Agency, and to the Administrator, Farm Service Agency.

(19) Administer the Healthy Forests Reserve Program authorized by sections 501–508, Title V of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6571–6578).

(20) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1456), and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under such Act and submitted to the Secretary of Commerce, consistent with section 306(a) and (c) of such Act (16 U.S.C. 1455(a) and (c)).

(21) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to agricultural lands and water.

(22) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*), except for responsibilities assigned to the Forest Service.

(23) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622) and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlement, but excluding section 122(b)(1) of the Act.

(24) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(25) Administer the following provisions of the Farm Security and Rural Investment Act of 2002 with respect to functions otherwise delegated to the Chief, Natural Resources Conservation Service:

(i) The equitable relief provisions of section 1613 (7 U.S.C. 7996); and

(ii) The tracking of benefits under section 1614 (7 U.S.C. 7997).

(26) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(27) In coordination with the Director, Office of Advocacy and Outreach, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(28) Authorize employees of the Natural Resources Conservation Service to carry and use firearms for personal protection while conducting field work in remote locations in the performance of their official duties (7 U.S.C. 2274a).

(29) Conduct activities that assist the Director, Office of Environmental Markets, in developing guidelines regarding the development of environmental services markets.

(30) Administer the Terminal Lakes assistance program authorized by section 2507 of the Farm Security and Rural Investment Act of 2002 (16 U.S.C. 3839bb–6).

(31) Enter into cooperative agreements, which may provide for the acquisition of goods or services, including personal services, as authorized by Public Law 106–387 (7 U.S.C. 6962a).

(32) Administer the following provisions of the Agriculture Improvement Act of 2018 (Pub. L. 116–334):

(i) Section 1704 (7 U.S.C. 1308–3a), authorizing waivers of the adjusted gross income limitation.

(ii) In consultation with the Administrator, Farm Service Agency, and the Director of the U.S. Fish and Wildlife Service, Section 2707 (16 U.S.C. 1531 note), relating to wildlife management.

(iii) In coordination with the Under Secretary for Marketing and Regulatory Programs, Section 2408 (7 U.S.C. 8351 note), relating to the Feral Swine Eradication and Control Pilot Program.

(iv) Section 8628, relating to the purchase of Natural Resources Conservation Service property in Riverside County, California.

(v) Section 12302, relating to the Office of Urban Agriculture and Innovative Production.

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Farm Production and Conservation:

(1) Executing cooperative agreements and memoranda of understanding for multi-agency cooperation with conservation districts and other districts organized for soil and water conservation within States, territories, possessions, and American Indian Nations.

(2) Approving additions to authorized Resource Conservation and Development Projects that designate new project areas in which resource conservation and development program assistance will be provided, and withdrawing authorization for assistance, pursuant to 16 U.S.C. 590a-f; 7 U.S.C. 1010–1011; 16 U.S.C. 3451–3461.

(3) Giving final approval to and transmitting to the Congress watershed work plans that require congressional approval.

[83 FR 22185, May 14, 2018, as amended at 85 FR 65515, Oct. 15, 2020; 89 FR 80075, Oct. 2, 2024]

§ 2.44 Administrator, Risk Management Agency and Manager, Federal Crop Insurance Corporation.

(a) *Delegations.* Pursuant to § 2.16(a)(4), subject to reservations in § 2.16(b)(3), the following delegations of authority are made by the Under Secretary for Farm Production and Conservation to the Administrator, Risk Management Agency, and Manager Federal Crop Insurance Corporation:

(1) Appoint such officers and employees as may be necessary for the transaction of the business of the Federal Crop Insurance Corporation and the Risk Management Agency.

(2) Conduct pilot programs involving revenue insurance, risk management savings accounts, or the use of futures markets to manage risk and support farm income.

(3) Provide education in management of the financial risks inherent in the production and marketing of agricultural commodities.

(4) Conduct a study and issue a report on the efficacy and accuracy of the application of pack factors regarding the measurement of farm-stored production for purposes of providing policies or plans of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

(5) Carry out functions relating to highly erodible land and wetland conservation under sections 1211–1213 and 1221–1223 of the Food Security Act of 1985, as amended (16 U.S.C. 3811–3813 and 3821–3823).

(6) Prepare cropland reports as required by section 11014(c) of the Agricultural Act of 2013, Public Law 113–79.

(7) Assist the Administrator, Economic Research Service with implementing section 10016 of the Agricultural Act of 2014 regarding locally or regionally produced agricultural food products (7 U.S.C. 2204h).

(8) Administer the Federal Crop Insurance Act (7 U.S.C. 1501, *et seq.*), except for sections 524(a)(1)(B), (a)(3), and (b) (7 U.S.C. 1524(a)(1)(B), (a)(3), (b)) and 531 (7 U.S.C. 1531).

(9) Coordinate with the Administrator, Farm Service Agency, on the type and format of data received under the noninsured crop assistance program authorized by Sec. 196 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L 104–127, as amended) (7 U.S.C. 7333).

(10) Establish programs with any bureau of the U.S. Department of the Interior (DOI), or with other agencies within USDA, in support of the Service First initiative for the purpose of promoting customer service and efficiency, including delegating to employees of DOI and other USDA agencies the authorities of the Risk Management Agency to carry out projects on behalf of USDA (43 U.S.C. 1703).

(b) [Reserved]

[62 FR 19901, Apr. 24, 1997, as amended at 74 FR 3407, Jan. 21, 2009; 79 FR 44113, July 30, 2014; 83 FR 22188, May 14, 2018; 85 FR 65516, Oct. 15, 2020; 89 FR 80075, Oct. 2, 2024]

Subpart G—Delegations of Authority by the Under Secretary for Rural Development

EDITORIAL NOTE: Nomenclature changes to subpart G of part 2 appear at 60 FR 66713, Dec. 26, 1995.

§ 2.45 Deputy Under Secretary for Rural Development.

Pursuant to § 2.17(a), subject to reservations in § 2.17(b), and subject to policy guidance and direction by the Under Secretary for Rural Development, the following delegation of authority is made to the Deputy Under Secretary for Rural Development, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Rural Development.

[85 FR 65516, Oct. 15, 2020]

§ 2.46 Chief Operating Officer, Rural Development Business Center.

(a) *Delegations.* Pursuant to § 2.17(a), subject to the reservations in § 2.17(b), the following delegations of authority are made by the Under Secretary for Rural Development Assistant to the Secretary for Rural Development to the Chief Operating Officer, Rural Development Business Center: (1) Provide to the Rural Utilities Service, Rural Housing Service, and Rural Business-Cooperative Service management support services including information technology, financial management, human resources, procurement, property management, and related business and administrative processes.

(2) With respect to land and facilities under the authority of the Under Secretary for Rural DevelopmentAssistant to the Secretary for Rural Development, exercise the functions delegated to the Secretary by Executive Order

12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604(a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(3) With respect to facilities and activities under the authority of the Under Secretary for Rural DevelopmentAssistant to the Secretary for Rural Development, exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(4) Collect, service, and liquidate single family housing loans made, insured, or guaranteed by the Rural Housing Service.

(b) [Reserved]

[83 FR 61313, Nov. 29, 2018]

§ 2.47 Administrator, Rural Utilities Service.

(a) *Delegations.* Pursuant to §§ 2.17(a)(14) and (a)(16) through (a)(20), and subject to policy guidance and direction by the Under Secretary for Rural Development, the following delegations of authority are made by the Under Secretary for Rural Development to the Administrator, Rural Utilities Service:

(1) Administer the Rural Electrification Act of 1936, as amended (7 U.S.C. 901, *et seq.*): Provided, however, that the Administrator may utilize consultants and attorneys for the provision of legal services pursuant to 7 U.S.C. 918, with the concurrence of the General Counsel.

(2) Administer the Rural Electrification Act of 1938 (7 U.S.C. 903 note).

(3) The Administrator, Rural Utilities Service is designated to serve as the chief executive officer of the Rural Telephone Bank.

(4) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921, *et seq.*):

(i) Section 306 (7 U.S.C. 1926), related to water and waste facilities.

(ii) Section 306A (7 U.S.C. 1926a).

(iii) Section 306B (7 U.S.C. 1926b).

(iv) Section 306C (7 U.S.C. 1926c).

(v) Section 306D (7 U.S.C. 1926d).

(vii) Section 306E (7 U.S.C. 1926e).

(vii) Sections 309 (7 U.S.C. 1929 and 309A (7 U.S.C. 1929a), relating to assets and programs related to watershed facilities, resource and conservation facilities, and water and waste facilities.

(viii) Section 305 (7 U.S.C. 1926) relating to hazardous weather early warning systems.

(ix) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development.

(x) Section 310B(b) (7 U.S.C. 1932(b)).

(xi)–(xii) [Reserved]

(xiii) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Utilities Service activities.

(xiv) Section 379B (7 U.S.C. 2009;).

(5) Administer section 8, and those functions with respect to repayment of obligations under section 4, of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1006a, 1004) and administer the Resource Conservation and Development Program to assist in carrying out resource conservation and development projects in rural areas under section 32(e) of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(6) Administer the Water and Waste Loan Program (7 U.S.C. 1926–1).

(7) Administer the Rural Wastewater Treatment Circuit Rider Program (7 U.S.C. 1926 note).

(8) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Utilities Service or its predecessor agencies.

(9) Consult with the Assistant Secretary of Commerce for Communications and Information to assist in the verification of eligibility of the broadband loan and grant programs of the Department of Agriculture (7 U.S.C. 950bb–6).

(10) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to rural development credit and financial assistance.

(11) In coordination with the Federal Communications Commission, administer Section 12511 of the Agriculture Improvement Act of 2018 (Pub. L. 115–334) relating to the precision agriculture connectivity task force.

((12) [Reserved]

(13) Administer the Distance Learning and Medical Link Programs (7 U.S.C. 950aaa *et seq.*).

(14) Administer water and waste facility programs and activities (7 U.S.C. 1926–1).

(15) In coordination with the Office of Tribal Relations, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

(16) In coordination with the Director, Office of Advocacy and Outreach, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(17) Administer section 6407 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8107a), relating to a rural energy savings program.

(18) Administer section 6210 of the Agricultural Act of 2014, Public Law 113–79, relating to funding of pending rural development loan and grant applications.

(19) Administer the authority under Sec. 746 of Division A of the Consolidated Appropriations Act, 2018 (Pub. L. 115–141), and any successor provisions in subsequent appropriations acts, to issue waivers to the U.S. iron and steel requirements for the construction, alteration, maintenance, or repair of a public water or wastewater system.

(b) *Reservations.* The following authority is reserved to the Under Secretary for Rural Development:

(1) Making and issuing notes to the Secretary of the Treasury for the purposes of the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a).

(2) Administering loans for rural telephone facilities and service in rural areas as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*).

[60 FR 56393, Nov. 8, 1995, as amended at 66 FR 16593, Mar. 27, 2001; 68 FR 27443, May 20, 2003; 74 FR 3407, Jan. 21, 2009; 75 FR 43380, July 23, 2010; 78 FR 40938, July 9, 2013; 79 FR 44113, July 30, 2014; 83 FR 22188, May 14, 2018; 83 FR 61314, Nov. 29, 2018; 85 FR 65516, Oct. 15, 2020]

§ 2.48 Administrator, Rural Business-Cooperative Service.

(a) *Delegations.* Pursuant to §§ 2.17(a)(1), (a)(2), (a)(14), (a)(16) through (a)(19), and (a)(21), subject to reservations in § 2.17(b)(1), and subject to policy guidance and direction by the Under Secretary for Rural Development , the following delegations of authority are made by the Under Secretary for Rural Development to the Administrator, Rural Business-Cooperative Service:

(1) Administer the rural economic development loan and grant programs under the Rural Electrification Act (7 U.S.C. 940c and 950aa *et seq.*).

(2) Administer the following sections of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(i) Section 306(a)(11)(A) (7 U.S.C. 1926(a)(11)(A)), related grants for business technical assistance and planning;

(ii) [Reserved]

(iii) Sections 309 (7 U.S.C. 1929) and 309A (7 U.S.C. 1929a), relating to assets and programs related to rural development;

(iv) Section 310B (7 U.S.C. 1932), relating to various Rural Development programs, except for subsection (b) of that section.

(v) Section 310H (7 U.S.C. 1936b), relating to an intermediary relending program.

(vi) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Business-Cooperative Service activities;

(vii) Section 378 (7 U.S.C., 2008m) relating to the National Rural Development Partnership; and

(viii) Section 379E (7 U.S.C. 2008s) relating to the Rural Microentrepreneur Assistance Program.

(ix) Section 379F (7 U.S.C. 2000t) relating to the Expansion of Employment Opportunities for Individuals with Disabilities in Rural Areas Program.

(x) Section 379G (7 U.S.C. 2008u) relating to Health Care Services.

(xi) Section 382A *et seq.* (7 U.S.C. 2009aa *et seq.*) relating to the Delta Regional Authority.

(xii) Section 383A *et seq.* (7 U.S.C. 2009bb *et seq.*) relating to the Northern Great Plains Regional Authority.

(xiii) Section 384A *et seq.* (7 U.S.C. 2009cc *et seq.*) relating to the Rural Business Investment program.

(xiv) Section 385A *et seq.* (7 U.S.C. 2009dd *et seq.*) relating to the Rural Collaborative Investment Program.

(3) Administer Alcohol Fuels Credit Guarantee Program Account (Pub L. No. 102–341, 106 Stat. 895).

(4) [Reserved]

(5) Administer loan programs in the Appalachian region under sections 203 and 204 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 204).

(6) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. No. 95–620).

(7) Administer the Drought and Disaster Guaranteed Loan program under section 331 of the Disaster Assistance Act of 1988 (7 U.S.C. 1929a note).

(8) Administer the Disaster Assistance for Rural Business Enterprises Guaranteed Loan Program under section 401 of the Disaster Assistance Act of 1989 (7 U.S.C. 1929a note).

(9) Administer the Rural Economic Development Demonstration Grant Program (7 U.S.C. 2662a).

(10) Administer the Economically Disadvantaged Rural Community Loan program (7 U.S.C. 6616).

(11) Administer programs authorized by the Cooperative Marketing Act of 1926 (7 U.S.C. 451–457).

(12) Carry out the responsibilities of the Secretary of Agriculture relating to the marketing aspects of cooperatives, including economic research and analysis, the application of economic research findings, technical assistance to existing and developing cooperatives, education on cooperatives, and statistical information pertaining to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(13) Work with institutions and international organizations throughout the world on subjects related to the development and operation of agricultural cooperatives. Such work may be carried out by:

(i) Exchanging materials and results with such institutions or organizations;

(ii) Engaging in joint or coordinated activities; or

(iii) Stationing representatives at such institutions or organizations in foreign countries (7 U.S.C. 3291).

(14) Collect, service, and liquidate loans made, insured, or guaranteed by the Rural Business-Cooperative Service or its predecessor agencies.

(15) In coordination with the Office of Tribal Relations, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

(16) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Assistance Act (42 U.S.C. 5195 *et seq.*), relating to rural development credit and financial assistance.

(17)–(18) [Reserved]

(19) Administer in rural areas the process of designation, provision of monitoring and oversight, and provision of technical assistance for Empowerment Zones and Enterprise Communities pursuant to section 13301 of Pub. L. No. 103–66, Omnibus Budget Reconciliation Act of 1993 (26 U.S.C. 1391 *et seq.*).

(20) Provide leadership and coordination within the executive branch at the state and local level of Federal rural development program utilizing the services of executive branch departments and agencies and the agencies, bureaus, offices, and services of the Department of Agriculture in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(21) Coordinate, at the state and local level, activities relative to rural development among agencies reporting to the Under Secretary for Rural Development and, through appropriate channels, serve as the coordinating agency for other departmental agencies having primary responsibilities, in coordination with rural development programs of State and local governments (7 U.S.C. 2204).

(22) Work with Federal agencies in encouraging the creation of local rural community development organizations. Within a State, assist other Federal agencies in developing means for

extending their services effectively to rural areas and in designating pilot projects in rural areas (7 U.S.C. 2204).

(23) Conduct assessments to determine how programs of the Department can be brought to bear on the economic development problems of a State or local area and assure that local groups are receiving adequate and effective technical assistance from Federal agencies or from local and State governments in formulating development programs and in carrying out planned development activities (7 U.S.C. 2204b).

(24) Develop a process through which State, sub-state and local rural development needs, goals, objectives, plans, and recommendations can be received and assessed on a continuing basis (7 U.S.C. 2204b).

(25) Prepare local or area-wide rural development strategies based on the needs, goals, objectives, plans and recommendations of local communities, sub-state areas and States (7 U.S.C. 2204b).

(26) Develop a system of outreach in the State or local area to promote rural development and provide for the publication and dissemination of information, through multi-media methods, relating to rural development. Advise local rural development organizations of availability of Federal programs and the type of assistance available, and assist in making contact with Federal program contact (7 U.S.C. 2204; 7 U.S.C. 2204b).

(27) Administer the assets of the Alternative Agricultural Research and Commercialization Corporation and the funds in the Alternative Agricultural Research and Commercialization Fund in accordance with section 6201 of the Farm Security and Rural Investment Act of 2000 (*see* note to 7 U.S.C. 5901 (repealed)).

(28) In coordination with the Administrator of the Agricultural Marketing Service, administer the value-added producer grants program and farmers' markets and local food promotion program (7 U.S.C. 1627c(d)(5)–(6)).

(29) Administer the Agriculture Innovation Center Demonstration program (7 U.S.C. 1632b).

(30) Administer the Renewable Energy Systems and Energy Efficiency Improvements program (7 U.S.C. 8106).

(30) Administer the renewable energy programs authorized in sections 9003, 9004, 9005, 9007, and 9009 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8103, 8104, 8105, 8107, and 8109).

(31) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(32) In coordination with the Director, Office of Advocacy and Outreach, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(33) Administer the Healthy Food Financing Initiative under section 243 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6953).

(34) Administer section 6209 of the Agricultural Act of 2014 (7 U.S.C. 2207b), relating to the collection and reporting of program metrics.

(35) Implementation of a program for the Federal procurement of biobased products and of a voluntary ''USDA Certified Biobased product'' labeling program (7 U.S.C. 8102).

(36) Entering into cooperative agreements to further research programs in the food and agricultural sciences, related to establishing and implementing Federal biobased procurement and voluntary biobased labeling programs (7 U.S.C. 3318).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Development: Making and issuing notes to the Secretary of the Treasury for the purposes of the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929a).

[60 FR 56393, Nov. 8, 1995, as amended at 66 FR 33107, June 11, 2001; 68 FR 27444, May 20, 2003; 73 FR 3407, Jan. 21, 2009; 75 FR 43380, July 23, 2010; 78 FR 40938, July 9, 2013; 79 FR 44114, July 30, 2014; 83 FR 61314, Nov. 29, 2018; 85 FR 65516, Oct. 15, 2020]

§ 2.49 Administrator, Rural Housing Service.

(a) *Delegations.* Pursuant to §§ 2.17(a)(14), (a)(16) through (a)(19) and (a)(22), and subject to policy guidance and direction by the Under Secretary

for Rural Developmentt, the following delegations of authority are made by the Under Secretary for Rural Development to the Administrator, Rural Housing Service:

(1) Administer the following under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*):

(i) Section 306 (7 U.S.C. 1926) except subsection 306(a)(11) and except financing for water and waste disposal facilities; hazardous weather early warning systems; grazing facilities; irrigation and drainage facilities; rural electrification or telephone systems or facilities; and hydro-electric generating and related distribution systems and supplemental and supporting structures if they are eligible for Rural Utilities financing;

(ii) Section 309A (7 U.S.C. 1929a), regarding assets and programs relating to community facilities; and

(iii) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Housing Service activities;

(iv) Section 379 (7 U.S.C. 2008n) relating to the Rural Telework program.

(v) Section 379A (7 U.S.C. 2008o) relating to the Historic Barn Preservation program.

(vi) Section 379C (7 U.S.C. 2008q) relating to the Farm Workers Training Grant program.

(2) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), except those functions pertaining to research.

(3) [Reserved]

(4) Administer the rural housing disaster program under sections 232, 234, and 253 of the Disaster Relief Act of 1970 (Pub. L. No. 91–606).

(5) [Reserved]

(6) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100–628 (42 U.S.C. 1480(d)), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel;

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions; and

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Rural Housing Service and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

(7) In coordination with the Office of Tribal Relations, provide technical assistance to improve access by Tribal entities to rural development programs funded by the Department of Agriculture through available cooperative agreement authorities (7 U.S.C. 2671).

(8) Administer responsibilities and function assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to rural housing and community development credit and financial assistance.

(9) In consultation with the Department of Justice, Secretary of Housing and Urban Development, and Secretary of Health and Human Services, administer the emergency and transitional pet shelter and housing assistance grant program (34 U.S.C. 20127).

(10) [Reserved]

(11) Administer the Rural Firefighters and Emergency Personnel Grant program (7 U.S.C. 2655).

(12) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(13) In coordination with the Director, Office of Advocacy and Outreach, issue receipts under section 2501A(e) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 2279–1(e)).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Development: Making and issuing notes to the Secretary of the Treasury for the purposes the Rural Development Insurance Fund as authorized by the Consolidated Farm and Rural Development Act (7 U.S.C. 1929(a)) and the Rural Housing Insurance Fund as authorized by title V of the Housing Act of 1949 (41 U.S.C. 1487).

[60 FR 56393, Nov. 8, 1995, as amended at 66 FR 16593, Mar. 27, 2001; 68 FR 27444, May 20, 2003; 74 FR 3408, Jan. 21, 2009; 75 FR 43380, July 23, 2010; 78 FR 40938, July 9, 2013; 79 FR 44114, July 30, 2014; 85 FR 65516, Oct. 15, 2020]

Subpart H—Delegations of Authority by the Under Secretary for Food Safety

§ 2.51 Deputy Under Secretary for Food Safety.

Pursuant to § 2.18, and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Food Safety to the Deputy Under Secretary for Food Safety, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Food Safety: Provided, that this authority shall be exercised first by a career Deputy Under Secretary in the order in which he or she has taken office as Deputy Under Secretary, and second by a noncareer Deputy Under Secretary in the order in which he or she has taken office as Deputy Under Secretary.

[80 FR 58338, Sept. 29, 2015]

§ 2.53 Administrator, Food Safety and Inspection Service.

(a) *Delegations.* Pursuant to § 2.18, the following delegations of authority are made by the Under Secretary for Food Safety to the Administrator, Food Safety and Inspection Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), relating to voluntary inspection of poultry and edible products thereof; voluntary inspection and certification of technical animal fat; certified products for dogs, cats and other carnivora; voluntary inspection of rabbits and edible products thereof; and voluntary inspection and certification of edible meat and other products.

(2) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) Poultry Products Inspection Act, as amended (21 U.S.C. 451–470, 472);

(ii) Federal Meat Inspection Act, as amended, and related legislation, excluding so much of section 18 as pertains to issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 601–613, 615–624, 641–645, 661, 671–680, 683, 691–692, 694–695);

(iii) Egg Products Inspection Act, except for the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary egg grading program (21 U.S.C. 1031–1056);

(iv) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in administration of the Federal Meat Inspection Act and the Poultry Products Inspection Act;

(v) Humane Slaughter Act (7 U.S.C. 1901–1906); and

(vi) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to wholesomeness of meat and poultry and products thereof and inspection of egg and egg products.

(3) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(4) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(5) Administer the National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products.

(6) Administer and conduct a food safety research program (7 U.S.C. 427).

(7) Coordinate with the Animal and Plant Health Inspection Service the administration of programs relating to human pathogen reduction (such as *salmonella enteritidis*) pursuant to section 2 of the Act of February 2, 1903, as amended (21 U.S.C. 111), and sections 4 and 5 of the Act of May 29, 1884, as amended (21 U.S.C. 120).

(8) Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

(9) Conduct an education program regarding the availability and safety of processes and treatments that eliminate or substantially reduce the level of pathogens on meat, meat food products, poultry, and poultry products (21 U.S.C. 679b).

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 68 FR 27444, May 20, 2003; 74 FR 3408, Jan. 21, 2009]

Subpart I—Delegations of Authority by the Under Secretary for Food, Nutrition, and Consumer Services

§ 2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.

Pursuant to §2.19(a), subject to reservations in §2.19(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Food, Nutrition, and Consumer Services to the Deputy Under Secretary for Food, Nutrition and Consumer Services, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Food, Nutrition, and Consumer Services.

§ 2.57 Administrator, Food and Nutrition Service.

(a) *Delegations.* Pursuant to §2.19(a)(1), (a)(2) and (a)(5), subject to reservations in §2.91(b), the following delegations of authority are made by the Under Secretary for Food, Nutrition, and Consumer Services to the Administrator, Food and Nutrition Service:

(1) Administer the following legislation:

(i) The Food and Nutrition Act of 2008, as amended (7 U.S.C. 2011–2036), except for section 25, regarding assistance for community food projects.

(ii) Richard B. Russell National School Lunch Act, as amended (42 U.S.C. 1751–1769i), except procurement of agricultural commodities and other foods under section 6 thereof.

(iii) Child Nutrition Act of 1966, as amended (42 U.S.C. 1771–1790).

(iv) Sections 933–939 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (7 U.S.C. 5930 note).

(v) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).

(vi) Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007).

(vii) Section 4403 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3171 note).

(viii) Section 4404 of the Farm Security and Rural Investment Act of 2002 (2 U.S.C. 1161).

(ix) Section 4142 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(x) Section 4301 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1758a).

(xi) Section 4305 of the Food, Conservation, and Energy Act of 2008 (42 U.S.C. 1755a).

(xii) Section 4307 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(xiii) Section 4208 of the Agriculture Improvement Act of 2018 (7 U.S.C. 2026a).

(xiv) Section 12614 of the Agriculture Improvement Act of 2018 (7 U.S.C. 6925).

(2) Administer those functions relating to the distribution and donation of agricultural commodities and products thereof under the following legislation:

(i) Clause (3) of section 416(a) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(a)), except the estimate and announcement of the types and varieties of food commodities, and the

quantities thereof, to become available for distribution thereunder;

(ii) Section 709 of the Food and Agriculture Act of 1965, as amended (7 U.S.C. 1446a–1);

(iii) Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation;

(iv) Section 9 of the Act of September 6, 1958 (7 U.S.C. 1431b);

(v) Section 210 of the Agricultural Act of 1956 (7 U.S.C. 1859), except with respect to donations to Federal penal and correctional institutions;

(vi) [Reserved]

(vii) Section 311 of the Older Americans Act of 1965, as amended (42 U.S.C. 3030a);

(viii) Sections 412 and 413(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180(b));

(ix) Sections 4 and 5 of the Agriculture and Consumer Protection Act of 1973, as amended (7 U.S.C. 612c note);

(x) Section 1114 of the Agriculture and Food Act of 1981, as amended (7 U.S.C. 1431e);

(xi) Section 1336 of the Agriculture and Food Act of 1981 (Pub. L. No. 97–98);

(xii) Emergency Food Assistance Act of 1983, as amended (7 U.S.C. 7501 *et seq.*);

(xiii) Sections 3(b)–(i), 3A and 4 of the Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note); and

(xiv) Section 110 of the Hunger Prevention Act of 1988 (7 U.S.C. 612c note).

(3) Administer those functions relating to the distribution of supplemental nutrition assistance program benefits under section 412 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179).

(4) In connection with the functions assigned in paragraphs (a)(1), (a)(2), and (a)(3) of this section, relating to the distribution and donation of agricultural commodities and products thereof and supplemental nutrition assistance program benefits to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and supplemental nutrition assistance program benefits to be so distributed.

(5) Receive donation of food commodities under clause (3) of section 416(a) of the Agricultural Act of 1949, as amended, section 709 of the Food and Agriculture Act of 1965, as amended, section 5 of the Agriculture and Consumer Protection Act of 1973, section 1114(a) of the Agriculture and Food Act of 1981, and section 202(a) and 202A of the Emergency Food Assistance Act of 1983.

(6) Authorize defense emergency supplemental nutrition assistance program benefits.

(7) Develop and implement USDA policy and procedural guidelines for carrying out the Department's Consumer Affairs Plan.

(8) Advise the Secretary and other policy level officials of the Department on consumer affairs policies and programs.

(9) Coordinate USDA consumer affairs activities and monitor and analyze agency procedures and performance.

(10) Represent the Department at conferences, meetings and other contacts where consumer affairs issues are discussed, including liaison with the White House and other governmental agencies and departments.

(11) Work with the Office of Budget and Program Analysis and the Office of Communications to ensure coordination of USDA consumer affairs and public participation programs, policies and information, and to prevent duplication of responsibilities.

(12) Serve as a consumer ombudsman and communication link between consumers and the Department.

(13) Approve the designation of agency Consumer Affairs Contacts.

(14) Administer those functions under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612) relating to the eligibility of aliens for benefits under the domestic food assistance programs.

(15) Administer the following provisions of the Agricultural Act of 2014, Public Law 113–79:

(i) Section 4004(b), relating to a demonstration project regarding the Food Distribution Program on Indian Reservations (7 U.S.C. 2013 note).

(ii) Section 4031, relating to a Commonwealth of the Northern Mariana Islands pilot program regarding the Supplemental Nutrition Assistance Program (48 U.S.C. 1841 note).

(iii) Section 4032, relating to annual State reporting on verification of Supplemental Nutrition Assistance Program participation (7 U.S.C. 2036c).

(iv) Section 4033, relating to service of traditional foods in public facilities (25 U.S.C. 443d).

(v) Section 4214, relating to a pilot project for canned, frozen, or dried fruits and vegetables as part of the Fresh Fruit and Vegetable Program under the Richard B. Russell National School Lunch Act (42 U.S.C. 1769a note).

(16) Administer section 301 of the National Nutrition Monitoring and Related Research Act of 1990, relating to the Dietary Guidelines for Americans (7 U.S.C. 5341).

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 63 FR 35787, July 1, 1998; 68 FR 27444, May 20, 2003; 74 FR 3408, Jan. 21, 2009; 79 FR 44114, July 30, 2014; 85 FR 65516, Oct. 15, 2020]

Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

EDITORIAL NOTE: Nomenclature changes to subpart J of part 2 appear at 60 FR 66713, Dec. 26, 1995.

§ 2.59 Deputy Under Secretaries for Natural Resources and Environment.

Pursuant to §2.20(a), subject to reservations in §2.20(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Natural Resources and Environment to the Deputy Under Secretaries for Natural Resources and Environment, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Natural Resources and Environment. Provided, that, except in the absence of both the Under Secretary and a Deputy Under Secretary, this authority shall be exercised by the respective Deputy Under Secretary only with respect to the area or responsibility assigned to him or her.

§ 2.60 Chief, Forest Service.

(a) *Delegations.* Pursuant to §2.20(a)(1), (2), and (6), (a)(7)(ii), and (a)(8), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment to the Chief of the Forest Service:

(1) Provide national leadership in forestry. (As used here and elsewhere in this section, the term ''forestry'' encompasses renewable and nonrenewable resources of forests, including lands governed by the Alaska National Interest Lands Conservation Act, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well-being).

(2) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System.

(3) Acquire, dispose, and lease lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, including the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended, and special forest receipts acts (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54

Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632).

(4) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(5) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670.

(6) For the purposes of the National Forests System Drug Control Act of 1986 (16 U.S.C. 559b 559g), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on National Forest System lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(7) Cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(8) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125(a)–(c), 138, 202(a)–(b), 203, 204(a)–(c), 205(a)–(d), 211, 317, 401).

(9) Administer provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1305) as they relate to management of the National Forest System.

(10) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: Renewable resource management research; renewable resource environmental research; renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(11) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(12) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(13) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 3105, 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(14) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(15) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3152, 3318).

(16) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(17) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas and forest lands in foreign countries (16 U.S.C. 2101–2114).

(18) Provide assistance to States and other units of government in forest resources planning and forestry rural revitalization (7 U.S.C. 6601, 6611–6617; 16 U.S.C. 2107).

(19) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(20) Administer rural fire protection and control program (16 U.S.C. 2106c).

(21) Provide technical assistance on forestry technology or the implementation of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(22) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(23) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead–Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1013a).

(24) Under such general program criteria and procedures as may be established by the Natural Resources Conservation Service:

(i) Administer the forestry aspects of the programs listed in paragraphs (a)(24)(i)(A) through (C) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands:

(A) The cooperative river basin surveys and investigations program (16 U.S.C. 1006);

(B) The eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act of 1944 (Pub. L. 78–534);

(C) The small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009).

(ii) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead–Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(25) Provide assistance to the Farm Service Agency in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–q).

(26) Provide assistance to the Rural Housing Service in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923;

(27) Coordinate mapping work of USDA including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by USDA agencies;

(iii) Preparing and submitting required USDA reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of the Interior, and other departments and establishments;

(v) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(28) Administer the radio frequency licensing work of USDA, including:

(i) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment

Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(29) Represent USDA in all matters relating to responsibilities and authorities under the Federal Power Act (16 U.S.C. 791a–823).

(30) Administer the Youth Conservation Corps Act (16 U.S.C. 1701–1706)) for USDA.

(31) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(32) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(33) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(34) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. 4501 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), relating to forests and forest products, rural fire defense, and forestry research.

(35) Represent USDA on Regional Response Teams on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251 *et seq.*), the Oil Pollution Act (OPA), as amended (33 U.S.C. 2701 *et seq.*), Executive Order 12580, 3 CFR, 1987 Comp., p. 193, Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR part 300.

(36) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1287, except for making recommendations to the President regarding additions to the National Wild and Scenic Rivers System.

(37) Issue proposed rules relating to the authorities delegated in this section, issue final rules and regulations as provided in 36 CFR 261.70, issue technical amendments and corrections to final rules issued by the Secretary or Under Secretary for Natural Resources and Environment, and issue proposed and final rules necessary and appropriate to carry out title VIII of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215) with regard to National Forest System Lands.

(38) Jointly administer gypsy moth eradication activities with the Animal and Plant Health Inspection Service, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 7759, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 1633), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(39) With respect to land and facilities under his or her authority, to exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104(a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and

(c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(g) of the Act (42 U.S.C. 9613(g)), with respect to receiving notification of a natural resource trustee's intent to file suit;

(x) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(xi) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xii) Section 117(a) and (c) of the Act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xiii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiv) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(40) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 *et seq.*).

(41) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate United States District Court with an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Amendment, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended, (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(42) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, and Executive Order 12777, 3 CFR, 1991 Comp., p. 351, to act as Federal trustee for natural resources in accordance with section 107(f) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(f)), section 311(f)(5) of the Federal Water Pollution Control Act (33 U.S.C. 1321(f)(5)), and section 1006(b)(2) of the Oil Pollution Act of 1990 (33 U.S.C. 2706(b)(2)).

(43) With respect to land and facilities under his or her authority, to exercise the authority vested in the Secretary of Agriculture to act as the ''Federal Land Manager'' pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*

(44) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.*) for USDA consistent with the Department's overall national service program.

(45) Enforce and conduct investigations of violations of the Lacey Act, which prohibits importing or exporting any plant or plant product in interstate or foreign commerce in violation of any federal, state, Tribal, or foreign law regulating plants or plant products (16 U.S.C. 3371–3378).

(46) Focusing on countries that could have a substantial impact on global warming, provide assistance that promotes sustainable development and global environmental stability; share technical, managerial, extension, and administrative skills; provide education and training opportunities; engage in scientific exchange; and cooperate with domestic and international organizations that further international programs for the management and protection of forests, rangelands, wildlife, fisheries and related natural resources (16 U.S.C. 4501–4505).

(47) Exercise the functions of the Secretary of Agriculture authorized in Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Public Law 105–83, relating to the acquisition so the New World Mines and other priority land acquisitions, land exchanges, and other activities.

(48) Establish programs with any bureau of the U.S. Department of the Interior (DOI), or with other agencies within USDA, in support of the Service First initiative for the purpose of promoting customer service and efficiency, including delegating to employees of DOI and other USDA agencies the authorities of the Forest Service necessary to carry out projects on behalf of USDA (43 U.S.C. 1703).

(49) At the request of the Director, Homeland Security Staff (Director), designate law enforcement personnel of the Forest Service to assist the Director in providing for the personal security for the Secretary and the Deputy Secretary in the National Forest System.

(50) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(51) Administer a program, through the Deputy Chief of State and Private Forestry, for providing loans to eligible units of local government to finance the purchase of equipment to monitor, remove, dispose of, and replace infested trees located under their jurisdiction and within the borders of quarantined areas (16 U.S.C. 2104a).

(52) [Reserved]

(53) Administer the community wood energy program providing grants to develop community wood energy plans, acquire or upgrade community wood energy systems, and establish or expand biomass consumer cooperatives (7 U.S.C. 8113).

(54) Conduct activities that assist the Director, Office of Environmental Markets, in developing guidelines regarding the development of environmental services markets.

(55) Administer the programs authorized by the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6501 *et seq.*), except for the Healthy Forests Reserve Program authorized in title V of such act (16 U.S.C. 6571–6578).

(56) Administer Good Neighbor contracts and cooperative agreements with a State to carry out forest, rangeland, and watershed restoration services on National Forest System lands (16 U.S.C. 2113a).

(57) Utilize the Agriculture Conservation Experienced Services (ACES) Program (16 U.S.C. 3851) to provide technical services for conservation-related programs and authorities carried out on National Forest System lands (16 U.S.C. 3851a).

(58) Enter into reciprocal fire agreements or contracts with domestic entities. Administer reimbursements received for fire suppression (42 U.S.C. 1856–1856e).

(59) Administer the large airtanker and aerial asset lease program (16 U.S.C. 551c).

(60) Provide technical and other assistance with respect to eligibility of forest products for the ''USDA Certified Biobased Products'' labeling program (7 U.S.C. 8102(g)).

(61) Cooperate with public or private entities or individuals to perform work on state, county, municipal, or private lands within or near the boundary of National Forest System lands for administration, protection, improvement, reforestation, and other kinds of work the Forest Service is authorized to do on National Forest System lands, and cooperate with public or private entities or individuals to perform the same kinds of work in connection with the use or occupancy of National Forest System lands (16 U.S.C. 572).

(62) Enter into reciprocal fire agreements with foreign fire organizations. (42 U.S.C. 1856m–1856o).

(63) Administer the payments to states program (16 U.S.C. 500; 16 U.S.C. 7101–7153); establish, maintain, and appoint members to Resource Advisory Committees (16 U.S.C. 7125).

(64) Conduct performance-driven research and development, education, and technical assistance for the purpose of facilitating the use of innovative wood products in wood building construction in the United States (7 U.S.C. 7655c) and administer the Wood Innovation Grant program (7 U.S.C. 7655d).

(65) Furnish subsistence to employees without consideration as, or deduction from, the compensation of such employees where warranted by emergency conditions connected with the work of the Forest Service (7 U.S.C. 2228).

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Natural Resources and Environment:

(1) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided in 36 CFR 261.70 and § 2.60(a)(37).

(2) As deemed necessary for administrative purposes, the authority to divide into and designate as national forests any lands of more than 3,000 acres acquired under or subject to the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521).

(3) The authority to make recommendations to the Administrator of General Services regarding transfer to other Federal, State, or Territorial agencies lands acquired under the Bankhead-Jones Farm Tenant Act, together with recommendations on the conditions of use and administration of such lands, pursuant to the provisions of section 32(c) of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(c), and Executive Order 11609, 3 CFR, 1971–1975 Comp., p. 586).

(4) Making recommendations to the President for establishing new units or adding to existing units of the National Wild and Scenic Rivers System (16 U.S.C. 1271–1278); National Scenic Trails System (16 U.S.C. 1241–1249) and the National Wilderness Preservation System (16 U.S.C. 1131–1136).

(5) Signing of declarations of taking and requests for condemnation of property as authorized by law to carry out the mission of the Forest Service (40 U.S.C. 257).

(7) The authority to approve disbursements from the New World Mine Response and Restoration Account and the authority to prepare and approve

the New World Mine Response and Restoration Plan, including the coordination of the response and restoration activities of the Forest Service and the other Federal and State agencies, and make quarterly reports to Congress under section 502(d) and (f) of Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Pub. L. 105–83.

[60 FR 56393, Nov. 8, 1995, as amended at 64 FR 34967, June 30, 1999; 65 FR 12429, Mar. 9, 2000; 67 FR 59135, Sept. 20, 2002; 72 FR 36859, July 6, 2007; 74 FR 3408, Jan. 21, 2009; 78 FR 40938, July 9, 2013; 79 FR 44114, July 30, 2014; 85 FR 65516, Oct. 15, 2020; 87 FR 44270, July 26, 2022; 88 FR 70580, Oct. 12, 2023; 89 FR 80075, Oct. 2, 2024]

§ 2.61 [Reserved]

Subpart K—Delegations of Authority by the Under Secretary for Research, Education, and Economics

§ 2.63 Deputy Under Secretary for Research, Education, and Economics.

Pursuant to §2.21(a), subject to reservations in §2.21(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Research, Education, and Economics, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Research, Education, and Economics.

§ 2.65 Administrator, Agricultural Research Service.

(a) *Delegations.* Pursuant to §2.21(a)(1), (a)(3) and (a)(5) through (a)(7), subject to reservations in §2.21(b)(1), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, Agricultural Research Service:

(1) [Reserved]

(2) Conduct research related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants and other critical agricultural materials from native agricultural crops having strategic and industrial importance (7 U.S.C. 178–178n).

(3) Conduct research on the control of undesirable species of honeybees in cooperation with specific foreign governments (7 U.S.C. 284).

(4) Conduct research concerning domestic animals and poultry, their protection and use, the causes of contagious, infectious, and communicable diseases, and the means for the prevention and cure of the same (7 U.S.C. 391).

(5) Conduct research related to the dairy industry and to the dissemination of information for the promotion of the dairy industry (7 U.S.C. 402).

(6) Conduct research and demonstrations at Mandan, ND, related to dairy livestock breeding, growing, and feeding, and other problems pertaining to the establishment of the dairy and livestock industries (7 U.S.C. 421–422).

(7) Conduct research on new uses for cotton and on cotton ginning and processing (7 U.S.C. 423–424).

(8) Conduct research into the basic problems of agriculture in its broadest aspects, including, but not limited to, production, marketing (other than statistical and economic research but including research related to family use of resources), distribution, processing, and utilization of plant and animal commodities; problems of human nutrition; development of markets for agricultural commodities; discovery, introduction, and breeding of new crops, plants, animals, both foreign and native; conservation development; and development of efficient use of farm buildings, homes, and farm machinery except as otherwise delegated in §§2.22(a)(1)(ii) and 2.79(a)(2) (7 U.S.C. 427, 1621–1627, 1629, 2201 and 2204).

(9) Conduct research on varietal improvement of wheat and feed grains to enhance their conservation and environmental qualities (7 U.S.C. 428b).

(10) Administer an experienced services program to obtain technical, professional, and administrative services to support the research, education, and economics mission area of the Department (16 U.S.C. 3851).

(11) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting

cooperative research projects (7 U.S.C. 450a).

(12) Conduct research under the IR–4 program (7 U.S.C. 450i(e)).

(13) Conduct research related to soil and water conservation, engineering operations, and methods of cultivation to provide for the control and prevention of soil erosion (7 U.S.C. 1010 and 16 U.S.C. 590a).

(14) Maintain four regional research laboratories and conduct research at such laboratories to develop new scientific, chemical, and technical uses and new and extended markets and outlets for farm commodities and products and the by-products thereof (7 U.S.C. 1292).

(15) Conduct a Special Cotton Research Program designed to reduce the cost of producing upland cotton in the United States (7 U.S.C. 1444a(c)).

(16) [Reserved]

(17) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(18) Provide national leadership and support for research programs and other research activities in the food and agricultural sciences to meet major needs and challenges in food and agricultural system productivity; development of new food, fiber, and energy sources; agricultural energy use and production; natural resources; promotion of the health and welfare of people; human nutrition; and international food and agriculture pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*).

(19) [Reserved]

(20) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(21) Conduct program evaluations to improve the administration and effectiveness of agricultural research and education programs (7 U.S.C. 3317).

(22) Enter into contracts, grants, or cooperative agreements to further research programs and library and related information programs supporting research, extension, and teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(23) Enter into cost-reimbursable agreements with State cooperative institutions or other colleges and universities for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

(24) Conduct research for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(25)–(26) [Reserved]

(27) Cooperate and work with national and international institutions, Departments and Ministries of Agriculture in other nations, land-grant colleges and universities, and other persons throughout the world in the performance of agricultural research activities (7 U.S.C. 3291).

(28) Provide a biennial report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate on efforts of the Federal Government to coordinate international agricultural research within the Federal Government, and to more effectively link the activities of domestic and international agricultural researchers, particularly researchers of the Agricultural Research Service (7 U.S.C. 3291(d)(2)).

(29) Conduct a program of basic research on cancer in animals and birds (7 U.S.C. 3902).

(30) Promote cooperation and coordination between 1862, 1890, 1994, and NLGCA Institutions, HSACUs, and cooperating forestry schools and international partner institutions in developing countries by exercising the Secretary's authority in 7 U.S.C. 3292, including coordinating with the Administrator, Foreign Agricultural Service to place interns from covered institutions in, or in service to benefit, developing countries.

(31) Conduct research to optimize crop and livestock production potential, integrated resource management, and integrated crop management (7 U.S.C. 5821).

(32) Administer a national research program on genetic resources to provide for the collection, preservation, and dissemination of genetic material important to American food and agriculture production (7 U.S.C. 5841).

(33) Conduct remote-sensing and other weather-related research (7 U.S.C. 5852).

(34)–(37) [Reserved]

(38) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(39) Conduct a research initiative known as the Agricultural Genome Initiative, and make grants or enter into cooperative agreements on a competitive basis to carry out the Initiative (7 U.S.C. 5924).

(40) Facilitate access, including through the National Agricultural Library, by research and extension professionals, farmers, and other interested persons in the United States to, and the use by those persons of, organic research conducted outside the United States (7 U.S.C. 5925d).

(41)–(46) [Reserved]

(47) Establish a National Plant Disease Recovery System to engage in strategic long-range planning to recover from high-consequence plant transboundary diseases (7 U.S.C. 8914(d)).

(48) Coordinate Departmental policies under the Toxic Substances Control Act (15 U.S.C. 2601–2629).

(49) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(50) Perform research and administer grants for research and development in aquaculture (16 U.S.C. 2804).

(51) Maintain a National Arboretum for the purposes of research and education concerning tree and plant life, and order disbursements from the Treasury, in accordance with the Act of March 4, 1927 (20 U.S.C. 191 *et seq.*).

(52) Conduct research on foot-and-mouth disease and other animal diseases (21 U.S.C. 113a).

(53)–(56) [Reserved]

(57) Pursuant to the authority delegated by the Administrator of General Services to the Secretary of Agriculture in 34 FR 6406, 36 FR 1293, 36 FR 18840, and 38 FR 23838, appoint uniformed armed guards and special policemen, make all needful rules and regulations, and annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318(c)), as will insure their enforcement, for the protection of persons, property, buildings, and grounds of the Arboretum, Washington, DC; the U.S. Meat Animal Research Center, Clay Center, NE.; the Agricultural Research Center, Beltsville, MD; and the Animal Disease Center, Plum Island, NY, over which the United States has exclusive or concurrent criminal jurisdiction, in accordance with the limitations and requirements of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 *et seq.*), the Act of June 1, 1948, as amended (40 U.S.C. 318 *et seq.*), and the policies, procedures, and controls prescribed by the General Services Administration. Any rules or regulations promulgated under this authority shall be

approved by the Director, Office of Operations, and the General Counsel prior to issuance.

(58) Administer the Department's Patent Program except as delegated to the General Counsel in § 2.31(a)(5).

(59) Provide management support services for the Economic Research Service, the National Institute of Food and Agriculture, and the National Agricultural Statistics Service as agreed upon by the agencies with authority to take actions required by law or regulation. As used herein, the term management support services includes budget, finance, personnel, information technology, procurement, property management, communications, paperwork management, and related administrative services.

(60) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(61) [Reserved]

(62) Perform food and agricultural research in support of functions assigned to the Department under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*).

(63) Propagate bee-breeding stock and release bee germplasm to the public (7 U.S.C. 283).

(64) Administer a National Food and Human Nutrition Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended. As used herein the term ''research'' includes:

(i) Research on the nutrient composition of foods and the effects of agricultural practices, handling, food processing, and cooking on the nutrients they contain;

(ii) Surveillance of the nutritional benefits provided to participants in the food programs administered by the Department; and

(iii) Research on the factors affecting food preference and habits (7 U.S.C. 3171–3173, 3175).

(65) The authority in paragraph (a)(64) of this section includes the authority to:

(i) Appraise the nutritive content of the U.S. food supply;

(ii) Develop and make available data on the nutrient composition of foods needed by Federal, State, and local agencies administering food and nutrition programs, and the general public, to improve the nutritional quality of diets;

(iii) Coordinate nutrition education research and professional education projects within the Department; and

(iv) Maintain data generated on food composition in a National Nutrient Data Bank.

(66) Conduct, in cooperation with the Department of Health and Human Services, the National Nutrition Monitoring and Related Research Program. Included in this delegation is the authority to:

(i) Design and carry out periodic nationwide food consumption surveys to measure household food consumption;

(ii) Design and carry out a continuous, longitudinal individual intake survey of the United States population and special high-risk groups; and

(iii) Design and carry out methodological research studies to develop improved procedures for collecting household and individual food intake consumption data;

(67) [Reserved]

(68) Provide staff support to the Under Secretary for Research, Education, and Economics related to the Ten-Year Comprehensive Plan and the Interagency Board for Nutrition Monitoring and Related Research required by Pub. L. No. 101–445, 7 U.S.C. 5301 *et seq.*

(69) Obtain and furnish excess property to eligible recipients for use in the conduct of research and extension programs.

(70) [Reserved]

(71) Establish and maintain a Food Safety Research Information Office at the National Agricultural Library to provide to the research community and the general public information on publicly and privately funded food safety research initiatives (7 U.S.C. 7654(a)).

(72) Develop and maintain library and information systems and networks and facilitate cooperation and coordination of the agricultural libraries of colleges, universities, USDA, and their closely allied information gathering and dissemination units in conjunction with private industry and other research libraries (7 U.S.C. 2201, 2204, 3125a, and 3126).

(73) Accept gifts and order disbursements from the Treasury for the benefit of the National Agricultural Library or for the carrying out of any of its functions (7 U.S.C. 2264–2265).

(74) Provide for the dissemination of appropriate rural health and safety information resources possessed by the National Agricultural Library Rural Information Center, in cooperation with State educational program efforts (7 U.S.C. 2662).

(75) Provide national leadership in the development and maintenance of library and related information systems and other activities to support the research, extension, and teaching programs in the food and agricultural sciences pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 and 3121).

(76) Administer the programs and services of the National Agricultural Library consistent with its charge to serve as the primary agricultural information resource of the United States and enter into agreements and receive funds from various entities to conduct

National Agricultural Library activities (7 U.S.C. 3125a).

(77) Provide and distribute information and data about Federal, State, local, and other rural development assistance programs and services available to individuals and organizations. To the extent possible, the National Agricultural Library shall use telecommunications technology to disseminate such information to rural areas (7 U.S.C. 3125b).

(78) Assemble and collect food and nutrition educational materials, including the results of nutrition research, training methods, procedures, and other materials related to the purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended; maintain such information; and provide for the dissemination of such information and materials on a regular basis to State educational agencies and other interested parties (7 U.S.C. 3126).

(79) Conduct program evaluations to improve the administration and efficacy of the National Agricultural Library and related information systems in the food and agricultural sciences (7 U.S.C. 3317).

(80) Administer the National Agricultural Library, including the farmland information center, pursuant to section 1544(b) of the Farmland Protection Policy Act (7 U.S.C. 4205(b)).

(81) Support Department water programs through participation in State water quality coordination programs and dissemination of agrichemical information (7 U.S.C. 5503–5506).

(82)–(83) [Reserved]

(84) Represent the Department on all library and information science matters before Congressional Committees and appropriate commissions, and provide representation to the coordinating committees of the Federal and State governments concerned with library and information science activities.

(85) Represent the Department in international organizational activities and on international technical committees concerned with library and information science activities.

(86) Prepare and disseminate computer files, indexes and abstracts, bibliographies, reviews and other analytical information tools.

(87) Arrange for the consolidated purchasing and dissemination of printed and automated indexes, abstracts, journals, and other widely used information resources and services.

(88) Provide assistance and support to professional organizations and others concerned with library and information science matters and issues.

(89) Copy and deliver on demand selected articles and other materials from the National Agricultural Library's collections by photographic reproduction or other means within the permissions, constraints, and limitations of sections 106, 107, and 108 of the Copyright Act of October 19, 1976 (17 U.S.C. 106, 107 and 108).

(90) Formulate, write, or prescribe bibliographic and technically related standards for the library and information services of USDA (7 U.S.C. 3125a *et seq.*).

(91) Assure the acquisition, preservation, and accessibility of all information concerning food and agriculture by providing leadership to and coordination of the acquisition programs and related activities of the library and information systems, with the agencies of USDA, other Federal departments and agencies, State agricultural experiment stations, colleges and universities, and other research institutions and organizations.

(92) Determine by survey or other appropriate means, the information needs of the Department's scientific, professional, technical, and administrative staffs, its constituencies, and the general public in the areas of food, agriculture, the environment, and other related areas.

(93) Review cooperative research and development agreements entered into pursuant to 15 U.S.C. 3710a–3710c, with authority to disapprove or require the modification of any such agreement.

(94) Administer the Stuttgart National Aquaculture Research Center (16 U.S.C. 778 *et seq.;* Pub. L. 104–127, sec. 889).

(95) Provide technical and educational assistance to conserve and enhance private grazing land resources (16 U.S.C. 2005b).

(96) Provide technical assistance to farmers and ranchers under the Environmental Quality Incentives Program (16 U.S.C. 3830 *et seq.*).

(97) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(98) Coordinate USDA activities delegated under 15 U.S.C. 3710a–3710c.

(99) Ensure that agricultural research conducted by the Agricultural Research Service (ARS) addresses a concern that is a priority and has national, multistate, or regional significance (7 U.S.C. 7611).

(100) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education (7 U.S.C. 7612(b)).

(101) Consider the results of the annual review performed by the Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(102) Establish procedures that ensure scientific peer review of all research activities conducted by the Agricultural Research Service (7 U.S.C. 7613(d)).

(103) Coordinate the resources of the Department to develop, commercialize, and promote the use of biobased products, and enter into cooperative agreements with private entities to operate pilot plants and other large-scale preparation facilities under which the facilities and technical expertise of the Agricultural Research Service may be made available (7 U.S.C. 7624).

(104) Administer grants to consortia of land-grant colleges and universities to enhance the ability of the consortia to carry out multi-State research projects aimed at understanding and combating diseases of wheat, triticale, and barley caused by Fusarium graminearum and related fungi or Tilletia indica and related fungi (7 U.S.C. 7628).

(105) Administer a program of fees to support the Patent Culture Collection maintained and operated by the Agricultural Research Service (7 U.S.C. 7641).

(106) Update on a periodic basis, nutrient composition data, and report to Congress the method that will be used to update the data and the timing of the update (7 U.S.C. 7651).

(107) Ensure that each research activity conducted by an Agricultural Research Service facility serves a national or multistate need (7 U.S.C. 390a(e)).

(108) Exchange, sell, or otherwise dispose of animals, animal products, plants, and plant products, and use the sale or other proceeds to acquire such items or to offset costs related to the maintenance, care, or feeding of such items (7 U.S.C. 2241a).

(109) Establish and administer a pilot program at the Beltsville Agricultural Research Center and National Agricultural Library to lease nonexcess property (7 U.S.C. 3125a note).

(110) Lease land at the Grazinglands Research Laboratory at El Reno, Oklahoma, pursuant to section 7503 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(111) Administer a natural products research program (7 U.S.C. 5937).

(112) Provide staff support to the Under Secretary for Research, Education, and Economics related to the National Agricultural Research, Extension, Education, and Economics Advisory Board (7 U.S.C. 3123).

(113) Carry out pollinator health research activities (7 U.S.C. 5925(g)(2)).

(114) Enter into grants, contracts, cooperative agreements, or other legal instruments with former Department of Agriculture agricultural research facilities (7 U.S.C. 3315(b)).

(115) Enter into cooperative agreements with institutions of higher education regarding the dissemination of agricultural and food law research, legal tools, and information (7 U.S.C. 3125a–1).

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 62 FR 65594, Dec. 15, 1997; 65 FR 5416, Feb. 4, 2000; 68 FR 27445, May 20, 2003; 74 FR 3409, Jan. 21, 2009; 75 FR 43381, July 23, 2010; 76 FR 4802, 4803, Jan. 27, 2011; 79 FR 44115, July 30, 2014; 83 FR 61314, Nov. 29, 2018; 85 FR 65520, Oct. 15, 2020; 87 FR 44270, July 26, 2022]

§ 2.66 Director, National Institute of Food and Agriculture.

(a) *Delegations.* Pursuant to § 2.21 (a)(1) and (a)(3), subject to the reservations in § 2.21(b)(1), the following delegations of authority are made by the Under Secretary for Research, Education and Economics (Under Secretary) to the Director, National Institute of Food and Agriculture, who shall report directly to the Under Secretary.

(1) Administer research and technology development grants related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants and other critical agricultural materials from native agricultural crops having strategic and industrial importance (7 U.S.C. 178–178n).

(2) Administer the appropriation for the endowment and maintenance of colleges for the benefit of agriculture and the mechanical arts (7 U.S.C. 321–326a).

(3) Administer teaching funds authorized by section 22 of the Bankhead Jones Act, as amended (7 U.S.C. 329).

(4) Cooperate with the States for the purpose of encouraging and assisting them in carrying out research related to the problems of agriculture in its broadest aspects under the Hatch Act, as amended (7 U.S.C. 361a–361i).

(5) Administer an agricultural research facilities proposal review process for submission to Congress (7 U.S.C. 390, 390a(a)–(d)).

(6) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of registration or reregistration of pesticides for minor agricultural use and for use on specialty crops, and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i(e)).

(7) Administer the Agriculture and Food Research Initiative for competitive grants for fundamental and applied research, extension, and education to address food and agricultural sciences (7 U.S.C. 450i(b)).

(8) Administer a program of making special grants for research, extension, or education activities (7 U.S.C. 450i(c)).

(9) Administer a next generation agriculture technology challenge competition to incentivize mobile technology that removes marketplace entry barriers for beginning farmers and ranchers (7 U.S.C. 3158).

(10) Administer, in cooperation with land-grant colleges and universities where applicable, a rural development research and extension program, a small farm research and extension program, and a rural health and safety education program under the Rural Development Act of 1972, as amended (7 U.S.C. 2661–2667).

(11) Provide national leadership and support for cooperative research and extension programs and other cooperative activities in the food and agricultural sciences to meet major needs and challenges in food and agricultural system productivity; development of new food, fiber, and energy sources; agricultural energy use and production; natural resources; promotion of the health and welfare of people; human nutrition; and international food and agriculture pursuant to the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*).

(12) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(13) Promote and strengthen higher education in the food and agricultural sciences; administer grants to colleges and universities; maintain a national food and agricultural education information system; conduct programs regarding the evaluation of teaching programs and continuing education; administer the National Food and Agricultural Sciences Teaching, Extension,

and Research Awards Program to recognize and promote excellence in teaching, extension, and research in the food and agricultural sciences; administer programs relating to secondary education and 2-year postsecondary education, including grants to public secondary schools, institutions of higher education that award an associate's degree, other institutions of higher education, and nonprofit organizations; and report to Congress on the distribution of funds to carry out such teaching programs (7 U.S.C. 3152).

(14) Administer a program to make competitive grants to assist in the construction, alteration, acquisition, modernization, renovation, or remodeling of agricultural research facilities (7 U.S.C. 390b).

(15) Promote cooperation and coordination between 1862, 1890, 1994, and NLGCA Institutions, HSACUs, and cooperating forestry schools and international partner institutions in developing countries by exercising the Secretary's authority in 7 U.S.C. 3292, including coordinating with the Administrator, Foreign Agricultural Service to place interns from covered institutions in, or in service to benefit, developing countries.

(16) [Reserved]

(17) Administer and direct an Animal Health and Disease Research Program under the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3191–3201).

(18) Support continuing agricultural and forestry extension and research, at 1890 land-grant institutions, including Tuskegee University (7 U.S.C. 3221, 3222, 3222d).

(19) Administer grants to 1890 land-grant colleges, including Tuskegee University, through Federal-grant funds to help finance and upgrade agricultural and food science facilities which are used for research, extension, and resident instruction (7 U.S.C. 3222b).

(20) Provide policy direction and coordinate the Department's work with national and international institutions and other persons throughout the world in the performance of agricultural research, extension, teaching, and development activities; administer a program of competitive grants for collaborative projects involving Federal scientists or scientists from colleges and universities working with scientists at international agricultural research centers in other nations focusing either on new technologies and programs for increasing the production of food and fiber or training scientists and a program of competitive grants to colleges and universities to strengthen United States economic competitiveness and to promote international market development; and establish a program in coordination with the Foreign Agricultural Service to place interns from United States colleges and universities at Foreign Agricultural Service field offices overseas (7 U.S.C. 3291, 3292b).

(21) Administer grants to 1890 Institutions, including Tuskegee University, for purposes of awarding scholarships to individuals pursuing careers in the food and agricultural sciences (7 U.S.C. 3222a).

(22) Conduct program evaluations to improve the administration and efficacy of the cooperative research grants and extension programs involving State agricultural experiment stations, cooperative extension services, and colleges and universities (7 U.S.C. 3317).

(23) Enter into contracts, grants, or cooperative agreements to further research, extension or teaching activities in the food and agricultural sciences (7 U.S.C. 3318)

(24) Enter into cost-reimbursable agreements with State cooperative institutions or other colleges and universities for the acquisition of goods or services in support of research, extension, or teaching activities in the food and agricultural sciences, including the furtherance of library and related information programs (7 U.S.C. 3319a).

(25) Conduct research and develop and implement a program for the development of supplemental and alternative crops (7 U.S.C. 3319d).

(26) Administer an Aquaculture Assistance Program, involving centers, by making grants to eligible institutions for research and extension to facilitate or expand production and marketing of aquacultural food species and products; making grants to States to formulate aquaculture development

plans for the production and marketing of aquacultural species and products; conducting a program of research, extension and demonstration at aquacultural demonstration centers (7 U.S.C. 3321–3322).

(27) Make competitive grants to land-grant colleges and universities, including 1994 Institutions, to provide identifiable support specifically targeted for Tribal students (7 U.S.C. 3222e).

(28) Administer a cooperative rangeland research program (7 U.S.C. 3331–3336).

(29) Administer grants for basic research on cancer in animals and birds (7 U.S.C. 3902).

(30) Administer programs and conduct projects in cooperation with other agencies for research and education on sustainable agriculture (7 U.S.C. 5811–5813).

(31) Administer a cooperative research and extension program to optimize crop and livestock production potential in integrated resource management and integrated crop management systems (7 U.S.C. 5821).

(32) Establish an Agricultural Weather Office and administer a national agricultural weather information system, including competitive grants program for research in atmospheric sciences and climatology (7 U.S.C. 5852–5853).

(33) Administer a cooperative extension program on agricultural weather forecasts and climate information for agricultural producers and administer a grant program to States to administer programs for State agricultural weather information systems (7 U.S.C. 5854).

(34) Administer competitive grants for the acquisition of special purpose scientific research equipment for use in the food and agricultural sciences programs of eligible institutions (7 U.S.C. 3310a).

(35) Establish a National Plant Diagnostic Network to monitor and surveil through diagnostics threats to plant health from diseases or pests of concern in the United States and establish cooperative agreements with land-grant colleges and universities (7 U.S.C. 8914(c)).

(36) [Reserved]

(37) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(38)–(39) [Reserved]

(40) Conduct a research initiative known as the Agricultural Genome Initiative; and make grants or enter cooperative agreements on a competitive basis with individuals and organizations to carry out the Initiative (7 U.S.C. 5924).

(41) [Reserved]

(42) Administer a competitive high priority research and extension grants program in specified subject areas (7 U.S.C. 5925), including pollinator activities (7 U.S.C. 5925(g)) not otherwise delegated to the Administrator, Agricultural Research Service in § 2.65(a)(113) and the Administrator, Animal and Plant Health Inspection Service in § 2.80(a)(47).

(43) In consultation with the Urban Agriculture and Innovative Production Advisory Committee, administer competitive grants to support research, education, and extension activities for the purposes of facilitating the development of urban, indoor, and other emerging agricultural production, harvesting, transportation, aggregation, packaging, distribution, and markets (7 U.S.C. 5925g).

(44) Administer competitive grants to support research, education, and extension activities regarding organically grown and processed agricultural commodities (7 U.S.C. 5925b).

(45) –(49) [Reserved]

(50) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638(e)-(k)).

(51) Administer a cooperative forestry program in accordance with the McIntire-Stennis Cooperative Forestry Act, and administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 582a–582a–8).

(52) Establish and administer the Forestry Student Grant Program to provide competitive grants to assist the expansion of the professional education of forestry, natural resources, and environmental scientists (16 U.S.C. 1649).

(53) Provide staff support to the Secretary of Agriculture in his or her role as permanent Chair for the Joint Subcommittee on Aquaculture established

by the National Aquaculture Act of 1980 and coordinate aquacultural responsibilities within the Department (16 U.S.C. 2805).

(54) Administer extension education programs in aquaculture and administer grants related to research and development in aquaculture (16 U.S.C. 2806).

(55) Coordinate research by cooperating State research institutions and administer education and information activities assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*).

(56) Prepare an annual report to Congress on disbursements of funds for agricultural research and extension at 1890 and 1862 Institutions for programs under the following authorities: 7 U.S.C. 3221; 7 U.S.C. 3222; 7 U.S.C. 343(b) and (c); and 7 U.S.C. 361a *et seq.* (7 U.S.C.

(57) Represent the Department on the Federal Interagency Committee on Education.

(58)–(60) [Reserved]

(61) Administer a cooperative agricultural extension program in accordance with the Smith-Lever Act, as amended (7 U.S.C. 341–349).

(62) Administer a cooperative agricultural extension program relating to agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy in the District of Columbia (DC Code 38–1202.09).

(63) Conduct educational and demonstration work related to the distribution and marketing of agricultural products under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627).

(64)–(71) [Reserved]

(72) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(73) [Reserved]

(74) Administer a National Food and Human Nutrition Research and Extension Program (7 U.S.C. 3171–3173, 3175)

(75) [Reserved]

(76) Design educational programs, implement, and distribute materials in cooperation with the cooperative extension services of the States emphasizing the importance of productive farmland pursuant to section 1544(a) of the Farmland Protection Policy Act (7 U.S.C. 4205(a)).

(77) Recognize centers of excellence, led by 1890 Institutions, focused on student success and workforce development; nutrition, health, wellness, and quality of life; farming systems, rural prosperity, and economic sustainability; global food security and defense, natural resources, energy, and environment; and emerging technologies, and submit an annual report to Congress on the resources invested in and work being done by such centers (7 U.S.C. 5926).

(78) Develop and make available handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices; carry out activities related to a national training program for sustainable agriculture (7 U.S.C. 5831, 5832).

(79) Administer grants to consortia of land-grant colleges and universities to enhance the ability of the consortia to carry out multi-State research projects aimed at understanding and combating diseases of wheat, triticale, and barley caused by Fusarium graminearum and related fungi or Tilletia indica and related fungi (7 U.S.C. 7628).

(80)–(81) [Reserved]

(82) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(83) Conduct education and extension programs related to nutrition education (7 U.S.C. 2027(a)).

(84) Administer a demonstration grants program for support of an assistive technology program for farmers with disabilities (7 U.S.C. 5933).

(85) Conduct educational and demonstrational work in cooperative farm forestry programs (16 U.S.C. 568).

(86) Provide for an expanded and comprehensive extension program for forest and rangeland renewable resources (16 U.S.C. 1671–1676).

(87) [Reserved]

(88) Provide technical, financial, and educational assistance to State foresters and State extension directors on rural forestry assistance (16 U.S.C. 2102).

(89) Provide educational assistance to State foresters under the Forest Stewardship Program (16 U.S.C. 2103a).

(90) Implement and conduct an educational program to assist the development of urban and community forestry programs (16 U.S.C. 2105).

(91) Administer an experienced services program to obtain technical, professional, and administrative services to support the research, education, and economics mission area of the Department (16 U.S.C. 3851).

(92) Authorize the use of the 4-H Club name and emblem (18 U.S.C. 707).

(93) Conduct demonstrational and promotional activities related to farm dwellings and other buildings for the purposes of reducing costs and adapting and developing fixtures and appurtenances for more efficient and economical farm use (42 U.S.C. 1476(b)).

(94) [Reserved]

(95) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity (part 18 of this title).

(96) [Reserved]

(97) Provide educational and technical assistance in implementing and administering the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (Pub. L. No. 99–198, 99 Stat. 1509, 16 U.S.C. 3831–3844).

(98) Establish and administer a 1994 Institutions Endowment Fund and to enter into agreements necessary to do this (Section 533(b)(c) of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(99) Make grants in equal amounts to 1994 Land-Grant Institutions to be used in the same manner as is prescribed for colleges under the Act of August 30, 1890 (26 Stat. 417, chapter 841; 7 U.S.C. 321 *et seq.*) (commonly known as the Second Morrill Act), and subject to the requirements of such Act (Sections 533 and 534 of the Equity in Educational Land-Grant Act of 1994, 7 U.S.C. 301 note).

(100) Make competitive Institutional Capacity Building Grants to assist 1994 Institutions with constructing, acquiring, and remodeling buildings, laboratories, and other capital facilities (including fixtures and equipment) necessary to conduct instructional activities more effectively in agriculture and sciences (Section 535 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(101) Make competitive grants to 1994 Land-Grant Institutions to conduct agricultural research that addresses high priority concerns of tribal, national, or multistate significance (Section 536 of the Equity in Educational Land-Grant Status Act of 1994, 7 U.S.C. 301 note).

(102) Implement and administer the Community Food Projects Program under section 25 of the Food and Nutrition Act of 2008 (7 U.S.C. 2034).

(103) In consultation with the Administrator of the Food and Nutrition Service, administer pilot projects to encourage the use of public-private partnerships committed to addressing food insecurity (7 U.S.C. 2036d).

(104) Develop and carry out a system to monitor and evaluate agricultural research and extension activities conducted or supported by the Department of Agriculture that will enable the Secretary to measure the impact and effectiveness of research, extension, and education programs according to priorities, goals, and mandates established by law. Conduct a comprehensive review of state-of-the-art information technology systems for use in developing the system (7 U.S.C. 3129).

(105) [Reserved]

(106) Administer grants to 1890 land-grant colleges, including Tuskegee University, through Federal-grant funds to help finance research facilities and equipment including agricultural libraries (7 U.S.C. 3223).

(107) Establish and administer competitive grants to Hispanic-serving Institutions for the purpose of promoting and strengthening the ability of Hispanic-serving Institutions to carry out education, applied research, and related community development programs (7 U.S.C. 3241).

(108)–(109) [Reserved]

(110) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to agricultural research conducted or funded by the Department involving biotechnology, including the development and implementation of guidelines for oversight of research activities, acting as liaison on all matters and

functions pertaining to agricultural research in biotechnology between agencies within the Department and between the Department and other governmental, educational, or private organizations and carrying out any other activities authorized by (7 U.S.C. 3121).

(111)–(112) [Reserved]

(113) Provide technical and educational assistance to conserve and enhance private grazing land resources (16 U.S.C. 2005b).

(114) Provide technical assistance to farmers and ranchers under the Environmental Quality Incentives Program (16 U.S.C. 3830 *et seq.*).

(115)–(116) [Reserved]

(117) Represent the Department in international organizational activities and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

(118) [Reserved]

(119) Ensure that agricultural research, extension, or education activities administered, on a competitive basis, by the National Institute of Food and Agriculture address a concern that is a priority and has national, multistate, or regional significance (7 U.S.C. 7611).

(120) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education; ensure that Federally supported and conducted agricultural research, extension, and education activities are accomplished in accord with identified management principles; and promulgate regulations concerning implementation of a process for obtaining stakeholder input at 1862, 1890, and 1994 Institutions and Hispanic-serving agricultural colleges and universities (7 U.S.C. 7612(b), (c), and (d)).

(121) Establish procedures that provide for scientific peer review of each agricultural research grant administered on a competitive basis, and for relevancy and merit review of each agricultural research, extension, or education grant administered on a competitive basis, by the National Institute of Food and Agriculture (7 U.S.C. 7613(a)).

(122) Consider the results of the annual review performed by the National Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(123) Require a procedure to be established by each 1862, 1890, and 1994 Institution and Hispanic-serving agricultural college and university, for merit review of each agricultural research and extension activity funded and review of the activity in accordance with the procedure (7 U.S.C. 7613(e)).

(124)–(127) [Reserved]

(128) Administer competitive grants for integrated, multifunctional agricultural research, education, and extension activities (7 U.S.C. 7626).

(129) Operate and administer the Food Animal Residue Avoidance Database through contracts, grants, or cooperative agreements with appropriate colleges or universities (7 U.S.C. 7642).

(130) Develop a national program of safe food handling education for adults and young people to reduce the risk of food-borne illness (7 U.S.C. 7655).

(131) Cooperate with other Federal agencies (including the National Science Foundation) in issuing joint requests for proposals, awarding grants, and administering grants under any competitive agricultural research, education, or extension grant program (7 U.S.C. 3319b).

(132) Administer a program of competitive grants, establish education teams, and establish an online clearinghouse of curricula and training materials and programs, all for training, education, outreach, and technical assistance initiatives for the benefit of

beginning farmers and ranchers (7 U.S.C. 2279(d)).

(133) Administer agricultural research, education, and extension activities (including through competitive grants), using any authority available to the Secretary, to reduce the vulnerability of the United States food and agricultural system to chemical or biological attack, to continue partnerships with institutions of higher education and other institutions to help form stable, long-term programs to enhance the biosecurity of the United States, to make competitive grants to universities and qualified research institutions for research on counterbioterrorism, and to counter or otherwise respond to chemical or biological attack (7 U.S.C. 3351).

(134) Administer a program of competitive grants to colleges and universities for expansion and security upgrades to enhance the security of agriculture against bioterrorism (7 U.S.C. 3352).

(135) Administer programs for distance education grants and resident instruction grants to eligible institutions in insular areas that have demonstrable capacity to carry out teaching and extension programs in the food and agricultural sciences (7 U.S.C. 3361–3363).

(136) Administer a program of cooperative research (including through competitive award of grants and cooperative agreements to colleges and universities) and extension projects on carbon cycling in soils and plants, the exchange of other greenhouse gases from agriculture, and the carbon sequestration benefits of conservation practices (7 U.S.C. 6711).

(137) In consultation with the Secretary of Energy, administer competitive grants to provide education about carbon utilization and biogas (7 U.S.C. 8115).

(138) Administer a program of grants to the Girl Scouts of the United States of America, the Boy Scouts of America, the National 4-H Council, and the National FFA Organization to establish pilot projects to expand the programs carried out by the organizations in rural areas and small towns (7 U.S.C. 7630).

(139) Oversee implementation of the termination of Federal schedule A civil service appointments of State agricultural extension employees at land-grant colleges and universities (section 7220 of Pub. L. 107–171).

(140) Administer and direct a program of grants to the Food and Agricultural Policy Research Institute (section 10805 of Pub. L. 107–171).

(141) Formulate and carry out the Veterinary Medicine Loan Repayment Act program authorized by the National Veterinary Medical Service Act (7 U.S.C. 3151a).

(142) Administer grants to assist the land-grant university in the District of Columbia to acquire, alter, or repair facilities or relevant equipment necessary for conducting agricultural research (7 U.S.C. 3222b–1).

(143) Administer grants to assist the land-grant colleges and universities in insular areas to acquire, alter, or repair facilities or relevant equipment necessary for conducting agricultural research; and to support tropical and subtropical agricultural research, including pest and disease research (7 U.S.C. 3222b–2).

(144) Enter into agreements necessary to administer an Hispanic–Serving Agricultural Colleges and Universities Fund; enter into agreements necessary to administer a program of making annual payments to Hispanic-serving agricultural colleges and universities; administer an institutional capacity-building grants program for Hispanic-serving agricultural colleges and universities; administer a competitive grants program to fund fundamental and applied research and extension at Hispanic-serving agricultural colleges and universities and to award competitive grants to Hispanic-serving agricultural colleges and universities to provide for training in the food and agricultural sciences of Hispanic agricultural workers and Hispanic youth working in the food and agricultural sciences (7 U.S.C. 3243).

(145) Administer the New Era Rural Technology Program to make grants for technology development, applied research, and training to aid in the development of an agriculture-based renewable energy workforce (7 U.S.C. 3319e).

(146) Administer a competitive grants program to assist NLGCA Institutions in maintaining and expanding capacity to conduct education, research, and outreach activities relating to agriculture, renewable resources, and other similar disciplines (7 U.S.C. 3319i).

(147) [Reserved]

(148) Administer a competitive research and extension grants program to improve the farm management knowledge and skills of agricultural producers and establish and maintain a national, publicly available farm financial management database to support improved farm management (7 U.S.C. 5925f).

(149) Administer the Specialty Crop Research Initiative (7 U.S.C. 7632).

(150) Administer a competitive research and education grants program relating to antibiotics and antibiotic-resistant bacteria (7 U.S.C. 3202).

(151) Administer a competitive grants program to establish and maintain a Farm and Ranch Stress Assistance Network (7 U.S.C. 5936).

(152) Administer a competitive grant program to support the development and expansion of advanced training programs in agricultural biosecurity planning and response for food science professionals and veterinarians (7 U.S.C. 8913).

(153) Administer a Sun Grants Program (7 U.S.C. 8114).

(154)–(155) [Reserved]

(156) Administer the Biomass Research and Development Initiative (7 U.S.C. 8108(e)); consult and coordinate, as appropriate, with the Under Secretary for Rural Development and other mission areas of the Department as deemed necessary in carrying out the authorities delegated herein.

(157) Administer a competitive grants program to encourage basic and applied research and the development of qualified agricultural countermeasures (7 U.S.C. 8921).

(158) Administer a competitive grants program to promote the development of teaching programs in agriculture, veterinary medicine, and disciplines closely allied to the food and agriculture system to increase the number of trained individuals with an expertise in agricultural biosecurity (7 U.S.C. 8922).

(159) Administer a program of providing grants to Alaska Native serving institutions and Native Hawaiian serving institutions for the purpose of promoting and strengthening the ability of those institutions to carry out education, applied research, and related community development programs (7 U.S.C. 3156).

(160) Administer a competitive grant program for national food safety training, education, extension, outreach, and technical assistance (7 U.S.C. 7625).

(161) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(162) Administer a food insecurity nutrition incentive program (7 U.S.C. 7517).

(163) Administer a food and agriculture service learning grant program (7 U.S.C. 7633).

(164) Administer a veterinary services grant program (7 U.S.C. 3151b).

(165) Administer a forestry and forestry products research and extension initiative (7 U.S.C. 7655b).

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 62 FR 65595, Dec. 15, 1997; 65 FR 5417, Feb. 4, 2000; 68 FR 27445, May 20, 2003; 72 FR 12701, Mar. 19, 2007; 74 FR 3409, Jan. 21, 2009; 75 FR 43381, July 23, 2010; 76 FR 4803, Jan. 27, 2011; 76 FR 52852, Aug. 24, 2011; 77 FR 40249, July 9, 2012; 79 FR 44115, July 30, 2014; 83 FR 61314, Nov. 29, 2018; 85 FR 65520, Oct. 15, 2020]

§ 2.67 Administrator, Economic Research Service.

(a) *Delegations.* Pursuant to § 2.21 (a)(3), (a)(8) and (a)(9), subject to reservations in § 2.21(b)(2), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, Economic Research Service:

(1) Conduct economic research on matters of importance to cooperatives as authorized by the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

(2) Conduct economic and social science research and analyses relating to:

(i) Food and agriculture situation and outlook;

(ii) The production, marketing, and distribution of food and fiber products

(excluding forest and forest products), including studies of the performance of the food and agricultural sector of the economy in meeting needs and wants of consumers;

(iii) Basic and long-range, worldwide, economic analyses and research on supply, demand, and trade in food and fiber products and the effects on the U.S. food and agriculture system, including general economic analyses of the international financial and monetary aspects of agricultural affairs;

(iv) Natural resources, including studies of the use and management of land and water resources, the quality of these resources, resource institutions, and watershed and river basin development problems; and

(v) Rural people and communities, as authorized by title II of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), and the Act of June 29, 1935, as amended (7 U.S.C. 427).

(3) Administer an experienced services program to obtain technical, professional, and administrative services to support the research, education, and economics mission area of the Department (16 U.S.C. 3851).

(4) Investigate and make findings as to the effect upon the production of food and upon the agricultural economy of any proposed action pending before the Administrator of the Environmental Protection Agency for presentation in the public interest, before said Administrator, other agencies, or before the courts.

(5) Review economic data and analyses used in speeches by Department personnel and in materials prepared for release through the press, radio and television.

(6) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global agricultural system. Such work may be carried out by:

(i) Exchanging research materials and results with the institutions or persons;

(ii) Engaging in joint or coordinated research;

(iii) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension; and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Under Secretary for Research, Education, and Economics;

(iv) Stationing representatives at such institutions or organizations in foreign countries; or

(v) Entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and with the concurrence of the Office of International Cooperation and Development, USDA, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Under Secretary for Research, Education, and Economics (7 U.S.C. 3291(a)).

(7) [Reserved]

(8) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning estimates of supplies of agricultural commodities and evaluation of requirements therefor; food and agricultural aspects of economic stabilization and economic research; and coordination of energy programs.

(9) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agricultural sciences (7 U.S.C. 3318).

(10) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

(11) Represent the Department in international organizational activities and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

(12) Facilitate access by research and extension professionals, farmers, and

other interested persons in the United States to, and the use by those persons of, organic research conducted outside the United States (7 U.S.C. 5925d).

(13)–(14) [Reserved]

(15) Solicit and consider input and recommendations from persons who conduct or use agricultural research, extension, or education (7 U.S.C. 7612(b)).

(16) Consider the results of the annual review performed by the Agricultural Research, Extension, Education, and Economics Advisory Board regarding the relevance to priorities of the funding of all agricultural research, extension, or education activities conducted or funded by the Department and the adequacy of funding, when formulating each request for proposals, and evaluating proposals, involving an agricultural research, extension, or education activity funded, on a competitive basis, by the Department; and solicit and consider input from persons who conduct or use agricultural research, extension, or education regarding the prior year's request for proposals for each activity funded on a competitive basis (7 U.S.C. 7613(c)).

(17) Establish procedures that ensure scientific peer review of all research activities conducted by the Economic Research Service (7 U.S.C. 7613(d)).

(18) Include in each issuance of projections of net farm income an estimate of the net farm income earned by commercial producers in the United States that will in addition show the estimate of net farm income attributable to commercial producers of livestock, loan commodities, and agricultural commodities other than loan commodities (7 U.S.C. 7998).

(19) Conduct surveys and analysis and publish reports relating to organic production, handling, distribution, retail, and trend studies (including consumer purchasing patterns) (7 U.S.C. 5925c).

(20) Ensure that studies carried out by the Economic Research Service document the number, location, and economic contributions of socially disadvantaged farmers or ranchers in agricultural production (7 U.S.C. 2279(h)).

(21) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects (7 U.S.C. 450a).

(22) Coordinate implementation of section 10016 of the Agricultural Act of 2014 regarding locally or regionally produced agricultural food products (7 U.S.C. 2204h).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Research, Education, and Economics: Review all proposed decisions having substantial economic policy implications.

[60 FR 56393, Nov. 8, 1995, as amended at 62 FR 65596, Dec. 15, 1997; 64 FR 40736, July 28, 1999; 65 FR 5418, Feb. 4, 2000; 68 FR 27446, May 20, 2003; 74 FR 3410, Jan. 21, 2009; 79 FR 44116, July 30, 2014; 87 FR 44270, July 26, 2022]

§ 2.68 Administrator, National Agricultural Statistics Service.

(a) *Delegations.* Pursuant to § 2.21 (a)(3) and (a)(8), subject to reservations in § 2.21(b)(2), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Administrator, National Agricultural Statistics Service:

(1) Prepare crop and livestock estimates and administer reporting programs, including estimates of production, supply, price, and other aspects of the U.S. agricultural economy, collection of statistics, conduct of enumerative and objective measurement surveys, construction and maintenance of sampling frames, and related activities. Prepare reports of the Agricultural Statistics Board of the Department of Agriculture covering official state and national estimates (7 U.S.C. 476, 951, and 2204).

(2) Take such security precautions as are necessary to prevent disclosure of crop or livestock report information prior to the scheduled issuance time approved in advance by the Secretary of Agriculture and take such actions as are necessary to avoid disclosure of confidential data or information supplied by any person, firm, partnership, corporation, or association (18 U.S.C. 1902, 1905, and 2072).

(3) Improve statistics in the Department; maintain liaison with OMB and other Federal agencies for coordination of statistical methods and techniques.

(4) Administer responsibilities and functions assigned under the Defense

Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning coordination of damage assessment; and food and agricultural aspects of agricultural statistics.

(5) Enter into contracts, grants, or cooperative agreements to further research and statistical reporting programs in the food and agricultural sciences (7 U.S.C. 3318).

(6) Enter cost-reimbursable agreements relating to agricultural research and statistical reporting (7 U.S.C. 3319a).

(7) Cooperate and work with national and international institutions and other persons throughout the world in the performance of agricultural research and extension activities to promote and support the development of a viable and sustainable global agricultural system. Such work may be carried out by:

(i) Exchanging research materials and results with the institutions or persons;

(ii) Engaging in joint or coordinated research;

(iii) Entering into cooperative arrangements with Departments and Ministries of Agriculture in other nations to conduct research, extension, and education activities (limited to arrangements either involving no exchange of funds or involving disbursements by the agency to the institutions of other nations), and then reporting these arrangements to the Under Secretary for Research, Education, and Economics;

(iv) Stationing representatives at such institutions or organizations in foreign countries; or

(v) entering into agreements with land-grant colleges and universities, other organizations, institutions, or individuals with comparable goals, and, with the concurrence of the Foreign Agricultural Service, international organizations (limited to agreements either involving no exchange of funds or involving disbursements by the agency to the cooperator), and then reporting these agreements to the Under Secretary for Research, Education, and Economics (7 U.S.C. 3291(a)).

(8) Represent the Department in international organizational activities and on international technical committees concerned with agricultural science, education, and development activities, including library and information science activities.

(9) Take a census of agriculture in 1998 and every fifth year thereafter pursuant to the Census of Agriculture Act of 1997, Public Law 105–113 (7 U.S.C. 2204g); ensure that the census of agriculture documents the number, location, and economic contributions of socially disadvantaged farmers or ranchers in agricultural production (7 U.S.C. 2279(h)).

(10) Develop surveys and report statistical analysis on organically produced agricultural products (7 U.S.C. 5925c).

(11) Assist the Administrator, Agricultural Marketing Service with respect to Dairy Product Mandatory Reporting (7 U.S.C. 1637–1637b).

(12) Enter into agreements with and receive funds from any State, other political subdivision, organization, or individual for the purpose of conducting cooperative research projects, including agricultural statistical survey activities (7 U.S.C. 450a).

(13) Assist the Administrator, Economic Research Service with implementing section 10016 of the Agricultural Act of 2014 regarding locally or regionally produced agricultural food products (7 U.S.C. 2204h).

(14) Collect and, not less frequently than once every 3 years report, data and analysis on farmland ownership, tenure, transition, and entry of beginning farmers and ranchers and socially disadvantaged farmers and ranchers (7 U.S.C. 2204i).

(15) Administer an experienced services program to obtain technical, professional, and administrative services to support the research, education, and economics mission area of the Department (16 U.S.C. 3851).

(b) *Reservation.* The following authority is reserved to the Under Secretary

for Research, Education, and Economics: Review all proposed decisions having substantial economic policy implications.

[60 FR 56393, Nov. 8, 1995, as amended at 62 FR 65596, Dec. 15, 1997; 65 FR 5418, Feb. 4, 2000; 68 FR 27446, May 20, 2003; 74 FR 3410, Jan. 21, 2009; 77 FR 40250, July 9, 2012; 79 FR 44116, July 30, 2014; 85 FR 65521, Oct. 15, 2020; 87 FR 44270, July 26, 2022]

§ 2.69 Director, Office of the Chief Scientist.

(a) *Delegations.* Pursuant to § 2.21(a)(11) and (a)(12), the following delegations of authority are made by the Under Secretary for Research, Education, and Economics to the Director, Office of the Chief Scientist.

(1) Provide to the Under Secretary (Chief Scientist of the Department) information on topics that can benefit from scientific input to ensure informed decision-making at the highest levels of Government.

(2) Assist the Chief Scientist with facilitating the coordination and collaboration within the Department on high priority science issues that will benefit from intra-Departmental collaboration, including coordinating the assessment of the relevance, quality, performance, and impact of the Department's efforts in science.

(3) Assist the Chief Scientist with building partnerships within the scientific community and with the Chief Scientist's role as point of contact for interactions with other agencies of science, universities, and other external members of the scientific community for the purpose of leveraging and promoting relationships to explore common scientific interests and shared goals.

(4) Assist the Chief Scientist with developing mechanisms to address scientific integrity within the Department.

(5) [Reserved]

(6) Assist the Chief Scientist in carrying out sections 251(c)(2) and 251(d)(2) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6971(c)(2), (d)(2)) by exercising the duties set forth in section 25 l(e)(3)(E) of that Act (7 U.S.C. 6971(e)(3)(E)) through a series of divisions organized by the following focus areas:

(i) Renewable energy, natural resources, and environment;

(ii) Food safety, nutrition, and health;

(iii) Plant health and production and plant products;

(iv) Animal health and production and animal products;

(v) Agricultural systems and technology; and

(vi) Agricultural economics and rural communities.

(b) The divisions will be headed by Division Chiefs/Senior Advisors (or a similar title), and will be known collectively as the Office of the Chief Scientist.

[76 FR 10756, Feb. 28, 2011, as amended at 85 FR 65521, Oct. 15, 2020]

Subpart L—Delegations of Authority by the Chief Economist

§ 2.70 Deputy Chief Economist.

Pursuant to § 2.29, the following delegation of authority is made by the Chief Economist to the Deputy Chief Economist, to be exercised only during the absence or unavailability of the Chief Economist: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Chief Economist.

§ 2.71 Director, Office of Risk Assessment and Cost-Benefit Analysis.

(a) *Delegations.* Pursuant to § 2.29(a)(2), the following delegations of authority are by the Chief Economist to the Director, Office of Risk Assessment and Cost-Benefit Analysis:

(1) Responsible for assessing the risks to human health, human safety, or the environment, and for preparing cost-benefit analyses, with respect to proposed major regulations, and for publishing such assessments and analyses in the FEDERAL REGISTER as required by section 304 of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 2204e)

(2) Provide direction to Department agencies in the appropriate methods of risk assessment and cost-benefit analyses and coordinate and review all risk assessments and cost-benefit analyses prepared by any agency of the Department.

(b) *Reservation.* The following authority is reserved to the Chief Economist: Review all proposed decisions having substantial economic policy implications.

[60 FR 56393, Nov. 8, 1995, as amended at 63 FR 66979, Dec. 4, 1998; 78 FR 40938, July 9, 2013]

§ 2.72 Chairman, World Agricultural Outlook Board.

(a) *Delegations.* Pursuant to § 2.29 (a)(3) through (a)(7), the following delegations of authority are made by the Chief Economist to the Chairman, World Agricultural Outlook Board:

(1) *Related to food and agriculture outlook and situation.* (i) Coordinate and review all crop and commodity data used to develop outlook and situation material within the Department.

(ii) Oversee and clear for consistency analytical assumptions and results of all estimates and analyses which significantly relate to international and domestic commodity supply and demand, including such estimates and analyses prepared for public distribution by the Foreign Agricultural Service, the Economic Research Service, or by any other agency or office of the Department.

(2) *Related to weather and climate.* (i) Advise the Secretary on climate and weather activities, and coordinate the development of policy options on weather and climate.

(ii) Coordinate all weather and climate information and monitoring activities within the Department and provide a focal point in the Department for weather and climate information and impact assessment.

(iii) Arrange for appropriate representation to attend all meetings, hearings, and task forces held outside the Department which require such representation.

(iv) Designate the Executive Secretary of the USDA Weather and Climate Program Coordinating Committee.

(v) Coordinate with the Director of the National Drought Mitigation Center and the Administrator of the National Oceanic and Atmospheric Administration to enhance the collection of data to improve the accuracy of the United States Drought Monitor (7 U.S.C. 5856).

(3) *Related to interagency commodity estimates committees.* (i) Establish Interagency Commodity Estimates Committees for Commodity Credit Corporation price-supported commodities, for major products thereof, and for commodities where a need for such a committee has been identified, in order to bring together estimates and supporting analyses from participating agencies, and to develop official estimates of supply, utilization, and prices for commodities, including the effects of new program proposals on acreage, yield, production, imports, domestic utilization, price, income, support programs, carryover, exports, and availabilities for export.

(ii) Designate the Chairman, who shall also act as Secretary, for all Interagency Commodity Estimates Committees.

(iii) Assure that all committee members have the basic assumptions, background data and other relevant data regarding the overall economy and market prospects for specific commodities.

(iv) Review for consistency of analytical assumptions and results all proposed decisions made by Commodity Estimates Committees prior to any release outside the Department.

(4) [Reserved]

(5) *Related to long-range commodity and agricultural-sector projections.* Establish committees of the agencies of the Department to coordinate the development of a set of analytical assumptions and long-range agricultural-sector projections (2 years and beyond) based on commodity projections consistent with these assumptions and coordinated through the Interagency Commodity Estimates Committees.

(b) *Reservation.* The following authority is reserved to the Chief Economist: Review all proposed decisions having substantial economic policy implications.

[60 FR 56393, Nov. 8, 1995, as amended at 77 FR 14952, Mar. 14, 2012; 78 FR 40938, July 9, 2013; 85 FR 65521, Oct. 15, 2020]

§ 2.73 Director, Office of Energy and Environmental Policy.

(a) *Delegations.* Pursuant to § 2.29(a)(11) through (13) the following delegations of authority are made by

the Chief Economist to the Director, Office of Energy and Environmental Policy.

(1) Providing Department leadership in:

(i) Analyzing and evaluating existing and proposed energy policies and strategies, including those regarding the allocation of scarce resources;

(ii) Developing energy policies and strategies, including those regarding the allocation of scarce resources;

(iii) Reviewing and evaluating Departmental energy and energy-related programs and program progress;

(iv) Developing agricultural and rural components of national energy policy plans;

(v) Preparing reports on energy and energy-related policies and programs required under Act of Congress and Executive Orders, including those involving testimony and reports on legislative proposals.

(2) Providing Departmental oversight and coordination with respect to resources available for energy and energy-related activities, including funds transferred to USDA from departments and agencies of the Federal government pursuant to interagency agreements.

(3) Representing the Chief Economist at conferences, meetings, and other contacts where energy matters are discussed, including liaison with the Department of Energy, the Environmental Protection Agency, and other governmental departments and agencies.

(4) Providing the Chief Economist with such assistance as requested to perform the duties delegated to the Director concerning energy and new uses.

(5) Working with the Office of the Assistant Secretary for Congressional Relations to maintain Congressional and public contacts in energy matters, including development of legislative proposals, preparation of reports on legislation pending in congress, appearances before Congressional committees, and related activities.

(6) These delegations exclude the energy management actions related to the internal operations of the Department as delegated to the Assistant Secretary for Administration.

(7) Conduct a program on the economic feasibility of new uses of agricultural products. Assist agricultural researchers by evaluating the economic and market potential of new agricultural products in the initial phase of development and contributing to prioritization of the Departmental research agenda.

(8) Administer a competitive biodiesel fuel education grants program (7 U.S.C. 8106).

(9) Implement a memorandum of understanding with the Secretary of Energy regarding cooperation in the application of hydrogen and fuel cell technology programs for rural communities and agricultural producers.

(10) *Related to global climate change.* (i) Coordinate policy analysis, long-range planning, research, and response strategies relating to climate change issues.

(ii) Provide liaison with other Federal agencies, through the Office of Science and Technology Policy, regarding climate change issues.

(iii) Inform the Department of scientific developments and policy issues relating to the effects of climate change on agriculture and forestry, including broader issues that affect the impact of climate change on the farms and forests of the United States.

(iv) Recommend to the Chief Economist alternative courses of action with which to respond to such scientific developments and policy issues.

(v) Ensure that recognition of the potential for climate change is fully integrated into the research, planning, and decisionmaking processes of the Department.

(vi) Coordinate global climate change studies.

(vii) Coordinate the participation of the Department in interagency climate-related activities.

(viii) Consult with the National Academy of Sciences and private, academic, State, and local groups with respect to climate research and related activities.

(ix) Represent the Department to the Office of Science and Technology Policy on issues related to climate change.

(x) Represent the Department on the Intergovernmental Panel on Climate Change.

(xi) Review all Department budget items relating to climate change issues, including specifically the research budget to be submitted by the Secretary to the Office of Management and Budget.

(11) *Related to environmental markets.* Coordinate implementation of section 1245 of the Food Security Act of 1985 regarding environmental services markets (16 U.S.C. 3845).

(b) [Reserved]

[64 FR 40736, July 28, 1999, as amended at 68 FR 27446, May 20, 2003; 74 FR 3410, Jan. 21, 2009; 79 FR 44116, July 30, 2014; 83 FR 61314, Nov. 29, 2018]

§ 2.74 [Reserved]

§ 2.75 Director, Office of Pest Management Policy.

(a) *Delegations.* Pursuant to § 2.29(a)(16), the following delegations of authority are made by the Chief Economist to the Director, Office of Pest Management Policy:

(1) Coordinate USDA policy relative to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, *et seq.*) and coordinate the Department's Integrated Pest Management Programs and the Pesticide Assessment Program (7 U.S.C. 136–136y) (7 U.S.C. 7653).

(2) Conduct a multiple crop and pesticide use survey as authorized by section 10109 of the Agricultural Improvement Act of 2018.

(b) [Reserved]

[83 FR 61314, Nov. 29, 2018, as amended at 85 FR 65521, Oct. 15, 2020]

Subpart M [Reserved]

Subpart N—Delegations of Authority by the Under Secretary for Marketing and Regulatory Programs

§ 2.77 Deputy Under Secretary for Marketing and Regulatory Programs.

Pursuant to § 2.22(a), subject to reservations in § 2.22(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made by the Under Secretary for Marketing and Regulatory Programs to the Deputy Under Secretary for Marketing and Regulatory Programs, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Marketing and Regulatory Programs: Provided, that this authority shall be exercised by the respective Deputy Under Secretary in the order in which he or she has taken office as a Deputy Under Secretary.

[75 FR 79950, Dec. 21, 2010]

§ 2.79 Administrator, Agricultural Marketing Service.

(a) *Delegations.* Pursuant to § 2.22(a)(1), (a)(5) and (a)(8), subject to reservations in § 2.22(b)(1), the following delegations of authority are made by the Under Secretary for Marketing and Regulatory Programs to the Administrator, Agricultural Marketing Service:

(1) Exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), including payments to State Departments of Agriculture in connection with cooperative marketing service projects under section 204(b) (7 U.S.C. 1623(b)), but excepting matters otherwise assigned.

(2) Conduct marketing efficiency research and development activities directly applicable to the conduct of the Wholesale Market Development Program, specifically:

(i) Studies of facilities and methods used in physical distribution of food and other farm products;

(ii) Studies designed to improve handling of all agricultural products as they are moved from farms to consumers; and

(iii) Application of presently available scientific knowledge to the solution of practical problems encountered in the marketing of agricultural products (7 U.S.C. 1621–1627b).

(3) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(4) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(5) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(6) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(7) Cooperate with other Departmental agencies in the development and recommendation of policies and programs for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(8) Exercise the functions of the Secretary of Agriculture contained in the following legislation:

(i) U.S. Cotton Standards Act (7 U.S.C. 51–65);

(ii) Cotton futures provisions of the Internal Revenue Code of 1954 (26 U.S.C. 4854, 4862–4865, 4876, and 7263);

(iii) Cotton Statistics and Estimates Act, as amended (7 U.S.C. 471–476), except as otherwise assigned;

(iv) [Reserved]

(v) Naval Stores Act (7 U.S.C. 91–99);

(vi) Tobacco Inspection Act (7 U.S.C. 511–511q);

(vii) Wool Standards Act (7 U.S.C. 415–415d);

(viii) Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601, 602, 608a-608e, 610, 612, 614, 624, 671–674);

(ix) Cotton Research and Promotion Act (7 U.S.C. 2101–2118), except as specified in § 2.43(a)(24);

(x) Export Apple and Pear Act (7 U.S.C. 581–590);

(xi) Export Grape and Plum Act (7 U.S.C. 591–599);

(xii) Titles I, II, IV, and V of the Federal Seed Act, as amended (7 U.S.C. 1551–1575, 1591–1611);

(xiii) Perishable Agricultural Commodities Act (7 U.S.C. 499a-499s);

(xiv) Produce Agency Act (7 U.S.C. 491–497);

(xv) Tobacco Seed and Plant Exportation Act (7 U.S.C. 516–517);

(xvi) [Reserved]

(xvii) Tobacco Statistics Act (7 U.S.C. 501–508);

(xviii)–(xxi) [Reserved]

(xxii) Section 401(a) of the Organic Act of 1944 (7 U.S.C. 415e);

(xxiii) Agricultural Fair Practices Act (7 U.S.C. 2301–2306);

(xxiv) Wheat Research and Promotion Act (7 U.S.C. 1292 note), except as specified in § 2.43(a)(24);

(xxv) Plant Variety Protection Act (7 U.S.C. 2321–2331, 2351–2357, 2371- 2372, 2401–2404, 2421–2427, 2441–2443, 2461–2463, 2481–2486, 2501–2504, 2531–2532, 2541–2545, 2561–2569, 2581–2583), except as delegated to the Judicial Officer;

(xxvi) Subtitle B of title I and section 301(4) of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4513, 4514(4)), except as specified in § 2.43(a)(24);

(xxvii) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as specified in § 2.43(a)(24);

(xxviii)–(xxx) [Reserved]

(xxxi) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated in § 2.43(a)(24);

(xxxii) Beef Research and Information Act, as amended, (7 U.S.C. 2901–2918), except as delegated in §§ 2.42(a)(29) and 2.43(a)(24);

(xxxiii) Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417), except as delegated in § 2.43(a)(24);

(xxxiv) Egg Products Inspection Act relating to the shell egg surveillance program, voluntary laboratory analyses of egg products, and the voluntary egg grading program (21 U.S.C. 1031–1056);

(xxxv) Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), as supplemented by the Act of June 28, 1937 (15 U.S.C. 713c), and related legislation, except functions which are otherwise assigned relating to the domestic distribution and donation of agricultural commodities and products thereof following the procurement thereof;

(xxxvi) Procurement of agricultural commodities and other foods under section 6 of the National School Lunch Act of 1946, as amended (42 U.S.C. 1755);

(xxxvii) [Reserved]

(xxxviii) Act of May 23, 1908, regarding inspection of dairy products for export (21 U.S.C. 693);

(xxxix) The Pork Promotion, Research, and Consumer Information Act

of 1985 (7 U.S.C. 4801–4819), except as specified in § 2.43(a)(24);

(xl) The Watermelon Research and Consumer Information Act (7 U.S.C. 4901–4616), except as specified in § 2.43(a)(24);

(xli) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612), except as specified in § 2.43(a)(24);

(xlii) Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended (7 U.S.C. 4501–4513, 4531–4538);

(xliii) The Floral Research and Consumer Information Act (7 U.S.C. 4301–4319), except as specified in § 2.43(a)(24);

(xliv) Section 213 of the Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r);

(xlv) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products;

(xlvi) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013), except as specified in § 2.43(a)(24);

(xlvii) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112), except as specified in § 2.43(a)(24);

(xlviii) Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212), except as specified in § 2.43(a)(24);

(xlix) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as specified in § 2.43(a)(24);

(l) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417), except as specified in § 2.43(a)(24);

(li) Producer Research and Promotion Board Accountability (104 Stat. 3927);

(lii) Consistency with International Obligations of the United States (7 U.S.C. 2278);

(liii) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) provided that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services;

(liv) Pesticide Recordkeeping (7 U.S.C. 136i–l) with the provision that the Administrator, Agricultural Marketing Service, will enter into agreements, as necessary, with other Federal agencies;

(lv) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406);

(lvi) The Sheep Promotion, Research, and Information Act (7 U.S.C. 7101–7111), except as specified in § 2.43(a)(24); and

(lvii) The Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814), except as specified in § 2.43(a)(24).

(lviii) Commodity Promotion and Evaluation (7 U.S.C. 7401);

(lix) Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), except as specified in § 2.43(a)(24);

(lx) The Canola and Rapeseed Research, Promotion, and Consumer Information Act (7 U.S.C. 7441–7452), except as specified in § 2.43(a)(24);

(lxi) The National Kiwifruit Research, Promotion, and Consumer Information Act (7 U.S.C. 7461–7473), except as specified in § 2.43(a)(24); and

(lxii) The Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7481–7491), except as specified in § 2.43(a)(24).

(lxiii) Local Agriculture Market Program (7 U.S.C. 1627c), in coordination with the Administrator, Rural Business-Cooperative Service.

(lxiv) [Reserved]

(lxv) Exemption of Certified Organic Products from Assessment (7 U.S.C. 7401).

(lxvi) Country of Origin Labeling (7 U.S.C. 1638–1638(d)).

(lxvii) Hass Avocado Promotion, Research, and Consumer Information Act of 2000 (7 U.S.C. 7801–7813).

(lxviii) Section 7407 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 5925c), with respect to the collection and distribution of comprehensive reporting of prices relating to organically produced agricultural products.

(lxix) Livestock Mandatory Reporting (7 U.S.C. 1635–1636i).

(lxx) Section 375 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008j).

(lxxi) Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note).

(lxxii) Section 1502 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8772).

(lxxiii) Section 12108 of the Agriculture Improvement Act of 2018 (7 U.S.C. 1622 note).

(lxxiv) Section 10105 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7655a).

(lxxv) Section 10107 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1622b).

(lxxvi) Section 4206 of the Agriculture Improvement Act of 2018 (7 U.S.C. 7518).

(lxxvii) Section 4213(c) of the Agricultural Act of 2014 (7 U.S.C. 1755b(c)).

(lxxviii) Section 12306 of the Agricultural Act of 2014 (7 U.S.C. 1632c).

(lxxix) Section 506 of the Trade and Development Act of 2000 (7 U.S.C. 7101 note).

(lxxx) Section 12513 of the Agriculture Improvement Act of 2018 (7 U.S.C. 1632d).

(9) Furnish, on request, copies of programs, pamphlets, reports, or other publications for missions or programs as may otherwise be delegated or assigned to the Administrator, Agricultural Marketing Service and charge user fees therefore, as authorized by section 1121 of the Agriculture and Food Act of 1981, as amended by section 1769 of the Food Security Act of 1985, 7 U.S.C. 2242a.

(10) [Reserved]

(11) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117(a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(12) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(13) Administer a program for Dairy Product Mandatory Reporting (7 U.S.C. 1637–1637b), with the assistance of the Administrator, National Agricultural Statistics Service.

(14) Assist the Administrator of the Foreign Agricultural Service with implementing section 3205 of the Food, Conservation, and Energy Act of 2008 (22 U.S.C. 7112 note) regarding the Consultative Group to Eliminate the Use of Child Labor and Forced Labor in Imported Agricultural Products.

(15) Assist the Administrator, Economic Research Service with implementing section 10016 of the Agricultural Act of 2014 regarding locally or regionally produced agricultural food products (7 U.S.C. 2204h).

(16) Administer the United States Grain Standards Act, as amended (7 U.S.C. 71–87h).

(17) Administer the Packers and Stockyards Act, 1921, as amended and supplemented.

(18) Enforce provisions of the Consumer Credit Protection Act (15 U.S.C. 1601–1665, 1681–1681t), with respect to any activities subject to the Packers and Stockyards Act, 1921, as amended and supplemented.

(19) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(20) Administer responsibilities and functions assigned to the Secretary in section 11006 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 228 note), with respect to the Packers and Stockyards Act, 1921.

(21) Administer the U. S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Agricultural Marketing Services programs.

(22) Administer commodity procurement and supply, transportation (other than from point of export, except for movement to trust territories or possessions), handling, payment, and related services in connection with programs under titles II and III of Public Law 480 (7 U.S.C. 1691, 1701, *et seq.*) and section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1), and payment and related services with respect to export programs and barter operations.

(23) Administer the Economic Adjustment Assistance for Textile Mills program (7 U.S.C. 9037(c)).

(24) In coordination with Administrator, Farm Service Agency, administer payments under the Special Competitive Provisions for Extra Long Staple Cotton (7 U.S.C. 9038).

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 61 FR 25776, May 23, 1996; 62 FR 37485, July 14, 1997; 62 FR 40255, July 28, 1997; 68 FR 27446, May 20, 2003; 74 FR 3411, Jan. 21, 2009; 79 FR 44116, July 30, 2014; 83 FR 22188, May 14, 2018; 83 FR 61314, Nov. 29, 2018; 85 FR 65521, Oct. 15, 2020]

§ 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) *Delegations.* Pursuant to § 2.22(a)(2) and (a)(6) through (a)(9), and subject to reservations in § 2.22(b)(2), the following delegations of authority are made by the Under Secretary for Marketing and Regulatory Programs to the Administrator, Animal and Plant Health Inspection Service: Exercise functions of the Secretary of Agriculture under the following authorities:

(1) Administer the Foreign Service personnel system for employees of the Animal and Plant Health Inspection Service in accordance with 22 U.S.C. 3922, except that this delegation does not include the authority to approve joint regulations issued by the Department of State relating to administration of the Foreign Service, nor an authority to represent the Department of Agriculture in interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations.

(2) The Terminal Inspection Act, as amended (7 U.S.C. 166).

(3) The Honeybee Act, as amended (7 U.S.C. 281–286).

(4) Section 18 of the Federal Meat Inspection Act, as amended, as it pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 618).

(5) The responsibilities of the United States under the International Plant Protection Convention.

(6) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159).

(7) Horse Protection Act (15 U.S.C. 1821–1831).

(8) 28 Hour Law, as amended (49 U.S.C. 80502).

(9) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902).

(10) Purebred animal duty-free-entry provision of Tariff Act of June 17, 1930, as amended (19 U.S.C. 1202, part 1, Item 100.01).

(11) Virus-Serum-Toxin Act (21 U.S.C. 151–159).

(12) Conduct diagnostic and related activities necessary to prevent, detect, control or eradicate foot-and-mouth disease and other foreign animal diseases (21 U.S.C. 113a).

(13) The Agricultural Marketing Act of 1946, section 203, 205, as amended (7 U.S.C. 1622, 1624), with respect to voluntary inspection and certification of animal products; inspection, testing, treatment, and certification of animals; and a program to investigate and develop solutions to the problems resulting from the use of sulfonamides in swine.

(14) Talmadge-Aiken Act (7 U.S.C. 1633) with respect to cooperation with States in control and eradication of plant and animal diseases and pests.

(15) Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), relating to protection of livestock, poultry and crops and products thereof from biological and chemical warfare; and utilization or disposal of livestock and poultry exposed to radiation.

(16) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801 note; 2814).

(17) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

(18) Executive Order 11987, 3 CFR, 1977 Comp., p. 116.

(19) Section 101(d), Organic Act of 1944 (7 U.S.C. 398).

(20) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813).

(21) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378).

(22) Title III (and title IV to the extent that it relates to activities under title III) of the Federal Seed Act, as amended (7 U.S.C. 1581–1610).

(23) Authority to prescribe the amounts of commuted traveltime allowances and the circumstances under which such allowances may be paid to

employees covered by the Act of August 28, 1950 (7 U.S.C. 2260).

(24) Provide management support services for the Agricultural Marketing Service, as agreed upon by the agencies, with authority to take actions required by law or regulation. As used herein, the term management support services includes information technology, budget, finance, personnel, procurement, property management, communications, paperwork management, and related administrative services.

(25) Coordinate the development and carrying out by Department agencies of all matters and functions pertaining to the Department's regulation of biotechnology, and act as liaison on all matters and functions pertaining to the regulation of biotechnology between agencies within the Department and between the Department and other governmental and private organizations.

(26) The Act of March 2, 1931 (7 U.S.C. 8351–8352).

(27) The Act of December 22, 1987 (7 U.S.C. 8353).

(28) Authority to work with developed and transitional countries on agricultural and related research and extension, with respect to animal and plant health, including providing technical assistance, training, and advice to persons from such countries engaged in such activities and the stationing of scientists at national and international institutions in such countries (7 U.S.C. 3291(a)(3)).

(29) With respect to land and facilities under his or her authority, exercise the functions delegated to the Secretary by Executive Order 12580, 3 CFR, 1987 Comp., p. 193, under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''the Act''), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and remedial actions in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access requests and orders; compliance with Federal health and safety standards and wage and labor standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) The first two sentences of section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations of section 122 of the Act (42 U.S.C. 9622), and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action and identifying and notifying potentially responsible parties;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Sections 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9119), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to settlements, but excluding section 122(b)(1) of the Act (42 U.S.C. 9622(b)(1)), related to mixed funding agreements.

(30) With respect to facilities and activities under his or her authority, to exercise the authority of the Secretary of Agriculture pursuant to section 1–102 related to compliance with applicable pollution control standards and section 1–601 of Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to enter into an inter-agency agreement with the United States Environmental Protection Agency, or an administrative consent order or a consent judgment in an appropriate State, interstate, or local agency, containing a plan and schedule to achieve and maintain compliance with applicable pollution control standards established pursuant to the following:

(i) Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended by the Hazardous and Solid Waste Amendments, and the Federal Facility Compliance Act (42 U.S.C. 6901 *et seq.*);

(ii) Federal Water Pollution Prevention and Control Act, as amended (33 U.S.C. 1251 *et seq.*);

(iii) Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

(iv) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

(v) Noise Control Act of 1972, as amended (42 U.S.C. 4901 *et seq.*);

(vi) Toxic Substances Control Act, as amended (15 U.S.C. 2601 *et seq.*);

(vii) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*); and

(viii) Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. 9601 *et seq.*).

(31) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended.

(32) The provisions of 35 U.S.C. 156.

(33) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (15 U.S.C. 3710a–3710c).

(34) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(35) Sections 901–905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note).

(36) Plant Protection Act, as amended (7 U.S.C. 7701–7786).

(37) Animal Health Protection Act (7 U.S.C. 8301–8317).

(38) Section 10504 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8318).

(39) Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e and 2279f).

(40) The responsibilities of the United States related to activities of the Office International des Epizooties.

(41) Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Title II, Subtitles B and C; of the Public Health Security and Bioterrorism Preparedness Response Act of 2002 (7 U.S.C. 8401 note, 8401, 8411)).

(42) Implement the information disclosure authorities of section 1619(b)(3)(A) of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8791(b)(3)(A)).

(43) Section 7524 of the Food, Conservation, and Energy Act of 2008 (21 U.S.C. 113a note), except for the suspension, revocation, or other impairment of a permit issued under that section.

(44) Section 10202 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7761).

(45) Section 10204 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 7701 note).

(46) Section 14216 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

(47) Section 1672(g)(3) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5925(g)(3)) regarding honey bee pest, pathogen, health, and population status surveillance.

(48) Section 12309 of the Agricultural Act of 2014 regarding produce represented as grown in the United States (19 U.S.C. 1304a).

(49) Section 11013 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 8322).

(50) In coordination with the Chief, Natural Resources Conservation Service, Section 2408 relating to the Feral Swine Eradication and Control Pilot Program (7 U.S.C. 8351 note).

(51) Section 12203(b) of the Agriculture Improvement Act of 2018 relating to diseases and pests of concern (7 U.S.C. 8914(b)).

(52) Section 12601 of the Agriculture Improvement Act of 2018 relating to baiting of migratory game birds (16 U.S.C. 704 note).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Marketing and Regulatory Programs: The authority to make determinations under 35 U.S.C. 156 as to whether an applicant acted with due diligence.

[60 FR 56393, Nov. 8, 1995, as amended at 61 FR 68541, Dec. 30, 1996; 65 FR 49471, Aug. 14, 2000; 68 FR 27446, May 20, 2003; 70 FR 55706, Sept. 23, 2005; 74 FR 3411, Jan. 21, 2009; 76 FR 4803, Jan. 27, 2011; 79 FR 44116, July 30, 2014; 83 FR 61314, Nov. 29, 2018; 85 FR 65521, Oct. 15, 2020]

§ 2.81 [Reserved]

Subpart O—Delegations of Authority by the Assistant Secretary for Congressional Relations

§ 2.83 Deputy Assistant Secretary for Congressional Relations.

Pursuant to § 2.23, and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all duties and exercise all powers which are now or which may hereafter be delegated to the Assistant Secretary for Congressional Relations.

§ 2.85 Director, Office of Intergovernmental Affairs.

(a) *Delegations.* Pursuant to § 2.23, the following delegations of authority are made by the Assistant Secretary for Congressional Relations to the Director, Office of Intergovernmental Affairs:

(1) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:

(i) National Association of State Departments of Agriculture;

(ii) Office of Intergovernmental Relations (Office of Vice President);

(iii) Advisory Commission on Intergovernmental Relations;

(iv) Council of State Governments;

(v) National Governors Conference;

(vi) National Association of Counties;

(vii) National League of Cities;

(viii) International City Managers Association;

(ix) U.S. Conference of Mayors; and

(x) Such other State and Federal agencies, departments, and organizations as are necessary in carrying out the responsibilities of this office.

(2) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(3) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A–85 to provide advance notification to State and local governments of proposed changes in Department programs that affect such governments.

(4) Act as the Department representative for Federal executive board matters.

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 68 FR 27447, May 20, 2003; 69 FR 34254, June 21, 2004; 79 FR 44117, July 30, 2014]

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

SOURCE: 75 FR 43381, July 23, 2010, unless otherwise noted.

§ 2.87 Deputy Assistant Secretary for Administration.

Pursuant to §2.24(a), and subject to reservations in §2.24(b), the following delegation of authority is made by the Assistant Secretary for Administration to the Deputy Assistant Secretary for Administration, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Administration: Provided, that this authority shall be exercised first by a respective non-career Deputy Assistant Secretary in the order in which he or she has taken office as Deputy Assistant Secretary, and second by a career Deputy Assistant Secretary.

§ 2.89 [Reserved]

§ 2.90 Director, Office of Property and Environmental Management.

(a) *Delegations.* Pursuant to §2.24(a)(6) of this chapter, and with due deference for delegations to other Departmental Administration officials, the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Property and Environmental Management:

(1) Promulgate policies, standards, techniques, and procedures, and represent the Department, in the following:

(i) Utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments.

(ii) Motor vehicle and aircraft fleet and other vehicular transportation.

(iii) Transportation of things (traffic management).

(iv) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, ''Federal Compliance With Pollution Control Standards,'' 3 CFR, 1978 Comp., p. 243).

(v) Development and implementation of sustainable operations actions including establishing and achieving greenhouse gas emission reduction goals, reducing energy intensity, increasing renewable energy use, increasing water efficiency, reducing petroleum use and increasing alternative fuel use, increasing recycling and waste diversion, preventing pollution, reducing use of toxic chemicals, procuring sustainable products and services, achieving sustainable principles for new and existing buildings, promoting electronic stewardship, and continuing environmental management system use. Maintain liaison with the Office of the Federal Environmental Executive, the Council on Environmental Quality, the Office of Management and Budget (OMB), the Department of Energy, and other Government agencies in these matters.

(2) Exercise the following special authorities:

(i) Maintain custody and permit appropriate use of the official seal of the Department.

(ii) Establish policy for the use of the official flags of the Secretary and the Department.

(iii) Coordinate collection and disposition of personal property of historical significance.

(iv) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M–1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C. 6050M. This includes making such verifications or certifications as may be required by 26 CFR 1.6050M–1 and making the election allowed by 26 CFR 1.6050M–1(d)(5)(1).

(v) Represent the Department in working with the Government Accountability Office (GAO), the General Services Administration, OMB, and other organizations or agencies on matters related to assigned responsibilities.

(vi) Redelegate, as appropriate, the authority in paragraphs (a)(4) and (a)(6) of this section to agency Property Officials or other qualified agency officials with no power of further redelegation.

(3) Transfer excess research equipment to eligible educational institutions or certain non-profit organizations for the conduct of technical and scientific education and research activities under section 11(i) of the Stevenson–Wydler Technology Innovation

Act of 1980 (15 U.S.C. 3710(i)) (7 CFR part 2812).

(4) Promulgate policy and obtain and furnish Federal excess personal property in accordance with section 923 of Public Law 104–127 (7 U.S.C. 2206a), to support research, educational, technical and scientific activities or for related programs, to:

(i) Any 1994 Institutions (as defined in section 532 of the Equity in Educational Land–Grant Status Act of 1994 (Pub. L. 103–382; 7 U.S.C. 301 note)).

(ii) Any Institutions eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, *et seq.*) including Tuskegee University.

(iii) Any Hispanic-serving Institutions (as defined in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

(5) Make available to organizations excess or surplus computers or other technical equipment of the Department for the purpose of distribution to cities, towns, or local government entities in rural areas (7 U.S.C. 2206b).

(6) Issue regulations and directives to implement or supplement the Federal Property Management Regulations (41 CFR chapter 101) and the Federal Management Regulation (41 CFR chapter 102).

(7) Related to compliance with environmental laws and sustainable operating requirements.

(i) Serve as Departmental Administration Member and Executive Secretary of the USDA Sustainable Operations Council.

(ii) Represent USDA in consulting or working with the EPA, the Council on Environmental Quality, the Domestic Policy Council, and others to develop policies relating to hazardous materials management and Federal facilities compliance with applicable pollution control laws.

(iii) Monitor, review, evaluate, and oversee hazardous materials management program activities and compliance Department-wide.

(iv) Monitor, review, evaluate, and oversee USDA agency expenditures for hazardous materials management program accomplishments.

(v) Represent USDA on the National Response Team and exercise responsibility for USDA response efforts for hazardous substance releases and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, *et seq.*); the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*); Oil Pollution Act, as amended (33 U.S.C. 2701, *et seq.*); Executive Order 12580, ''Superfund Implementation,'' 3 CFR, 1987 Comp., p. 193; Executive Order 12777, ''Implementation of section 311 of the Federal Water Pollution Control Act of October 18, 1972, as amended, and the Oil Pollution Act of 1990,'' 3 CFR, 1991 Comp., p. 351, and the National Oil and Hazardous Substances Contingency Plan, 40 CFR part 300. When a spill of national significance is declared under the Oil Pollution Act of 1990, responsibility for USDA response efforts will transfer to the Office of Homeland Security and Emergency Coordination, as determined by the Assistant Secretary for Administration.

(vi) Approve disbursements from the New World Mine Response and Restoration Account, approve the New World Mine Response and Restoration Plan, and make quarterly reports to Congress under Sections 502(d) and (f) of Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Public Law 105–83.

(vii) Ensure that the Hazardous Materials Management Program Department-wide is accomplished with regard to, and in compliance with, Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low–Income Populations,'' 3 CFR, 1994 Comp., p. 859.

(viii) Take such action as may be necessary, with the affected agency head and with the concurrence of the General Counsel, including issuance of administrative orders and agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order 12580, ''Superfund Implementation,'' 3 CFR, 1987 Comp., p. 193, as amended by Executive Order 13016, ''Amendment to

Executive Order No. 12580,'' 3 CFR, 1996 Comp., p. 214.

(ix) Represent USDA on the EPA Brownfields Federal Partnership and coordinate USDA support for Brownfields redevelopment and establish policy and guidance for the implementation of the June 2003 amendment to Executive Order 12580, ''Superfund Implementation,'' 3 CFR, 1987 Comp., p. 193 (Executive Order 13308, ''Further Amendment to Executive Order 12580, As Amended, Superfund Implementation,'' 3 CFR, 2003 Comp., p. 239).

(8) Exercise responsibility for USDA response efforts when a spill of national significance is declared under the Oil Pollution Act of 1990, as determined by the Assistant Secretary for Administration.

(b) [Reserved]

[83 FR 61315, Nov. 29, 2018, as amended at 85 FR 65521, Oct. 15, 2020]

§2.91 Director, Office of Human Resources Management.

(a) *Delegations.* Pursuant to §2.24(a)(4), with due deference for delegations to other Departmental Administration officials, and subject to the reservations in §2.24(b), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Human Resources Management:

(1) Formulate and issue Department policy, standards, rules and regulations relating to human resources management.

(2) Provide human resources management procedural guidance and operational instructions.

(3) Set standards for human resources data systems.

(4) Inspect and evaluate human resources management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive Orders, Office of Personnel Management (OPM) rules and regulations, and other appropriate rules and regulations.

(5) Exercise final authority in all human resources matters, including individual cases, that involve the jurisdiction of more than one General Officer, or agency head, or otherwise as deemed appropriate.

(6) Receive, review, and recommend action on all requests for the Secretary's or Assistant Secretary for Administration's approval in human resources matters.

(7) Authorize and make final decisions on adverse actions except in those cases where the Assistant Secretary for Administration or the Director, Office of Human Resources Management, has participated.

(8) Represent the Department in human resources matters in all contacts outside the Department.

(9) Exercise specific authorities in the following operational matters:

(i) Waive repayment of training expenses where an employee fails to fulfill service agreement.

(ii) Establish or change standards and plans for awards to private citizens.

(iii) Execute, change, extend, or renew:

(A) Labor-Management Agreements.

(B) Certifications of supervisory/managerial and non-labor union employee and professional organizations and associations.

(iv) Represent the Department in all contacts with the national offices of labor organizations in fulfilling the Department's national consultation obligations under 5 U.S.C. 7113.

(v) Change a position (with no material change in duties) from one pay system to another.

(vi) Grant restoration rights, and release employees with administrative reemployment rights.

(vii) Authorize any mass dismissals of employees in the Washington, DC metropolitan area.

(viii) Approve ''normal line of promotion'' cases in the excepted service where not in accordance with time-in grade criteria.

(ix) Make the final decision on all classification appeals filed with the Department of Agriculture.

(x) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions.

(xi) Authorize all employment actions (except LWOP) for the following positions:

(A) Schedule C.

(B) Non-career Senior Executive Service or equivalent.

(C) Administrative Law Judge.

(xii) Authorize and make final decisions on adverse actions for positions in GS–1–15 or equivalent.

(xiii) Authorize and make final decisions on adverse actions for positions in the career Senior Executive Service or equivalent.

(xiv) Approve the details of Department employees to the White House.

(xv) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service.

(xvi) Authorize long-term training in programs which require Departmentwide competition.

(xvii) Initiate and take adverse action in cases involving a violation of the merit system.

(xviii) Any other human resources operational matter.

(10) As used in this section, the term human resources includes:

(i) Position management.

(ii) Position classification.

(iii) Employment.

(iv) Pay administration.

(v) Automated human resources data and systems.

(vi) Hours of duty.

(vii) Performance management.

(viii) Promotions.

(ix) Employee development.

(x) Incentive programs.

(xi) Leave.

(xii) Retirement.

(xiii) Human resources program management accountability and evaluation.

(xiv) Social security.

(xv) Life insurance.

(xvi) Health benefits.

(xvii) Unemployment compensation.

(xviii) Labor management relations.

(xix) Intramanagement consultation.

(xx) [Reserved]

(xxi) Discipline.

(xxii) Appeals.

(xxiii) Drug Testing Program.

(xxiv) Worklife Program.

(xxv) Transit Subsidy Program.

(11) Maintain, review, and update Departmental delegations of authority.

(12) Recommend authorization of organizational changes.

(13) Formulate and promulgate Departmental policies regarding reorganizations.

(14) [Reserved]

(15) Provide for diversity and inclusion, as follows:

(i) Establish, direct, and provide policy and oversight for a Departmentwide Special Emphasis Program (SEP) including: Women, African Americans, Hispanics, Asian/Pacific Islanders, Native Americans, Disabled, and Gay/Lesbian/Bisexual/Transgender.

(ii) Provide oversight and support for Departmental SEP recognition programs.

(iii) Direct and oversee the Department-wide SEPM Council.

(iv) Administer Federal Equal Opportunity Recruitment Program.

(16) Oversee and manage the Department's administrative grievance program.

(17) Make final decisions in those cases where an agency head has appealed the recommended decision of a grievance examiner.

(18) Administer the administrative appeals process related to the inclusion of positions in the testing designated position listing in the Department's Drug-Free Workplace Program and designate the final appeal officer for that Program.

(19) Formulate and issue Department policy, standards, rules, and regulations relating to the Senior Scientific Research Service (7 U.S.C. 7657).

(20) Provide human resources operational services for the following:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) The Office of the Assistant Secretary for Civil Rights.

(v) Any other offices or agencies of the Department as may be agreed.

(21) Related to occupational safety and health:

(i) Establish Departmentwide safety and health policy and provide leadership in the development, coordination,

and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive Orders and other policy and procedural issuances and related to occupational safety and health and workers' compensation programs within the Department.

(ii) Represent the Department in all rulemaking, advisory, or legislative capacities on any groups, committees, or Governmentwide activities that affect the USDA Occupational Safety and Health Management Program.

(iii) Determine and provide Departmentwide technical services and regional staff support for the safety and health programs.

(iv) Administer the computerized management information systems for the collection, processing, and dissemination of data related to the Department's occupational safety and health programs.

(v) Administer the Department's Occupational Health and Preventive Medicine Program, as well as design and operate employee assistance and workers' compensation activities.

(vi) Provide education and training on a Departmentwide basis for safety and health-related issues and develop resource and operational manuals.

(22) Redelegate, as appropriate, any authority delegated under paragraphs (a)(1) through (21) of this section to general officers of the Department and heads of Departmental agencies, provided that the Director, Office of Human Resources Management retains the authority to make final decisions in any human resources matter so redelegated.

(b) *Reservations.* The following authorities are reserved to the Assistant Secretary for Administration:

(1) Authorize organizational changes occurring in a Department agency or staff office which affect the overall structure of that service or office; *i.e.*, require a change to that service or office's overall organization chart.

(2) Approve coverage and waiver of individual law enforcement and firefighter positions under the special retirement provisions of the Civil Service Retirement System and the Federal Employees Retirement System.

[60 FR 56393, Nov. 8, 1995, as amended at 77 FR 14954, Mar. 14, 2012; 78 FR 40939, July 9, 2013; 79 FR 44117, July 30, 2014; 83 FR 61316, Nov. 29, 2018]

§ 2.93 Director, Office of Contracting and Procurement.

(a) *Delegations.* Pursuant to § 2.24(a)(6) of this chapter, and with due deference for delegations to other Departmental Administration officials, the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Contracting and Procurement:

(1) Exercise full Departmentwide contracting and procurement authority.

(2) Promulgate policies, standards, techniques, and procedures, and represent the Department, in the following:

(i) Acquisition, including, but not limited to, the procurement of supplies, services, equipment, and construction.

(ii) Socioeconomic programs relating to contracting.

(iii) Selection, standardization, and simplification of program delivery processes utilizing contracts.

(iv) Acquisition and leasing of real and personal property.

(v) Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*).

(vi) Implementation of the policies and procedures set forth in OMB Circular No. A–76, Performance of Commercial Activities.

(3) Exercise the following special authorities:

(i) The Director, Office of Contracting and Procurement, is designated as the Departmental Debarring Officer and authorized to perform the functions of 48 CFR part 9, subpart 9.4 related to procurement activities, except for commodity acquisitions on behalf of the Commodity Credit Corporation (7 CFR part 1407), with authority to redelegate suspension and debarment authority for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c).

(ii) Promulgate regulations for the management of contracting and procurement for information technology and telecommunication equipment, software, services, maintenance and related supplies.

(iii) Represent the Department in working with the Government Accountability Office (GAO), the General Services Administration, OMB, and other organizations or agencies on matters related to assigned responsibilities.

(iv) Conduct liaison with the Office of Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18.

(4) Exercise authority under the Department's Chief Acquisition Officer (the Assistant Secretary for Administration) to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in OMB Circular No. A–109, Major Systems Acquisitions, with the exception that major system acquisitions for information technology shall be under the cognizance of the Chief Information Officer. This delegation includes the authority to:

(i) Ensure that OMB Circular No. A–109 is effectively implemented in the Department and that the management objectives of the Circular are realized.

(ii) Review the program management of each major system acquisition, excluding information technology.

(iii) Designate the program manager for each major system acquisition, excluding information technology.

(iv) Designate any Departmental acquisition, excluding information technology, as a major system acquisition under OMB Circular No. A–109.

(5) Pursuant to Executive Order 12931, ''Federal Procurement Reform,'' and 41 U.S.C. 1702(c), serve as the Senior Procurement Executive for the Department with responsibility for the following:

(i) Prescribing and publishing Departmental acquisition policies, advisories, regulations, and procedures.

(ii) Taking any necessary actions consistent with policies, regulations, and procedures, with respect to purchases, contracts, leases, agreements, and other transactions.

(iii) Appointing contracting officers.

(iv) Establishing clear lines and limitations of contracting authority through written delegations of authority.

(v) Approving any Departmental and component agency procurement systems and processes.

(vi) Managing and enhancing career development of the Department's acquisition workforce.

(vii) Participating in the development of Governmentwide procurement policies, regulations and standards, and determining specific areas where Governmentwide performance standards should be established and applied.

(viii) Developing unique Departmental standards as required.

(ix) Overseeing the development of procurement goals, guidelines, and innovation.

(x) Measuring and evaluating procurement office performance against stated goals.

(xi) Advising the Assistant Secretary for Administration whether procurement goals are being achieved.

(xii) Prescribing standards for agency Senior Contracting Officials.

(xiii) Redelegating, suspending, or revoking, as appropriate, the authority in paragraph (a)(5)(i) of this section to agency Senior Contracting Officials or other qualified agency officials with no power of further redelegation.

(xiv) Redelegating, suspending, or revoking, as appropriate, the authorities in paragraphs (a)(5)(ii), (iii), (iv), (vi), and (vii) of this section to agency Senior Contracting Officials or other qualified agency officials with the power of further redelegation.

(6) Represent the Department in establishing standards for acquisition transactions within the electronic data interchange environment.

(7) Designate the Departmental Task Order Ombudsman pursuant to 41 U.S.C. 253j.

(8) Serve as Departmental Remedy Coordination Official pursuant to 41 U.S.C. 255 to determine whether payment to any contractor should be reduced or suspended based on substantial evidence that the request of the

contractor for advance, partial, or progress payment is based on fraud.

(9) Review and approve exemptions for USDA contracts, subcontracts, grants, agreements, and loans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, ''Providing for Administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans,'' 3 CFR, 1971–1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the EPA (2 CFR 1532.1140).

(10) Issue regulations and directives to implement or supplement the Federal Acquisition Regulations (48 CFR chapter 1 and 4).

(12) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401, *et seq.*), designate the Department's Advocate for Competition with the responsibility for section 20 of the Act (41 U.S.C. 418), including:

(i) Reviewing the procurement activities of the Department.

(ii) Developing new initiatives to increase full and open competition.

(iii) Developing goals and plans and recommending actions to increase competition.

(iv) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services.

(v) Promoting the acquisition of commercial items.

(vi) Designating an Advocate for Competition for each procuring activity within the Department.

(13) In coordination with the Chief Financial Officer, implement the debarment authorities in section 14211 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 2209j), in connection with procurement activities.

(14) Provide services, including procurement of supplies, services, and equipment, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department, except the Inspector General.

(iii) Any other offices or agencies of the Department as may be agreed, including as a Working Capital Fund activity.

(b) [Reserved]

[83 FR 61316, Nov. 29, 2018]

§ 2.94 Chief Security Director, Office of Safety, Security, and Protection.

(a) Delegations from the Assistant Secretary for Administration. Pursuant to § 2.24(a)(11), and with due deference for delegations to other Departmental Administration officials, the following delegations of authority are made by the Assistant Secretary for Administration to the Chief Security Director:

(1) Promulgate Departmental policies, standards, techniques, and procedures; and represent the Department in maintaining the security of physical facilities and providing security guidance to the Food and Agricultural Sector nationwide. This includes the following activities:

(i) Lead and coordinate the development and maintenance of a mission critical facility inventory with agency involvement to ensure proper security countermeasures are implemented in the Department's most critical infrastructure.

(ii) Provide guidance to USDA agencies in matters of physical security through use of physical security assessments and development of mitigation strategies.

(iii) Conduct physical security investigations and compliance reviews Department-wide.

(iv) Review and provide coordinated technical physical security assessments for all new construction of laboratories, data centers, germplasm repositories, and other mission critical infrastructure during the design phase, and all leased facilities prior to contract award.

(v) Oversee and manage physical security aspects of the Common Identification Card (LincPass) Program to ensure National Institute of Standards and Technology (NIST) and General

Services Administration (GSA) compliancy within the National Capital Region and the physical access to USDA facilities.

(vi) Provide enterprise connectivity to agency physical access control systems that provide cost leveraging and provisioning/de-provisioning nationwide.

(2) Promulgate Departmental regulations, standards, techniques, and procedures and represent the Department in managing and maintaining a comprehensive physical and technical security program including access control, management of special police officer and guard services, executive driving, parking, ID badging in accordance with HSPD–12, occupant emergency and warden services at the USDA Headquarters Complex, George Washington Carver Center and, in coordination with GSA, USDA leased facilities in the Washington, DC metropolitan area, as well as at emergency relocation sites and certain critical facilities specified by the Assistant Secretary for Administration.

(3) Carry out protection operations for the Secretary, Deputy Secretary, and other individuals as specified in Section 12520 of the Agriculture Improvement Act of 2018, including by authorizing law enforcement officers or special agents to carry firearms; conduct criminal investigations into potential threats to the security of individuals protected under Section 12520; make arrests without a warrant for any offense against the United States committed in the presence of the law enforcement officer or special agent; perform protective intelligence work, including identifying and mitigating potential threats and conducting advance work to review security matters relating to sites and events; and coordinate with local law enforcement authorities (7 U.S.C. 2279k).

(b) [Reserved]

[85 FR 65521, Oct. 15, 2020, as amended at 87 FR 44270, July 26, 2022]

§ 2.95 Executive Director, Office of Homeland Security.

(a) Delegations from the Secretary. Pursuant to 7 U.S.C. 6922, Executive Order (E.O.) 10450, ''Security Requirements for Government Employment,'' 18 FR 2489, 3 CFR, 1953 Comp., p. 72, as amended; E.O. 12968, ''Access to Classified Information,'' 60 FR 40245, 3 CFR, 1995 Comp., p. 391; E.O. 13526, ''Classified National Security Information,'' 75 FR 707, 3 CFR, 2010 Comp., p. 298; E.O. 13587, ''Structural Reforms to Improve the Security of Classified Networks and Responsible Sharing and Safeguarding of Classified Information,'' 76 FR 63811, 3 CFR, 2012 Comp., p. 276, and 5 CFR part 732, and with due deference for delegations to other Departmental Administration officials, the following delegations of authority are made by the Secretary to the Executive Director, Office of Homeland Security, pursuant to the Executive Director's responsibilities as the Departmental National Security Programs Officer and Senior Official for Insider Threat, as designated by the Secretary:

(1) Manage the personnel security functions of the Department for making eligibility determinations for individuals who require initial or continued eligibility (SEAD 6, Continuous Evaluation, or its successor) for access to classified information or eligibility to hold a sensitive position in accordance with Security Executive Agent Directive (SEAD) 4, National Security Adjudicative Guidelines, or its successor; sponsoring access to Sensitive Compartmented Information (SCI); and suspending, denying, or revoking access to national security information (E.O. 12968 ''Access to Classified Information'', as amended), notwithstanding the Secretary's authority to remove an employee for national security reasons as outlined in 5 U.S.C. 7532.

(2) Manage the personnel security functions of the Department's suitability program for individuals holding Public Trust positions (positions designated as Moderate or High Risk) established pursuant to 5 CFR part 731 and E.O. 13488, ''Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust'' (74 FR 4111, 3 CFR, 2010 Comp., p. 189), as amended, to make initial or continued suitability determinations.

(3) Manage, coordinate, develop, and promulgate policies and training regarding personnel security, and serve as USDA's personnel security liaison to the Office of Personnel Management (OPM), who serves as the Suitability Executive Agent (SuitEA) and the Office of the Director of National Intelligence (ODNI), who serves as the Security Executive Agent (SecEA).

(4) Review and develop recommendations on classifying, declassifying, and safeguarding national security information for which the Secretary is responsible as Original Classification Authority.

(5) Establish, direct, and maintain an Insider Threat program to deter, detect, and mitigate insider threats in accordance with the National Insider Threat Policy and Minimum Standards for Executive Branch Insider Threat Programs, November 21, 2012, and subsequent guidance from the National Insider Threat Task Force (NITTF).

(b) Delegations from the Assistant Secretary for Administration. Pursuant to § 2.24(a)(8), and with due deference for delegations to other Departmental Administration officials, the following delegations of authority are made by the Assistant Secretary for Administration to the Executive Director, Office of Homeland Security:

(1) Serve as the principal advisor to the Secretary on national security, including emergency management, agriculture and food defense, and foreign investments in U.S. agriculture.

(2) Coordinate activities of the Department, including policies, processes, budget needs, and oversight relating to national security, including emergency management, biodefense, agriculture and food defense, and foreign investments in U.S. agriculture.

(3) Act as the primary liaison on behalf of the Department with other Federal departments and agencies in activities relating to national security, including emergency management, integrated laboratory networks, agriculture and food defense, foreign investments in U.S. agriculture, national intelligence collection priorities, and interagency coordination and data sharing.

(4) Coordinate in the Department the gathering of information relevant to early warning and awareness of threats and risks to the food and agriculture critical infrastructure sector; and share that information with, and provide assistance with interpretation and risk characterization of that information to, the intelligence community (as defined in 5 U.S.C. 3003), law enforcement agencies, the Secretary of Defense, the Secretary of Homeland Security, the Secretary of Health and Human Services, and State fusion centers (as defined in section 210A(j) of the Homeland Security Act of 2002 (6 U.S.C. 124h(j)).

(5) Establish and maintain an effective defensive Counterintelligence Program to counter Foreign Intelligence Entity (FIE) threats to Departmental sensitive information and assets that includes identification and risk assessment to sensitive assets, development and implementation of mitigation strategies, integration of counter-FIE efforts across the Department, sharing of threat information and warnings, and promotion of counterintelligence training awareness.

(6) Liaise with the Intelligence Community to assist in the development of periodic assessments and intelligence estimates, or other intelligence products, that support the defense of the food and agriculture critical infrastructure sector and risks associated with foreign investments in U.S. agriculture.

(7) Coordinate the conduct, evaluation, and improvement of exercises to identify and eliminate gaps in preparedness and response.

(8) Produce a Department-wide centralized strategic coordination plan to provide a high-level perspective of the operations of the Department relating to homeland and national security, including emergency management and agriculture and food defense.

(9) Establish and carry out an interagency Agriculture and Food Threat Awareness Partnership Program, including by entering into cooperative agreements or contracts with Federal, State, or local authorities (7 U.S.C. 6922).

(10) Administer the Department's Emergency Preparedness Program. This includes:

(i) Coordinate the delegations and assignments made to the Department under the Defense Production Act of 1950, 50 U.S.C. App. 2061, *et seq.*; the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*; and by Executive Orders 12148, ''Federal Emergency Management'' (3 CFR, 1979 Comp., p. 412), 12656, ''Assignment of Emergency Preparedness Responsibilities'' (3 CFR, 1988 Comp., p. 585), and 13603, ''National Defense Resources Preparedness'' (3 CFR, 2012 Comp., p. 225), or any successor to these Executive Orders, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any all hazards incident.

(ii) Manage the Department Emergency Operations Center at Headquarters and the Secretary's alternative facilities; provide senior staff with international, national, and regional situational awareness reports; and provide and maintain current information systems technology and National Security Systems to support USDA executive crisis management capability.

(iii) Provide facilities and equipment to facilitate inter-agency coordination during emergencies.

(iv) Activate the USDA incident management system in accordance with the National Response Framework and the National Incident Management System in the event of a major incident; and provide oversight and coordination of the Department's Emergency Support Functions as outlined in the National Response Framework.

(v) Develop and promulgate policies for the Department regarding emergency preparedness and national security, including matters relating to anti-terrorism and agriculture-related emergency preparedness planning, both national and international, and guidance to USDA State and County Emergency Boards.

(vi) [Reserved]

(vii) Provide representation and liaison for the Department in contacts with other Federal entities and organizations, including the National Security Council's functional directorates, Homeland Security Council, Office of Management and Budget, Department of Homeland Security, Federal Emergency Management Agency, Office of the Director of National Intelligence, Department of State, Federal Bureau of Investigation, and Department of Defense concerning matters of a national security, multilateral weapons conventions, natural disasters, other emergencies, and agriculture/food-related international civil emergency planning and related activities.

(viii) Act as the primary USDA representative for anti-terrorism activities and coordinates and oversees USDA's agroterrorism defense activities and programs.

(ix) [Reserved]

(x) Provide guidance and direction regarding radiological emergency preparedness programs and the implementation of the National Response Framework's Nuclear/Radiological Incident Annex to Departmental staff offices, mission areas, and agencies.

(xi) Provide program leadership and coordination for USDA's radiological emergency preparedness requirements with respect to Emergency Management and Assistance (44 CFR parts 350 through 352).

(xii) Represent USDA on the Federal Radiological Preparedness Coordinating Committee (FRPCC) and Regional Assistance Committees (RACs) and assist them in carrying out their functions.

(xiii) Support USDA in its management of the Department's emergency response program with respect to radiological emergency response activities.

(xiv) [Reserved]

(11) [Reserved]

(12) Serve as the primary point of contact for Government Accountability Office (GAO) and Office of the Inspector General (OIG) audits of USDA homeland and national security activities.

(13) Coordinate interaction between Department agencies and private sector businesses and industries in emergency planning and public education under Department authorities delegated or assigned under the National Response Framework, National Infrastructure Protection Plan, Defense Production Act of 1950, 50 U.S.C. App.

2061, *et seq.*, and Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121, *et seq.*

(14) Oversee the Department's ability to collect and disseminate information and prepare for an agricultural disease emergency, agroterrorism act, or other threat to agricultural biosecurity, and coordinate such activities among agencies and offices within the Department (7 U.S.C. 8912).

(15) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in providing security guidance to the Food and Agricultural Sector nationwide. This includes the following duties:

(i) Provide guidance to USDA agencies and the Food and Agricultural Sector in matters of security through use of assessments and development of mitigation strategies.

(ii) Represent and act as liaison for the Department in contacts with other Federal security entities and organizations, including the Interagency Security Committee and the Department of Homeland Security.

(iii) Provide guidance and direction to ensure agriculture/food security are fully integrated in USDA's security preparations, which are reported to and coordinated with the White House.

(iv) Provide assistance to the USDA agencies in preparation for and during a disaster to identify critical assets and possible alternate storage locations.

(16) Provide oversight and coordination of the development and administration of the Department Continuity Program. This includes:

(i) Provide guidance and direction regarding continuity of operations to the Office of the Secretary, Departmental staff offices, mission areas, and agencies.

(ii) Represent and act as liaison for the Department in contacts with other Federal entities and organizations concerning matters of assigned continuity program responsibilities.

(iii) Oversee Department continuity of operations and emergency relocation facility planning, development, equipping, and preparedness to ensure that resources are in a constant state of readiness.

(17) Establish procedures to prevent unnecessary access to classified national security information (CNSI) including procedures that require that need for access to CNSI is established before initiating security clearance procedures; and ensure that the number of persons granted access CNSI is limited to the minimum consistent with operational and security requirements:

(i) Direct and administer USDA's CNSI program pursuant to E.O. 13526, ''Classified National Security Information'' (75 FR 707, 3 CFR, 2010 Comp., p. 298), or subsequent orders.

(ii) Establish and maintain Information Security policies and procedures for classifying, declassifying, safeguarding, and disposing of CNSI and materials.

(iii) Investigate or delegate authority to investigate any potential compromises of CNSI and take corrective action for violations or infractions under section 5.5(b), of E.O. 13526 or any subsequent order.

(iv) Develop and maintain oversight of all facilities throughout USDA where CNSI is or will be safeguarded, discussed, or processed including sole authority to liaison with the Central Intelligence Agency concerning guidance, approval, requirements, and oversight of USDA secure facilities.

(18) Control within USDA the acquisition, use, and disposal of material and equipment that can be a source of ionizing radiation.

(i) Promulgate policies and procedures for ensuring the safety of USDA employees, the public, and the environment resulting from USDA's use of ionizing radiation sources.

(ii) Maintain and ensure compliance with the Nuclear Regulatory Commission regulations (Title 10, Code of Federal Regulations) and license(s) issued to USDA for the acquisition, use, and disposal of radioactive materials.

[87 FR 44270, July 26, 2022, as amended at 88 FR 70580, Oct. 12, 2023]

§ 2.96 Director, Office of Operations.

(a) *Delegations.* Pursuant to § 2.24(a)(9), and with due deference for delegations to other Departmental Administration officials, the following delegations of authority are made by

the Assistant Secretary for Administration to the Director, Office of Operations:

(1) Provide services relating to facilities management and daily operational support for agencies and offices occupying USDA's headquarters complex, George Washington Carver Center, and, in coordination with the General Services Administration (GSA), USDA leased facilities in the Washington, DC metropolitan area, as well as at emergency relocation sites and certain critical facilities specified by the Assistant Secretary for Administration in the following areas:

(i) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real property, including control of space assignments, and architecture and engineering design oversight.

(ii) Sustainable Operations leadership and management in the areas of internal energy efficiency, conservation and recycling in support of Executive Orders 13423, ''Strengthening Federal Environmental, Energy, and Transportation Management,'' 3 CFR, 2007 Comp., p. 193, and 13514, ''Federal Leadership in Environmental, Energy, and Economic Performance'' (74 FR 52117, Oct. 8, 2009).

(iii) Occupational health, safety, and related functions; and environmental compliance pursuant to Executive Order 12088, ''Federal Compliance with Pollution Control Standards,'' 3 CFR, 1978 Comp., p. 243, to ensure actions are taken for the prevention, control, and abatement of environmental pollution.

(2) Provide centralized Departmental business services including:

(i) Printing, copy reproducing, offset composing, mail management and delivery, and automated mailing lists.

(ii) USDA Nationwide mail management policy.

(iii) Operation of a disability resource center for all USDA agencies in the Washington, DC metropolitan area and nationwide in the areas of accessible technologies and reasonable accommodations.

(iv) General supplies, shipping and receiving, warehouse and labor services.

(v) Operation of a USDA Consolidated Forms and Publications Distribution Center for storage and nationwide distribution of USDA program forms and publications.

(vi) Excess personal property operations with disposition responsibility for all USDA agencies in the Washington, DC metropolitan area.

(vii) Operation of a GSA authorized Federal excess property Sales Center for USDA property and other government agencies in the Washington, DC metropolitan area via Memorandum of Understanding (MOU).

(3) [Reserved]

(4) Provide management and oversight of the Secretary's People's Garden initiative and the USDA Visitor's Center for education and outreach to USDA and the public.

(5) Represent the Department in contacts with other organizations or agencies on matters related to assigned responsibilities.

(6) Provide services, including travel support, conference management, and general administrative support including coordination of office renovations and moves (within USDA Whitten Building), with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department, except the Inspector General.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

(iv) The Office of the Assistant Secretary for Civil Rights.

(v) Any other offices or agencies of the Department as may be agreed.

(7) Prepare responses to requests under the Freedom of Information Act with authority to take actions as required by law or regulation for the office and agencies reporting to the Assistant Secretary for Administration.

(8) Administer the records management program in support ofDepartmental Administration, and prepare and coordinate responses to management audits by the Inspector General and the Government Accountability Office, with authority to take actions as required by law or regulation for the offices and agencies reporting to the Assistant Secretary for Administration.

(b) [Reserved]

[75 FR 43381, July 23, 2010, as amended at 78 FR 40939, July 9, 2013; 80 FR 38339, Sept. 29, 2015; 85 FR 65524, Oct. 15, 2020]

§ 2.97 [Reserved]

Subpart Q—Delegations of Authority by the General Counsel

§ 2.200 Principal Deputy General Counsel.

Pursuant to § 2.31, the following delegation of authority is made by the General Counsel to the Principal Deputy General Counsel, to be exercised only during the absence or unavailability of the General Counsel: Perform all duties and exercise all powers that are now or which may hereafter be delegated to the General Counsel.

[78 FR 40940, July 9, 2013]

§ 2.201 Director, Office of Ethics.

Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638, the Director, Office of Ethics, shall be the USDA Designated Agency Ethics Official with the authority to coordinate and manage the Department's ethics program as provided in part 2638.

[78 FR 40940, July 9, 2013]

§ 2.202 Deputy Director, Office of Ethics.

Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638, the Deputy Director, Office of Ethics, shall be the USDA Alternate Agency Ethics Official and shall exercise the authority reserved to the USDA Designated Agency Ethics Official as provided in part 2638 in the absence or unavailability of the USDA Designated Agency Ethics Official.

[78 FR 40940, July 9, 2013]

Subpart R—Delegations of Authority by the Assistant Secretary for Civil Rights

§ 2.300 Deputy Assistant Secretary for Civil Rights.

Pursuant to § 2.25, the following delegation of authority is made by the Assistant Secretary for Civil Rights to the Deputy Assistant Secretary for Civil Rights, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all duties and exercise all powers, which are now or which may hereafter be delegated to the Assistant Secretary.

[77 FR 14954, Mar. 14, 2012]

Subpart S—Delegations of Authority by the Chief Information Officer

§ 2.400 Deputy Chief Information Officer.

Pursuant to § 2.89, the following delegation of authority is made by the Chief Information Officer to the Deputy Chief Information Officer, to be exercised only during the absence or unavailability of the Chief Information Officer: Perform all duties and exercise all powers which are now or which may hereafter be delegated to the Chief Information Officer.

[75 FR 43393, July 23, 2010]

Subpart T—Delegations of Authority by the Chief Financial Officer

SOURCE: 75 FR 43393, July 23, 2010, unless otherwise noted.

§ 2.500 Principal Deputy Chief Financial Officer.

Pursuant to § 2.28, the following delegation of authority is made by the Chief Financial Officer to the Principal Deputy Chief Financial Officer, to be exercised only during the absence or unavailability of the Chief Financial Officer: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Chief Financial Officer.

[79 FR 44117, July 30, 2014, as amended at 85 FR 65524, Oct. 15, 2020]

Subpart U—Delegations of Authority by the Under Secretary for Trade and Foreign Agricultural Affairs

SOURCE: 83 FR 22188, May 14, 2018, unless otherwise noted.

§ 2.600 Deputy Under Secretary for Trade and Foreign Agricultural Affairs.

Pursuant to §2.15(a), subject to reservations in §2.15(b), and subject to policy guidance and direction by the Under Secretary, the following delegation of authority is made to the Deputy Under Secretary for Trade and Foreign Agricultural Affairs, if appointed, to be exercised only during the absence or unavailability of the Under Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Under Secretary for Trade and Foreign Agricultural Affairs: Provided, that this authority shall be exercised by the respective Deputy Under Secretary in the order in which he or she has taken office as a Deputy Under Secretary.

[87 FR 44272, July 26, 2022]

§ 2.601 Administrator, Foreign Agricultural Service.

(a) *Delegations.* Pursuant to §2.15(a)(1) and (3), subject to reservations in §2.15(b), the following delegations of authority are made by the Under Secretary for Trade and Foreign Agricultural Affairs to the Administrator, Foreign Agricultural Service:

(1) Coordinate the carrying out by Department agencies of their functions involving foreign agriculture policies and programs and their operations and activities in foreign areas. Act as liaison on these matters and functions relating to foreign agriculture between the Department of Agriculture and the Department of State, the United States Trade Representative, the Trade Policy Committee, the Agency for International Development and other departments, agencies and committees of the U.S. Government, foreign governments, the Organization for Economic Cooperation and Development, the European Union, the Food and Agriculture Organization of the United Nations, the International Bank for Reconstruction and Development, the Inter–American Development Bank, the Organization of American States, and other public and private United States and international organizations, and the contracting parties to the World Trade Organization (WTO).

(2) Conduct functions of the Department relating to WTO, the Trade Expansion Act of 1962 (19 U.S.C. 1801 *et seq.*), the Trade Act of 1974 (19 U.S.C. 2101 *et seq.*), the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the Omnibus Trade and Competition Act of 1988 (19 U.S.C. 2901 *et seq.*), and other legislation affecting international agricultural trade including the programs designed to reduce foreign tariffs and other trade barriers.

(3) Conduct studies of worldwide production, trade, marketing, prices, consumption, and other factors affecting exports and imports of U.S. agricultural commodities; obtain information on methods used by other countries to move farm commodities in world trade on a competitive basis for use in the development of programs of this Department; provide information to domestic producers, the agricultural trade, the public and other interests; and promote normal commercial markets abroad. This delegation excludes basic and long-range analyses of world conditions and developments affecting supply, demand, and trade in farm products and general economic analyses of the international financial and monetary aspects of agricultural affairs as assigned to the Under Secretary for Research, Education, and Economics.

(4) Administer Departmental programs concerned with development of foreign markets for agricultural products of the United States except functions relating to export marketing operations under section 32, of the Act of August 23, 1935, as amended (7 U.S.C. 612c), delegated to the Under Secretary for Marketing and Regulatory Programs, and utilization research delegated to the Under Secretary for Research, Education, and Economics.

(5) Exercise the Department's functions with respect to the International Coffee Agreement or any such future agreement.

(6) Administer functions of the Department relating to import controls including, among others, functions under section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624), the Harmonized Tariff Schedule of the United States (19

U.S.C. 1202), and section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) but not including those functions reserved to the Secretary under § 2.16(b)(2) and those relating to section 8e of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 608e–1), as assigned to the Under Secretary for Marketing and Regulatory Programs.

(7) Conduct Department activities to carry out the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. Chapter 56).

(8) Exercise the Department's responsibilities in connection with international negotiations of the Grains Trade Convention and in the administration of such Convention.

(9) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*), and title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195 *et seq.*), concerning foreign agricultural intelligence and other foreign agricultural matters.

(10) Conduct economic analyses pertaining to the foreign sugar situation.

(11) Exercise the Department's functions with respect to the International Sugar Agreement or any such future agreements.

(12) Exercise the Department's responsibilities with respect to tariff-rate quotes for dairy products under chapter 4 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(13) Serve as a focal point for handling quality or weight discrepancy inquiries from foreign buyers of U.S. agricultural commodities to insure that they are investigated and receive a timely response and that reports thereof are made to appropriate parties and government officials in order that corrective action may be taken.

(14) Formulate policies and administer programs and activities authorized by the Agricultural Trade Act of 1978, as amended (7 U.S.C. 5601 *et seq.*).

(15) Formulate policies and administer barter programs under which agricultural commodities are exported.

(16) Perform functions of the Department in connection with the development and implementation of agreements to finance the sale and exportation of agricultural commodities on long-term credit or for foreign currencies under the Food for Peace Act (7 U.S.C. 1691, 1701 *et seq.*).

(17) Coordinate within the Department activities arising under the Food for Peace Act (except as delegated to the Under Secretary for Research, Education, and Economics in § 2.21(a)(8)), and represent the Department in its relationships in such matters with the Department of State, any interagency committee on the Food for Peace Act, and other departments, agencies, and committees of the Government.

(18)–(19) [Reserved]

(20) Carry out activities relating to the sale, reduction, or cancellation of debt, as authorized by title VI of the Agricultural Trade and Development Act of 1954, as amended (7 U.S.C. 1738 *et seq.*).

(21) Promote cooperation and coordination between 1862, 1890, 1994, and NLGCA Institutions, HSACUs, and cooperating forestry schools and international partner institutions in developing countries by exercising the Secretary's authority in 7 U.S.C. 3292, including coordinating with the Director of the National Institute of Food and Agriculture and Administrator of the Agricultural Research Service to place interns from covered institutions in, or in service to benefit, developing countries.

(22) Allocate the agricultural commodities acquired under price support programs that have been determined by the FSA Administrator to be available for export among the various export programs.

(23) Maintain a worldwide agricultural intelligence and reporting system, including provision for foreign agricultural representation abroad to protect and promote U.S. agricultural interests and to acquire information on demand, competition, marketing, and distribution of U.S. agricultural commodities abroad pursuant to title VI of the Agricultural Act of 1954, as amended (7 U.S.C. 1761–1768).

(24) Plan and carry out programs and activities under the foreign market promotion authority of: The Wheat Research and Promotion Act (7 U.S.C. 1292 note); the Cotton Research and

Promotion Act (7 U.S.C. 2101–2118); the Potato Research and Promotion Act (7 U.S.C. 2611–2627); the Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); the Beef Research and Information Act, as amended (7 U.S.C. 2901–2911); the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3401–3417); the Floral Research and Consumer Information Act of 1981 (7 U.S.C. 4301–4319); subtitle B of title I of the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4501–4514); the Honey Research, Promotion, and Consumer Information Act of 1984, as amended (7 U.S.C. 4601–4613); the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); the Watermelon Research and Promotion Act, as amended (7 U.S.C. 4901–4916); the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013); the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212); the Soybean Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6301–6311); the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); the Fresh Cut Flowers and Fresh Cut Greens Promotion and Consumer Information Act (7 U.S.C. 6801–6814); the Sheep Promotion, Research, and Information Act of 1994 (7 U.S.C. 7101–7111); the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425); the Canola and Rapeseed Research, Promotion, and Consumer Information Act (7 U.S.C. 7441–7452); the National Kiwifruit Research, Promotion, and Consumer Information Act (7 U.S.C. 7461–7473); and, the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7481–7491). This authority includes determining the programs and activities to be undertaken and assuring that they are coordinated with the overall departmental programs to develop foreign markets for U.S. agricultural products.

(25) Establish and administer regulations relating to foreign travel by employees of the Department. Regulations will include, but not be limited to, obtaining and controlling passports, obtaining visas, coordinating Department of State medical clearances and imposing requirements for itineraries and contacting the Foreign Agricultural Affairs Officers upon arrival in the Officers' country(ies) of responsibility.

(26) Administer the Foreign Service personnel system for the Department in accordance with 22 U.S.C. 3922, except as otherwise delegated in § 2.80(a)(1), but including authority to represent the Department of Agriculture in all interagency consultations and negotiations with the other foreign affairs agencies with respect to joint regulations and authority to approve joint regulations issued by the Department of State relating to the administration of the Foreign Service.

(27) Establish and maintain U.S. Agricultural Trade Offices to develop, maintain and expand international markets for U.S. agricultural commodities in accordance with title IV of Public Law No. 95–501 (7 U.S.C. 1765a–g).

(28) Administer the programs under section 416(b) of the Agricultural Act of 1949, as amended (7 U.S.C. 1431(b)), relating to the foreign donation of CCC stocks of agricultural commodities, except as otherwise delegated in § 2.42(a)(43).

(29)–(30) [Reserved]

(31) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o), except as otherwise delegated in § 2.42(a)(43).

(32) Serve as Department adviser on policies, organizational arrangements, budgets, and actions to accomplish international scientific and technical cooperation in food and agriculture.

(33) Administer and direct the Department's programs in international development, technical assistance, and training carried out under the Foreign Assistance Act, as amended, as requested under such act (22 U.S.C. 2151 *et seq.*).

(34) Administer and coordinate assigned Departmental programs in international research and scientific and technical cooperation with other governmental agencies, land grant universities, international organizations, international agricultural research

centers, and other organizations, institutions, or individuals (7 U.S.C. 1624, 3291).

(35) Direct and coordinate the Department's participation in scientific and technical matters and exchange agreements between the United States and other countries.

(36) Direct and coordinate the Department's work with international organizations and interagency committees concerned with food and agricultural development programs (7 U.S.C. 2201 and 2202).

(37) Coordinate policy formulation for USDA international science and technology programs concerning international agricultural research centers, international organizations, and international agricultural research and extension activities (7 U.S.C. 3291).

(38) Disseminate, upon request, information on subjects connected with agriculture which has been acquired by USDA agencies that may be useful to the U.S. private sector in expanding foreign markets and investment opportunities through the operation of a Department information center, pursuant to 7 U.S.C. 2201.

(39) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3318, 3319a).

(40) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(41) Administer the Cochran Fellowship Program (7 U.S.C. 3293).

(42) Determine quantity trigger levels and impose additional duties under the special safeguard measures in accordance with U.S. note 2 to subchapter IV of chapter 99 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202).

(43) Implement provisions of the Trade Act of 1974 regarding adjustment assistance for farmers. (19 U.S.C. 2401–2401g).

(44) Implement section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1).

(45) Support remote sensing activities of the Department and research with satellite imagery including:

(i) Providing liaison with U.S. space programs;

(ii) Providing administrative management of the USDA Remote Sensing Archive and the transfer of satellite imagery to all USDA agencies;

(iii) Coordinating all agency satellite imagery data needs; and

(iv) Arranging for acquisition, and preparation of imagery for use to the extent of existing capabilities.

(46) Administer the International Agricultural Education Fellowship Program (7 U.S.C. 3295).

(47) Implement section 3206 of the Food, Conservation, and Energy Act of 2008 (7 U.S.C. 1726c) regarding local and regional food aid procurement projects.

(48) Administer the Borlaug International Agricultural Science and Technology Fellowship Program (7 U.S.C. 3319j).

(49) Compile and make available information relating to the improvement of international food security, and provide technical assistance for the improvement of international food security to Federal, State, or local agencies; agencies or instrumentalities of the government of foreign country; domestic or international organizations; or intergovernmental organizations (7 U.S.C. 1736dd).

(50) Administer the following provisions of the Agricultural Act of 2014, Public Law 113–79:

(i) Section 12314 relating to the Pima Agriculture Cotton Trust Fund (7 U.S.C. 2101 note), in coordination with the Administrator, Farm Service Agency.

(ii) Section 12315 relating to the Agriculture Wool Apparel Manufacturers Trust Fund (7 U.S.C. 7101 note), in coordination with the Administrator, Farm Service Agency.

(51) In consultation with the Tribal Advisory Committee and the Director of the Office of Tribal Relations, and in coordination with the Secretaries of Commerce, State, Interior, and the heads of any other relevant Federal agencies, implement section 3312 of the Agriculture Improvement Act of 2018 (7 U.S.C. 5608) to support greater inclusion of Tribal agricultural food products in Federal trade activities.

(b) [Reserved]

[83 FR 22188, May 14, 2018, as amended at 85 FR 65524, Oct. 15, 2020; 87 FR 44272, July 26, 2022]

§ 2.602 Manager, U.S. Codex Office.

(a) *Delegations.* Pursuant to § 2.15(a)(5), subject to reservations in § 2.15(b), the following delegations of authority are made by the Under Secretary for Trade and Foreign Agricultural Affairs.

(i) Inform the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (19 U.S.C. 2578; Pres. Proc. 6780).

(ii) Enter into agreements with organizations, institutions or individuals throughout the world to conduct activities related to the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission, including international outreach and education, in order to promote and support the development of a viable and sustainable global agricultural system; antihunger and improved international nutrition efforts; and increased quantity, quality, and availability of food (7 U.S.C. 3291).

(iii) Coordinate with institutions and other persons throughout the world performing agricultural and related research, extension, and teaching activities by exchanging research materials and results with such institutions or persons or by conducting with such institutions or persons joint or coordinated research, extension, or teaching activities that are related to the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission and that address problems of significance to food and agriculture in the United States (7 U.S.C. 3291).

(iv) Work with transitional and more advanced countries in food, agricultural, and related research, development, teaching, and extension activities related to the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (7 U.S.C. 3291).

(v) Enter into contracts, grants, cooperative agreements, and cost reimbursable agreements to carry out the Department's agricultural research, extension, or teaching activities related to the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (7 U.S.C. 3318, 3319a).

(vi) Determine amounts reimbursable for indirect costs under international agricultural programs and agreements (7 U.S.C. 3319).

(vii) Coordinate policy formulation for USDA international science and technology programs concerning the sanitary and phytosanitary standard-setting activities of the Codex Alimentar ius Commission (7 U.S.C. 3291).

(b) [Reserved]

[83 FR 22188, May 14, 2018, as amended at 87 FR 44272, July 26, 2022]

Subpart V—Delegations of Authority by the Director, Office of Partnerships and Public Engagement

SOURCE: 83 FR 61317, Nov. 29, 2018 unless otherwise noted.

§§ 2.700–2.701 [Reserved]

PART 3—DEBT MANAGEMENT

Subpart A—General

Sec.

3.1 Purpose and scope.
3.2 Authority.
3.3 Definitions.
3.4 Delegations of authority.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

3.10 Aggressive agency collection activity.
3.11 Demand for payment.
3.12 Reporting debts to Credit Reporting Agencies.
3.14 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.
3.15 Liquidation of collateral.
3.16 Collection in installments.
3.17 Interest, penalties, and administrative costs.
3.18 Use and disclosure of mailing addresses.
3.19 Standards for the compromise of claims and debt settlement.
3.20 Standards for suspending or terminating collection activities.
3.21 Referrals of debts to Justice.
3.22 CCC withholding of payment.

3.23 CCC assignment of payment.

Subpart C—Referral of Debts to Treasury

3.30 General requirements.
3.31 Mandatory referral for cross-servicing.
3.32 Discretionary referral for cross-servicing.
3.33 Required certification.
3.34 Fees.

Subpart D—Administrative Offset

3.40 Scope.
3.41 Procedures for notification of intent to collect by administrative offset.
3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.
3.43 Non-centralized administrative offset.
3.44 Centralized administrative offset.
3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.
3.46 Offset against tax refunds.
3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Subpart E—Administrative Wage Garnishment

3.50 Purpose.
3.51 Scope.
3.52 Definitions.
3.53 Procedures.

Subpart F—Administrative Reviews for Administrative Offset, Administrative Wage Garnishment, and Disclosure to Credit Reporting Agencies

3.60 Applicability.
3.61 Presiding employee.
3.62 Procedures.

Subpart G—Federal Salary Offset

3.70 Scope.
3.71 Definitions.
3.72 Coordinating offset with another Federal agency.
3.73 Determination of indebtedness.
3.74 Notice requirements before offset.
3.75 Request for a hearing.
3.76 Result if employee fails to meet deadlines.
3.77 Hearing.
3.78 Written decision following a hearing.
3.79 Review of USDA records related to the debt.
3.80 Written agreement to repay debts as alternative to salary offset.
3.81 Procedures for salary offset: when deductions may begin.
3.82 Procedures for salary offset: types of collection.
3.83 Procedures for salary offset: methods of collection.
3.84 Procedures for salary offset: imposition of interest, penalties, and administrative costs.
3.85 Non-waiver of rights.
3.86 Refunds.
3.87 Agency regulations.

Subpart H—Cooperation with the Internal Revenue Service

3.90 Reporting discharged debts to the Internal Revenue Service.

Subpart I—Adjusted Civil Monetary Penalties

3.91 Adjusted civil monetary penalties.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1506, 1981, 1981a, 1981d, and 2008h; 15 U.S.C. 714b; 31 U.S.C. 3701, 3711, 3716–18, and 3720B; and 31 CFR parts 285 and 901–904.

SOURCE: 85 FR 36672, June 17, 2020, unless otherwise noted.

Subpart A—General

§ 3.1 Purpose and scope.

(a)(1) The regulations in this part prescribe standards and procedures for use by USDA agencies in the collection, compromise, suspension, or termination of debts owed to the United States.

(2) The regulations in this part apply to all debts of the United States subject to collection by USDA agencies, except as otherwise specified in this part or by statute.

(3) The regulations in this part do not preclude the Secretary from collection, compromise, suspension, or termination of debts as otherwise authorized by law. In such cases the laws and implementing regulations that are specifically applicable to claims collection activities of a particular agency generally will take precedence over this part.

(b) USDA agencies may issue regulations to supplement this part in order to meet the specific requirements of individual programs.

(c) The regulations of this part will not apply to:

(1) Collection of debts owed government travel card contractors by USDA employees;

(2) Collection of debts owed by individual Food Stamp Program recipients

for whom debt collection procedures are provided under § 273.18 of this title.

(3) Collection of debts owed by foreign governments, sovereign institutions of foreign governments, or public international organizations.

(4) Actions pursuant to the FSA FLP Debt Settlement regulations in part 761, subpart F, of this title are authorized under the Consolidated Farm and Rural Development Act (ConAct), which are independent of the DCIA are excepted from this part.

(5) Actions pursuant to the following RD Debt Settlement regulations authorized under the ConAct and the Housing Act, which are independent of the DCIA are excepted from this part:

(i) 7 CFR part 1717, subpart Y;
(ii) 2 CFR part 175;
(iii) 7 CFR 1782.20;
(iv) 7 CFR 1951.213;
(v) 7 CFR part 1956;
(vi) 7 CFR part 3550, subpart F;
(vii) 7 CFR 3560.457; and
(viii) 7 CFR 3565.56.

[85 FR 36672, June 17, 2020, as amended at 88 FR 89276, Dec. 27, 2023]

§ 3.2 Authority.

(a) Generally, the regulations in this part are issued under the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (DCIA) (31 U.S.C. 3701, 3711–3720) and the Federal Claims Collection Standards (FCCS) issued pursuant to the DCIA by Treasury and Justice (31 CFR parts 901–904) that prescribe government-wide standards for administrative collection, compromise, suspension, or termination of agency collection action, disclosure of debt information to credit reporting agencies, referral of claims to private collection contractors for resolution, and referral to Justice for litigation to collect debts owed the government. The regulations under this part also are issued under Treasury regulations implementing DCIA (31 CFR part 285) and related statutes and regulations governing the offset of Federal salaries (5 U.S.C. 5512 and 5514; 5 CFR part 550, subpart K) and administrative offset of tax refunds (31 U.S.C. 3720A).

(b) With respect to agency specific provisions of this part, the following authorities are applicable:

(1) The Commodity Credit Corporation (CCC): section 4 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b).

(2) The Farm Service Agency (FSA): sections 331, 331A, 331D, and 373 of the Consolidated Farm and Rural Development Act (ConAct) (7 U.S.C. 1981, 1981a, 1981d, and 2008h).

(3) The Federal Crop Insurance Corporation (FCIC): section 506(j) of the Federal Crop Insurance Act (7 U.S.C. 1506(j)).

§ 3.3 Definitions.

For the purpose of this part, except as where otherwise specifically provided, the term or terms:

Account means a record of transactions involving the debt, claim, or loan for a particular person or entity, including the name, address, taxpayer identification number, other information necessary to establish the person's or entity's identity, the balance, status, history of the debt, and program under which the debt or claim arose.

Administrative charges means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, and costs of selling collateral or property to satisfy the debt.

Administrative offset means withholding funds payable by the United States (including funds payable by the United States on behalf of a State government) to, or held by the United States for, a person to satisfy a debt. This definition is consistent with 31 U.S.C. 3701(a)(1).

Agency means an agency, office, or corporation within USDA subject to the authority or general supervision of the Secretary.

Borrower and *debtor* have the same meaning and refer to a person who owes a delinquent, nontax debt to the United States.

Carrier means a person or other entity, including but not limited to railroads, motor carriers, ocean carriers or inter-modal marketing companies,

that provide transportation or other transportation-related services for compensation.

CCC means Commodity Credit Corporation.

Centralized administrative offset means referral of a debt to the Treasury Offset Program (TOP) to collect debts that creditor agencies have certified pursuant to 31 U.S.C. 3716(c), 3720A(a), and applicable regulations for offset of payments made to a debtor by Federal agencies other than USDA. Centralized offset also includes offset of payments made by States pursuant to 31 U.S.C. 3716(h) and 31 CFR 285.6.

CFO means Chief Financial Officer.

Civil monetary penalties are assessed for violations and failures to comply with various program requirements. The management and settlement of these debts are specified in this part, and the applicable laws and program specific regulations.

Claim and debt have the same meaning and refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

Compromise means the settlement or forgiveness of a debt under 31 U.S.C. 3711, in accordance with standards specified in FCCS and applicable federal law.

Contracting officer has the same meaning as in 41 U.S.C. 7101.

Credit reporting agencies (also known as credit bureaus) means major credit reporting agencies that have signed agreements with agencies to receive and integrate credit information (data) from voluntary subscribers (Federal agencies and private sector entities) into their respective databases for the purpose of generating credit reports for sale to purchasers of credit data.

Creditor agency means a Federal agency or USDA agency to which a debtor owes a debt, including a debt collection center when acting on behalf of a creditor agency in matters pertaining to collection of the debt.

Cross-servicing means the centralized collection of Federal debt and the various collection actions taken by Treasury on behalf of a Federal agency in accordance with the provisions of 31 U.S.C. 3711, 31 U.S.C. 3720D, 31 CFR part 285, and other Treasury regulations. Cross-servicing includes, but is not limited to, the use of debt collection centers and private collection contractors.

Day means calendar day unless otherwise specified.

DCIA means the Debt Collection Improvement Act of 1996.

Debt means an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency.

Debt collection center means the Treasury or other government agency or division, designated by the Secretary of the Treasury with authority to collect debt on behalf of creditor agencies in accordance with 31 U.S.C. 3711(g).

Debt record means the account, register, balance sheet, file, ledger, data file, or similar record of debts owed to any Federal agency with respect to which collection action is being pursued.

Debtor means a person who owes a delinquent, nontax debt to the United States.

Delinquent means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement), unless other satisfactory payment arrangements have been made, or as otherwise defined by program specific statutes or regulations.

Discharged debt means any debt, or part thereof, that an agency has determined is uncollectible and has closed out or, in the case of FSA FLP, means the amount of debt that was discharged through bankruptcy proceedings where no further collection actions may be taken on that debt.

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld including social security taxes and other withholding taxes, but

not including any amount withheld pursuant to a court order.

Federal agency means any department or entity within the Executive branch of the government that is not a USDA agency.

Financial statement means a statement of financial condition at a given date that accurately reflects the debtor's assets, liabilities, income, and expenses.

Fiscal Service means the United States Department of the Treasury's Bureau of the Fiscal Service.

Foreign debt means debt owed by a sovereign or non-sovereign entity, when the debt is subject to adjudication in a non-U.S. jurisdiction.

FSA FLP means the Farm Loan Programs of FSA.

Government or Federal government means the government of the United States, unless otherwise specified.

Justice means the United States Department of Justice.

Late payment interest rate means the amount of interest charged on delinquent debts and claims in cases where the annual rate of interest is not established by a promissory note. Unless otherwise provided by the law, regulation, contract, or agreement that established the debt, the late payment interest rate will be equal to the higher of the Prompt Payment Act interest rate or the standard late payment rate prescribed by 31 U.S.C. 3717, as of the date the debt became delinquent. Interest on delinquent debts will accrue on a daily basis.

NAD means the USDA National Appeals Division.

Non-centralized administrative offset means an agreement between a USDA creditor agency and a payment authorizing agency to offset the payments made by the payment authorizing agency to satisfy a USDA debt. The creditor agency and paying agency can be the same.

Offset means withholding funds payable by the United States to or held by the United States for a person to satisfy a debt owed by the payee.

OGC means the USDA Office of the General Counsel.

Payee means a person who is due a payment from a payment authorizing agency and includes a person who is entitled to all or part of a payment.

Payment authorizing agency means a Federal agency or USDA agency that is authorized to disburse payments to a recipient.

Penalty charge or penalty interest means the additional penalty amount charged on delinquent debts as specified in 31 U.S.C. 3717(e)(2) and §3.17(d).

Person means an individual, corporation, partnership, association, organization, State or local government, or any other type of public or private entity other than a Federal agency.

Private Collection Agency means any organization or corporation that specializes in debt collection is known as a collection agency or debt collector.

Recoupment means a special method for adjusting debts arising under the same transaction or occurrence, such as obligations arising under the same contract.

Reviewing officer means a person designated by a creditor agency as responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of an administrative collection action.

Salary offset means the deduction of money from the current pay account of a present or former Government employee as specified in 5 U.S.C. 5514 to satisfy a debt that person owes the Government.

Secretary means the Secretary of Agriculture, unless otherwise specified.

Settlement or debt settlement means, for the purposes of this part only, the final disposition or resolution of a debt or claim that results in cancellation of any remaining balance owed and reporting of the canceled amount to the IRS as specified in §3.90, and applicable IRS requirements.

Tax Identification Number or TIN means the identification number required on tax returns and other documents submitted to the Internal Revenue Service; that is, an individual's social security number (SSN) or employer identification number (EIN).

TOP means Treasury Offset Program, which is a centralized offset program that collects delinquent debts owed to Federal agencies and states.

Treasury means the United States Department of the Treasury.

USDA means the United States Department of Agriculture.

Withholding of payment means the action taken to temporarily prevent the payment of some or all amounts to a debtor under one or more contracts or programs.

§ 3.4 Delegations of authority.

The head of an agency is authorized to exercise any or all of the functions provided by this part with respect to programs for which the head of the agency has delegated responsibility and may delegate and authorize the redelegation of any of the functions vested in the head of the agency by this part, except as otherwise provided by this part.

Subpart B—Standards for the Administrative Collection and Compromise of Claims

§ 3.10 Aggressive agency collection activity.

An agency will aggressively collect all debts arising out of activities of, or referred or transferred for collection services to, that agency. Collection activities will be undertaken promptly with follow-up action taken as necessary.

§ 3.11 Demand for payment.

(a) Generally, debt collection is initiated with a written demand for payment to the debtor unless an applicable agreement or instrument (including a post-delinquency payment agreement) provides otherwise (such as providing USDA an immediate right to collect upon delinquency). Written demand as described in paragraph (b) of this section will be made promptly upon a debtor of the United States in terms that inform the debtor of the consequences of failing to cooperate with the agency to resolve the debt. The specific content, timing, and number of demand letters will depend upon the type and amount of the debt and the debtor's response, if any, to the agency's letters or telephone calls. Where statutes or agency regulations are specific as to the requirements for demand letters, an agency will follow its own procedures in formulating demand letters. Generally, one demand letter should suffice. In determining the timing of the demand letter(s), an agency will give due regard to the need to refer debts promptly to Justice for litigation, in accordance with 31 CFR 904.1. When necessary to protect the government's interest (for example, to prevent the running of a statute of limitations), written demand may be preceded by other appropriate actions under this part, including immediate referral for litigation.

(b) In demand letters, the USDA creditor agency will inform the debtor:

(1) The nature and amount of the debt; and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment must be made to avoid such charges, and that such assessments must be made unless excused in accordance with § 3.17;

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (b)(6) of this section;

(4) Of any willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to the agency (see § 3.16);

(5) The name, address, telephone number and email address (optional) of a contact person or office;

(6) The intent to enforce collection if the debtor fails to pay or otherwise resolve the debt, by taking one or more of the following actions:

(i) Offset the debtor's USDA payments and refer the debtor's debt to TOP for offset against other Federal payments, including income tax refunds, in accordance with subpart D of this part;

(ii) Refer the debt to a private collection agency.

(iii) Report the debt to a credit reporting agency in accordance with § 3.12;

(iv) Refer the debt to Treasury in accordance with subpart E of this part for possible collection by garnishing the debtor's wages through administrative wage garnishment;

(v) Refer the debt to Justice in accordance with §3.21 to initiate litigation to collect the debt;

(vi) Refer the debt to Treasury for collection in accordance with subpart C of this part;

(7) How the debtor may inspect and copy records related to the debt;

(8) How the debtor may request an administrative review of the determination that the debtor owes a debt and present evidence that the debt is not delinquent or legally enforceable (see subpart F of this part);

(9) How a debtor who is a Federal employee subject to Federal salary offset may request a hearing (see subpart G of this part);

(10) How a debtor may request a waiver of the debt, if applicable;

(11) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (see *http://www.irs.gov*);

(12) How the debtor may exercise other statutory or regulatory rights and remedies available to the debtor;

(13) That certain debtors may be ineligible for government loans, guarantees, and insurance (see §3.14);

(14) If applicable, the intention to suspend or revoke licenses, permits, or privileges (see §3.14); and

(15) That the debtor must advise the creditor agency of the filing of any bankruptcy proceedings of the debtor or of another person liable for the debt being collected.

(16) The debtor's right to appeal the determination in accordance with applicable appeal procedures;

(17) The debtor's right to present evidence that all or part of the debt is not past-due or not legally enforceable.

(c) A USDA creditor agency may omit from a demand letter one or more of the provisions contained in paragraphs (b)(6) through (17) of this section if the USDA creditor agency, in consultation with OGC, determines that any provision is not legally required given the collection remedies to be applied to a particular debt. In the case of foreign debt that is subject to insolvency or bankruptcy proceedings outside the United States, a USDA creditor agency may, in lieu of a demand letter, submit such documentation necessary to establish its claim as a creditor.

(d) Agencies will exercise care to ensure that demand letters are mailed or delivered (as applicable for the program) on the same day that they are dated. There is no prescribed format for demand letters. Agencies will utilize demand letters and procedures that will lead to the earliest practicable determination of whether the debt can be resolved administratively or must be referred for litigation.

(e) Agencies will respond promptly to communications from debtors, within 30 days of receipt whenever feasible, and will advise debtors who dispute debts to furnish available evidence to support their contentions.

(f) Prior to the initiation of the demand process or at any time during or after completion of the demand process, if an agency determines to pursue, or is required to pursue, administrative offset, the procedures applicable to offset must be followed (see subpart D of this part). The availability of funds or money for debt satisfaction by administrative offset, and the agency's determination to pursue collection by administrative offset, will release the agency from the necessity of further compliance with paragraphs (a), (b), and (c) of this section.

(g) Prior to referring a debt for litigation under 31 CFR part 904, agencies will advise each debtor determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification complies with Executive Order 12988 (58 FR 51735, October 4, 1993) and may be given as part of a demand letter under paragraph (b) of this section or in a separate document. Litigation counsel for the government will be advised that this notice has been given. In general, only one agency should service a debt at a time; that is, agencies should not simultaneously refer a debt to both Treasury and Justice for collection.

(h) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the agency will immediately request legal advice from OGC concerning the impact of the Bankruptcy Code on any

pending or contemplated collection activities. Unless the agency is advised that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, in most cases collection activity against the debtor must stop immediately. The agency should take the following steps:

(1) After requesting legal advice, a proof of claim must be filed in most cases with the bankruptcy court or the Trustee. Agencies will refer to the provisions of 11 U.S.C. 106 relating to the consequences on sovereign immunity of filing a proof of claim.

(2) If the agency is a secured creditor, it may request relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(3) Offset is stayed in most cases by the automatic stay. However, agencies may request legal advice from OGC to determine whether their payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. Agencies also may request legal advice from OGC to determine whether recoupment is available.

§ 3.12 Reporting of debts to Credit Reporting Agencies.

(a) In demand letters to debtors sent in accordance with § 3.11, agencies will inform debtors:

(1) The intent of the agency to report the delinquent debt to credit reporting agencies after 60 days;

(2) The specific information to be transmitted (that is, name, address, and taxpayer identification number, information about the debt);

(3) The actions which may be taken by the debtor to prevent the reporting (that is, repayment in full or a repayment agreement); and

(4) The rights of the debtor to request review of the existence of the debt in accordance with subpart F of this part.

(b) Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(e), the Privacy Act of 1974 (5 U.S.C. 552a), the Bankruptcy Code, and 31 CFR 901.4.

(c) When an agency has given a debtor any of the notices required by this part and an opportunity for administrative review under subpart F of this part, the agency need not duplicate such notice and review opportunities before reporting the delinquent debt to credit reporting agencies.

(d) Agencies will not disclose a delinquent debt to a credit reporting agency if a debtor requests review under subpart F of this part until a final determination is made by a reviewing official that upholds the agency intent to disclose.

§ 3.14 Suspension or revocation of eligibility for loans and loan guarantees, licenses, permits, or privileges.

(a) Agencies are not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency, except as otherwise authorized by law or upon waiver of application of this section by the USDA Chief Financial Officer (CFO) or Deputy CFO. This prohibition does not apply to disaster loans. Agencies may extend credit after the delinquency has been resolved. The Secretary of the Treasury may exempt classes of debts from this prohibition and has prescribed standards defining when a ''delinquency'' is ''resolved'' for purposes of this prohibition. See 31 CFR 285.13 (Barring Delinquent Debtors from Obtaining Federal Loans or Loan Insurance or Guarantees).

(b) Similarly, agencies also are not permitted to extend financial assistance (either directly or indirectly) in the form of grants, loans, or loan guarantees to judgment debtors who have a judgment lien placed against their property until the judgment is satisfied, unless the agency grants a waiver in accordance with agency regulations. See 31 U.S.C. 3720B.

(c) In non-bankruptcy cases, agencies pursuing the collection of statutory penalties, forfeitures, or other types of claims must consider the suspension or revocation of licenses, permits, or other privileges for any inexcusable or willful failure of a debtor to pay such a debt in accordance with the agency's regulations or governing procedures.

The debtor will be advised in the agency's written demand for payment of the agency's ability to suspend or revoke licenses, permits, or privileges.

(d) Any agency making, guaranteeing, insuring, acquiring, or participating in, loans must consider suspending or disqualifying any lender, contractor, or broker from doing further business with the agency or engaging in programs sponsored by the agency if such lender, contractor, or broker fails to pay its debts to the government within a reasonable time or if such lender, contractor, or broker has been suspended, debarred, or disqualified from participation in a program or activity by USDA or another Federal agency. Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overrun payments, but not including sums owed to the government under the Internal Revenue Code or as specified in the appropriations provisions regarding outstanding tax debt in sections 745 and 746 of Division E of the Consolidated Appropriations Act, 2016 (Pub. L. 114–113) and successor provisions of law) owed to any Federal agency or instrumentality is grounds for non-procurement suspension or debarment if the debt is uncontested and the debtor's legal administrative remedies for review of the debt are exhausted. See 2 CFR 180.800(c)(3).

(e) The failure of any surety to honor its obligations in accordance with 31 U.S.C. 9305 will be reported to Treasury. Treasury will forward to all interested agencies notification that a surety's certificate of authority to do business with the government has been revoked.

(f) The suspension or revocation of licenses, permits, or privileges also may extend to USDA programs or activities that are administered by the States on behalf of the government, to the extent that they affect the government's ability to collect money or funds owed by debtors. Therefore, States that manage USDA activities, pursuant to approval from the agencies, will ensure that appropriate steps are taken to safeguard against issuing licenses, permits, or privileges to debtors who fail to pay their debts to the government.

(g) In bankruptcy cases, before advising the debtor of an agency's intention to suspend or revoke licenses, permits, or privileges, agencies may request legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 362 and 525, which may restrict such action.

§ 3.15 Liquidation of collateral.

(a) In accordance with applicable laws and regulations, agencies may liquidate security or collateral through a sale or a nonjudicial foreclosure and apply the proceeds to the applicable debt(s), if the debtor fails to pay the debt(s) within a reasonable time after demand and if such action is in the interest of the United States. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety, insurer, or guarantor unless such action is expressly required by statute or contract.

(b) When an agency learns that a bankruptcy petition has been filed with respect to a debtor, the agency may request legal advice from OGC concerning the impact of the Bankruptcy Code, including, but not limited to, 11 U.S.C. 362, to determine the applicability of the automatic stay and the procedures for obtaining relief from such stay prior to proceeding under paragraph (a) of this section.

§ 3.16 Collection in installments.

(a) Whenever feasible, agencies will collect the total amount of a debt in one lump sum. If a debtor is financially unable to pay a debt in one lump sum, agencies may accept payment in regular installments. Agencies will obtain financial statements from debtors (or a similar statement from foreign debtors) who represent that they are unable to pay in one lump sum and independently verify such representations whenever possible (see 31 CFR 902.2(g) for methods of verification). Agencies that agree to accept payments in regular installments will obtain a legally enforceable written agreement from the debtor that specifies all terms of the arrangement and that contains a provision accelerating the debt in the event of default.

(b) The size and frequency of installment payments will bear a reasonable relation to the size of the debt and the debtor's ability to pay. If possible, the installment payments will be sufficient in size and frequency to liquidate the debt in 3 years or less.

(c) Security for deferred payments will be obtained in appropriate cases. Agencies may accept installment payments notwithstanding the refusal of the debtor to execute a written agreement or to give security, at the agency's option.

§ 3.17 Interest, penalties, and administrative costs.

(a) Except as provided in paragraphs (g) and (h) of this section, agencies will charge interest, penalties, and administrative costs on debts owed to the United States as specified in 31 U.S.C. 3717. If not included in the agency's demand notice, an agency will mail or deliver a written notice to the debtor, at the debtor's most recent address available to the agency, explaining the agency's requirements concerning these charges except where these requirements are included in a contractual or repayment agreement. These charges will continue to accrue until the debt is paid in full or otherwise resolved through compromise, termination, or waiver of the charges.

(b) Agencies will charge interest on debts owed the United States except as otherwise required by law and as provided in paragraph (i) of this section for debts owed to CCC and FSA. In charging such interest, agencies will apply the following provisions:

(1) Interest will accrue from the date of delinquency, or as otherwise provided by law.

(2) Unless otherwise established in a contract, repayment agreement, or by law, the rate of interest charged will be the rate established annually by the Secretary of the Treasury in accordance with 31 U.S.C. 3717. Pursuant to 31 U.S.C. 3717, an agency may charge a higher rate of interest if it reasonably determines that a higher rate is necessary to protect the rights of the United States. The agency must document the reason(s) for its determination that the higher rate is necessary.

(3) The rate of interest, as initially charged, will remain fixed for the duration of the indebtedness. When a debtor defaults on a repayment agreement and requests to enter into a new agreement, the agency may require payment of interest at a new rate that reflects the current value of funds to the Treasury at the time the new agreement is executed. Interest will not be compounded, that is, interest will not be charged on interest, penalties, or administrative costs required by this section. If, however, a debtor defaults on a previous repayment agreement, charges that accrued but were not collected under the defaulted agreement will be added to the principal under the new repayment agreement.

(c) Agencies will assess administrative costs incurred for processing and handling delinquent debts. The calculation of administrative costs will be based on actual costs incurred or upon estimated costs as determined by the assessing agency.

(d) Unless otherwise established in a contract, repayment agreement, or by law, agencies will charge a penalty, as specified in 31 U.S.C. 3717(e)(2), not to exceed six percent a year on the amount due on a debt that is delinquent for more than 90 days. This charge will accrue from the date of delinquency.

(e) Agencies may increase an ''administrative debt'' by the cost of living adjustment in lieu of charging interest and penalties under this section. ''Administrative debt'' includes, but is not limited to, a debt based on fines, penalties, and overpayments, but does not include a debt based on the extension of government credit, such as those arising from loans and loan guarantees. The cost of living adjustment is the percentage by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the debt was determined or last adjusted. Increases to administrative debts will be computed annually. Agencies may use this alternative only when there is a legitimate reason to do so, such as when calculating interest and penalties on a debt

would be extremely difficult because of the age of the debt.

(f) When a debt is paid in partial or installment payments, amounts received by the agency will be applied first to outstanding penalties, second to administrative charges (when applicable), third to interest, and last to principal, except as otherwise required by law.

(g) Agencies will waive the collection of interest and administrative charges imposed pursuant to this section (that is, this does not apply to interest or administrative penalties determined by an applicable agreement or instrument such as a loan contract) on the portion of the debt that is paid within 30 days after the date on which interest began to accrue. Agencies may extend this 30-day period on a case-by-case basis. In addition, agencies may waive interest, penalties, and administrative costs charged under this section, in whole or in part, without regard to the amount of the debt, either under the criteria specified in the Federal standards for the compromise of debts (31 CFR part 902), or if the agency determines that collection of these charges is against equity and good conscience or is not in the interest of the United States.

(h) Agencies are authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with common law. Agencies will consult OGC before imposing interest and related charges under common law for any debt.

(i)(1) For debts resulting from CCC loans made in accordance with chapter XIV of this title:

(i) Late payment interest will begin to accrue from the date on which a claim is established. In addition, an additional charge of 3 percent per year will be assessed on a portion of a debt that remains unpaid 60 days after the date on which a claim was established. Such rate will be assessed retroactively from the date of claim establishment and apply on a daily basis and will continue to be used until the delinquent debt has been paid.

(ii) Penalty charges, administrative costs and interest will continue to accrue if a debtor makes a request for appeal as provided by any agency or USDA-wide appeal regulation Collection by offset will continue during the appeal process unless prohibited by statute. If the debtor ultimately wins an appeal and the debt is found to be incorrect, CCC will credit the debtor's debt for the amount of penalty charges, administrative costs, and interest that has accrued from the date such charges were initiated on the portion determined in the appeal to not be due.

(2) Late payment interest provisions of this section do not apply to FSA and CCC debts owed by Federal agencies and State and local governments. Interest on debts owed by such entities will be assessed at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent.

(3) Late payment interest, penalty charges, and administrative costs may be waived by FSA or CCC in full or in part, if it is determined by the agency that such action is in the Government's interest.

(4) The provisions of this section do not apply to CCC foreign debt.

§ 3.18 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt under this part or 31 CFR parts 902 through 904 or other authority, agencies may send a request to Treasury to obtain a debtor's mailing address from the records of the Internal Revenue Service (IRS).

(b) Agencies are authorized to use mailing addresses obtained under paragraph (a) of this section to enforce collection of a delinquent debt and may disclose such mailing addresses to other agencies and to collection agencies for collection purposes.

§ 3.19 Standards for the compromise of claims and debt settlement.

(a) An agency will follow the standards specified in 31 CFR part 902 for the compromise of debts pursuant to 31 U.S.C. 3711 arising out of the activities of, or referred or transferred for collection services to, that agency, except where otherwise authorized or required by law.

(b) For FSA FLP debts, the first instance of debt cancellation is exempt

from the monetary limits established in 31 CFR 902.1.

(c) For CCC debts, CCC will, in exercising its authority pursuant to section 4 of the CCC Charter Act (15 U.S.C. 714b) to make final and conclusive settlement and adjustment of any CCC claims, follow the standards specified in 31 CFR 902.2, 902.3, 902.4, 902.6, and 902.7, for the compromise of debts owed to CCC, to the maximum extent practicable. In addition to the bases for the compromise of debts specified in 31 CFR 902.2, CCC may compromise a debt when the approving official with the authority to compromise the debt has determined that such action is in the interest of CCC.

§ 3.20 Standards for suspending or terminating collection activities.

(a) An agency will follow the standards specified in 31 CFR part 903 for the suspension or termination of collection activity pursuant to 31 U.S.C. 3711, except where otherwise authorized or required by law.

(b) CCC will, in exercising its authority pursuant to section 4 of the CCC Charter Act (15 U.S.C. 714b) to make final and conclusive settlement and adjustment of any CCC claims, follow the standards specified in 31 CFR 903.2, 903.3, 903.4, and 903.5(c) and (d), for the suspension or termination of collection activities with regard to debts owed to CCC, to the maximum extent practicable. In addition to the bases for the termination of collection activities specified in 31 CFR 903.3, CCC may terminate collection activities when the approving official with the authority to terminate collection activities with regard to the debt has determined that such action is in the interest of CCC.

§ 3.21 Referrals of debts to Justice.

An agency will promptly refer to Justice for litigation debts on which aggressive collection activity has been taken in accordance with this part, and that cannot be compromised by the agency or on which collection activity cannot be suspended or terminated in accordance with 31 CFR parts 902 and 903. Agencies will follow the procedures specified in 31 CFR part 904 in making such referrals. Agencies will consult with OGC on all debts which are to be collected in foreign jurisdictions to determine how and if a referral to Justice will take place.

§ 3.22 CCC withholding of payment.

(a) CCC may temporarily withhold issuance of payment of some or all amounts to a debtor under one or more contracts or programs. Withholding of a payment prior to the completion of an applicable offset procedure may be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil fraud laws and criminal prosecution or civil fraud action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available to CCC are insufficient to determine the amount to be offset or the proper payee;

(6) A judgement on a claim of CCC has been obtained; or

(7) Such action has been requested by Justice.

§ 3.23 CCC assignment of payment.

(a) No amounts payable to a debtor by CCC will be paid to an assignee of the debt until amounts owed by the debtor have been collected and applied to the debt.

(b) A payment that is assigned as specified in part 1404 of this title by execution of any CCC assignment form will be subject to offset for any debt owed to CCC, or any USDA agency, or any other Federal agency, any IRS notice of levy, or any judgment in favor of the United States, without regard to the date notice of assignment was accepted by CCC.

(c) Except as provided in 7 CFR 1404.6(b), any indebtedness owed by the assignor to CCC will be offset from any payment which is owed by CCC if such indebtedness was entered on the debt record of the applicable USDA office prior to the date of the filing Forms CCC–251 (Notice of Assignment) and CCC–252 (Instrument of Assignment).

Subpart C—Referral of Debts to Treasury

§ 3.30 General requirements.

(a) Agencies are required by law to transfer delinquent, nontax, legally enforceable debts to Treasury for collection through cross-servicing and through centralized administrative offset with the exception of foreign debt that is exempt from cross-servicing per the Debt Collection Improvement Act of 1996. Additionally, USDA will transfer debts to Treasury for collection through administrative wage garnishment. Agencies need not make duplicate referrals to Treasury for all these purposes; a debt may be referred simultaneously for purposes of collection by cross-servicing, centralized administrative offset, and administrative wage garnishment where applicable. However, in some instances a debt exempt from collection via cross-servicing may be subject to collection by centralized administrative offset so simultaneous referrals are not always the norm. This subpart specifies the rules applicable to the transfer of debts to Treasury for collection by cross-servicing. Rules for transfer to Treasury for centralized administrative offset are specified in subpart D of this part, and for administrative wage garnishment in subpart E of this part.

(b) When debts are referred or transferred to Treasury, or Treasury-designated debt collection centers under the authority of 31 U.S.C. 3711(g), Treasury will service, collect, or compromise the debts, or Treasury will suspend or terminate the collection action, in accordance with the statutory requirements and authorities applicable to the collection of such debts.

(c) In cases where a debtor has more than one FSA FLP loan that has been referred to cross-servicing and Treasury accepts an agreement to compromise or adjust one loan, or several loans, but not all of the debt, cancellation of any loan balances remaining on the compromised or adjusted debt will not be processed for the debtor until:

(1) All payments have been received as agreed; and

(2) All loans referred to the cross-servicing program for that debtor have been returned to FSA, with or without payment agreements.

§ 3.31 Mandatory referral for cross-servicing.

(a) Agencies will transfer to Treasury any legally enforceable nontax debt in excess of $25, or combination of debts less than $25 that exceeds $25 (in the case of a debtor whose taxpayer identification number (TIN) is unknown the applicable threshold is $100), that has or have been delinquent for a period of 180 days in accordance with 31 CFR 285.12 so that Treasury may take appropriate action on behalf of the creditor agency to collect or compromise, or to suspend or terminate collection, of the debt, including use of debt collection centers and private collection contractors to collect the debt or terminate collection action. Agencies that transfer delinquent debts to Fiscal Service for the purposes of debt collection and that rely on Fiscal Service to submit the transferred debts for administrative offset on the agency's behalf must transfer the debts to Fiscal Service no later than 120 days after the debts become delinquent in order to satisfy the 120–day notice requirement for purposes of administrative offset in accordance with 31 CFR 285.12(c)(1). For accounting and reporting purposes, the debt remains on the books and records of the agency which transferred the debt.

(b) The requirement of paragraph (a) of this section does not apply to any debt that:

(1) Is in litigation or foreclosure (see 31 CFR 285.12 (d)(2) for definition);

(2) Will be disposed of under an approved asset sale program (see 31 CFR 285.12(d)(3)(i) for definition);

(3) Has been referred to a private collection contractor for a period of time acceptable to Treasury;

(4) Is at a debt collection center for a period of time acceptable to Treasury;

(5) Will be collected under administrative offset procedures within 3 years after the debt first became delinquent;

(6) Is exempt from this requirement based on a determination by the Secretary of the Treasury that exemption for a certain class of debt is in the interest of the United States. Federal agencies may request that the Secretary of the Treasury exempt specific classes of debts. Any such request by an agency must be sent to the Fiscal Assistant Secretary of the Treasury by the USDA CFO.

(7) Is foreign debt; or

(8) Is FSA FLP debt in which case the delinquent loan servicing procedures and appeals process required by the ConAct will apply, including the deferral for cross-servicing until all security has been liquidated, and FSA concludes its review of any pending debt settlement application from the debtor.

(c) A debt is considered 180 days delinquent for purposes of this section if it is 180 days past due and is legally enforceable. A debt is past due if it has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. A debt is legally enforceable if there has been a final agency determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Where, for example, a debt is the subject of a pending administrative review process required by law or regulation and collection action during the review process is prohibited, the debt is not considered legally enforceable for purposes of mandatory transfer to Treasury and is not to be transferred even if the debt is more than 180 days past due. When a final agency determination is made after an administrative appeal or review process (including administrative review under subpart F of this part), the creditor agency must transfer such debt to Treasury, if more than 180 days delinquent, within 30 days after the date of the final decision.

§ 3.32 Discretionary referral for cross-servicing.

Agencies will consider referring legally enforceable nontax debts that are less than 180 days delinquent to Treasury or to Treasury-designated ''debt collection centers'' in accordance with 31 CFR 285.12 to accomplish efficient, cost effective debt collection if no USDA payments will be available to collect the debt through administrative offset under § 3.43.

§ 3.33 Required certification.

Agencies referring delinquent debts to Treasury for collection via cross-servicing must certify, in writing, that:

(a) The debts being transferred are valid and legally enforceable;

(b) There are no legal bars to collection; and

(c) The agency has complied with all prerequisites to a particular collection action under the laws, regulations or policies applicable to the agency, unless the agency and Treasury agree that Treasury will do so on behalf of the agency.

§ 3.34 Fees.

Federal agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

Subpart D—Administrative Offset

§ 3.40 Scope.

(a) This subpart specifies the procedures to be used by agencies in collecting debts by administrative offset.

(b) This subpart does not apply to:

(1) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(2) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(3) Debts arising under, or payments made under, the Internal Revenue Code (except for offset of tax refunds) or the tariff laws of the United States;

(4) Offsets against Federal salaries (such offsets are covered by subpart F of this part);

(5) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(6) Offsets or recoupments under common law, State law, or Federal laws specifically prohibiting offsets or recoupments of particular types of debts;

(7) Offsets in the course of judicial proceedings, including bankruptcy;

(8) Intracontractual offsets to satisfy contract debts taken by a contracting officer under the Contract Disputes Act, 41 U.S.C. 7101–7109; or

(9) Foreign Debt.

(c) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(d) In bankruptcy cases, agencies may request legal advice from OGC concerning the impact of the Bankruptcy Code, particularly 11 U.S.C. 106, 362, and 553 on pending or contemplated collections by offset.

§ 3.41 Procedures for notification of intent to collect by administrative offset.

(a) Prior to initiation of collection by administrative offset, a creditor agency must:

(1) Send the debtor a written Notice of Intent to Collect by Administrative Offset, by mail or hand-delivery, of the type and amount of the debt, the intention of the agency to use non-centralized administrative offset (which includes a USDA administrative offset) to collect the debt 30 days after the date of the Notice, the name of the Federal agency or USDA agency from which the creditor agency wishes to collect in the case of a non-centralized administrative offset, the intent to refer the debt to Treasury for collection through centralized administrative offset (including possible offset of tax refunds) 60 days after the date of the Notice if the debt is not satisfied by offset within USDA or by agreement with another Federal agency, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(2) Give the debtor the opportunity:

(i) To inspect and copy agency records related to the debt;

(ii) For a review within the agency of the determination of indebtedness in accordance with subpart F of this part; and

(iii) To make a written agreement to repay the debt.

(b) The procedures specified in paragraph (a) of this section are not required when:

(1) The offset is in the nature of a recoupment;

(2) The debt arises under a contract subject to the Contracts Disputes Act;

(3) In the case of a non-centralized administrative offset, the agency first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. When prior notice and an opportunity for review are omitted, the agency will give the debtor such notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed to the government; or

(4) The agency previously has given a debtor any of the notice and review opportunities required under this part, with respect to a particular debt (see, for example, §3.11). With respect to loans paid on an installment basis, notice and opportunity to review under this part may only be provided once for the life of the loan upon the occurrence of the first delinquent installment. Subsequently, if an agency elects this option, credit reporting agencies may be furnished periodically with updates as to the current or delinquent status of the loan account and the borrower may receive notice of referral to TOP for delinquent installments without further opportunity for review. Any interest accrued or any installments coming due after the offset is initiated also would not require a new notice and opportunity to review.

(c) The Notice of Intent to Collect by Administrative Offset will be included as part of a demand letter issued under §3.11 to advise the debtor of all debt

collection possibilities that the agency may employ.

§ 3.42 Debtor rights to inspect or copy records, submit repayment proposals, or request administrative review.

(a) A debtor who intends to inspect or copy agency or USDA records with respect to the debt must notify the creditor agency in writing within 30 days of the date of the Notice of Intent to Collect by Administrative Offset. In response, the agency must notify the debtor of the location, time, and any other conditions, consistent with part 1, subpart A, of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses. A decision by the agency under this paragraph will not be subject to review under subpart F of this part or by NAD under part 11 of this title.

(b) The debtor may, in response to the Notice of Intent to Collect by Administrative Offset, propose to the creditor agency a written agreement to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which must be received by the creditor agency within 30 days of the date of the Notice of Intent to Collect by Administrative Offset or 15 days after the date of a decision adverse to the debtor under subpart F of this part. In response, the creditor agency must notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the creditor agency must balance the government's interest in collecting the debt against fairness to the debtor. A decision by the agency under this paragraph will not be subject to review under subpart F of this part or by NAD under part 11 of this title. For proposed agreements to pay delinquent amounts owed on FSA FLP loans, the proposed payments in the agreement must cure the delinquency before the next loan installment is due, or within 90 days, whichever is sooner.

(c) A debtor must request an administrative review of the debt under subpart F of this part within 30 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by non-centralized administrative offset and within 60 days of the date of the Notice of Intent to Collect by Administrative Offset for purposes of a proposed collection by referral to Treasury for centralized offset against other Federal payments that would include tax refunds.

§ 3.43 Non-centralized administrative offset.

(a) In cooperation with the Federal agency certifying or authorizing payments to the debtor, a creditor agency may make a request directly to a payment authorizing agency to offset a payment due a debtor to collect a delinquent debt from, for example, a Federal employee's lump sum payment upon leaving government service in order to pay an unpaid advance. Unless prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable nontax delinquent debts may be collected through non-centralized administrative offset.

(b) A non-centralized administrative offset may start 31 days after the date of the Notice of Intent to Collect by Administrative Offset, any time after the final determination in an administrative review conducted under subpart F of this part upholds the creditor agency's decision to offset, or any time after the creditor agency notifies the debtor that its repayment proposal submitted under § 3.42(b) is not acceptable if the 30-day period for the debtor to request review of the Notice has expired, unless the creditor agency makes a determination under § 3.41(b)(3) that immediate action to effectuate the offset is necessary.

(c) A payment authorizing agency may conduct a non-centralized administrative offset only after certification by a creditor agency that:

(1) The debtor has been provided notice and opportunity for review as specified in § 3.41; and

(2) The payment authorizing agency has received written certification from the creditor agency that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the creditor agency has fully

complied with its regulations concerning administrative offset.

(d) Payment authorizing agencies will comply with offset requests by creditor agencies to collect debts owed to the United States, unless the offset would not be in the interest of the United States with respect to the program of the payment authorizing agency or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(e) When collecting multiple debts by non-centralized administrative offset, agencies will apply the recovered amounts to those debts in accordance with the interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(f) Debts arising from the shipment of commodities procured by CCC are subject to the following:

(1) Debts due CCC from a carrier for overcharges will be offset against amounts due to the carrier under freight bills involving shipments if:

(i) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(ii) The periods of limitation as specified in 49 U.S.C. 11705(f) or 49 U.S.C. 14705(f) have not expired;

(2) Debts due to CCC from a carrier for loss or damage will be offset against amounts due to the carrier under freight bills involving shipments if:

(i) Timely demand for payment was made on the carrier;

(ii) The carrier has declined payment of the debt without reasonable justification or has ignored the debt; and

(iii) The periods of limitation as specified in 49 U.S.C. 11706(e) or 49 U.S.C. 14706(e) have not expired; and

(3) Any overcharge, loss, or damage debt due to CCC on which the applicable period of limitation has expired may be offset against any amounts owed by CCC to the carrier which are subject to limitation.

§ 3.44 Centralized administrative offset.

(a)(1) Except as provided in paragraph (a)(2) of this section, after the notice and review opportunity requirements of § 3.41 are met, an agency will refer debts which are over 120 days delinquent to Fiscal Service for collection through centralized administrative TOP 61 days after the date of the Notice of Intent to Collect by Administrative Offset provided in accordance with § 3.41. If the debtor requests review under subpart F of this part, referral of the debt must occur within 30 days of the final decision upholding the agency decision to offset the debt if the debt is more than 120 days delinquent.

(2) For FSA FLP and Rural Development debt:

(i) The delinquent loan servicing procedures and timeframes required by the ConAct will be followed; and.

(ii) Offsets will not occur during any moratorium required by the ConAct.

(b) After the notice and review opportunity requirements of § 3.41 are met, and administrative review under subpart F of this part is not sought or is unsuccessful on the part of the debtor, an agency may refer a debt that is less than 120 days delinquent.

(c) Agencies will refer debts to Treasury for collection in accordance with Treasury procedures specified in 31 CFR 285.5.

(d) The agencies will ensure that:

(1) The names and TINs of debtors who owe debts referred to Treasury under this section will be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other government corporations, and disbursing officials of the United States designated by Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment authorizing agency must offset a payment to satisfy the debt.

(2) Any USDA official serving as a Federal disbursing official for purposes of effecting centralized administrative offset under this section, or Fiscal

Service on behalf of the disbursing official, must notify a debtor or payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice must include the information specified in paragraph (d)(4) of this section.

(3) As described in 31 CFR 285.5(g)(1) and (2), any USDA official serving as a Federal disbursing official for purposes of centralized administrative offset under this section, or Fiscal Service on behalf of the disbursing official, will furnish a warning notice to a payee or debtor prior to beginning offset of recurring payments. Such warning notice will include the information specified in paragraph (d)(4) of this section.

(4) The notice will include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency requesting the offset, and a contact point within the creditor agency who will respond to questions regarding the offset.

(5) The priorities for collecting multiple payments owed by a payee or debtor will be those specified in 31 CFR 285.5(f)(3).

§ 3.45 USDA payment authorizing agency offset of pro rata share of payments due entity in which debtor participates.

(a) A USDA payment authorizing agency, to satisfy either a non-centralized or centralized administrative offset under §§ 3.43 and 3.44, may offset:

(1) A debtor's pro rata share of USDA payments due any entity in which the debtor participates, either directly or indirectly, as determined by the creditor agency or the payment authorizing agency or:

(2) USDA payments due any entity that the debtor has established, or reorganized, transferred ownership of, or changed in some other manner the operation of, for the purpose of avoiding payment on the claim or debt, as determined by the creditor agency or the payment authorizing agency.

(b) Prior to exercising the authority of this section to offset any portion of a payment due an entity, the creditor agency must have provided notice to that entity in accordance with § 3.41 of its intent to offset payments to the entity in satisfaction of the debt of an individual debtor participating in that entity.

§ 3.46 Offset against tax refunds.

USDA will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402 in accordance with the provisions of 31 U.S.C. 3720A through referral for centralized administrative offset under § 3.44.

§ 3.47 Offset against amounts payable from Civil Service Retirement and Disability Fund.

Upon providing the Office of Personnel Management (OPM) written certification that a debtor has been afforded the procedures provided in § 3.41, creditor agencies may request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801 through 831.1808. Upon receipt of such a request, OPM will identify and ''flag'' a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund.

Subpart E—Administrative Wage Garnishment

§ 3.50 Purpose.

This subpart provides USDA procedures for use of administrative wage garnishment to garnish a debtor's disposable pay to satisfy delinquent nontax debt owed to USDA creditor agencies.

§ 3.51 Scope.

(a) This subpart applies to any agency that administers a program that gives rise to a delinquent nontax debt owed to the United States and to any agency that pursues recovery of such debt.

(b) This subpart will apply notwithstanding any provision of State law.

(c) Nothing in this subpart precludes the compromise of a debt or the suspension or termination of collection

action in accordance with the provisions of this part or other applicable law.

(d) The receipt of payments pursuant to this subpart does not preclude an agency from pursuing other debt collection remedies under this part. An agency may pursue such debt collection remedies separately or in conjunction with administrative wage garnishment.

(e) This subpart does not apply to the collection of delinquent nontax debt owed to the United States from the wages of Federal employees from their Federal employment. Federal pay is subject to the salary offset procedures of subpart G of this part.

(f) Nothing in this subpart requires agencies to duplicate notices or administrative proceedings required by contract or other laws or regulations, or other provisions of this part.

(g) This subpart does not apply to foreign debt.

§ 3.52 Definitions.

As used in this subpart the following definitions will apply:

Disposable pay means that part of the debtor's compensation (including, but not limited to, salary, bonuses, commissions, and vacation pay) from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld. For purposes of this section, ''amounts required by law to be withheld'' include amounts for deductions such as social security taxes and withholding taxes, but do not include any amount withheld pursuant to a court order.

Employer means a person or entity that employs the services of others and that pays their wages or salaries. The term employer includes, but is not limited to, State and local governments, but does not include an agency of the Federal government.

Garnishment means the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body. For purposes of this section, the terms ''wage garnishment order'' and ''garnishment order'' have the same meaning as ''withholding order.''

§ 3.53 Procedures.

(a) USDA has determined to pursue administrative wage garnishment of USDA debtors by referral of nontax legally enforceable debts to Treasury for issuance of garnishment orders by Treasury or its contractors.

(b) As specified in § 3.11, agencies must notify debtors of their intent to pursue garnishment of their disposable pay through referral of the debt to Treasury for issuance of an administrative wage garnishment order and provide debtors with the opportunity for review of the existence of the debt under subpart F of this part within 60 days of the date of the demand letter.

(c) Upon expiration of the 60-day period for review, or upon completion of a review under subpart F of this part that upholds the agency's determination of the debt, USDA will transfer the debt for collection through administrative wage garnishment as well as other means through cross-servicing or centralized administrative offset.

(d) If Treasury elects to pursue collection through administrative wage garnishment, Treasury, or its contractor, will notify the debtor of its intent to initiate garnishment proceedings and provide the debtor with the opportunity to inspect and copy agency records related to the debt, enter into a repayment agreement, or request a hearing as to the existence or amount of the debt or the terms of the proposed repayment schedule under the proposed garnishment order, in accordance with 31 CFR 285.11.

(e) If the debtor requests a hearing at any time, Treasury will forward the request to the USDA creditor agency to which the debt is owed, and the creditor agency will contact the Office of the CFO (OCFO) for selection of a hearing official. The issuance of proposed garnishment orders by Treasury will not be subject to appeal to NAD under part 11 of this title. Hearings will be conducted in accordance with 31 CFR 285.11(f).

(f) OCFO will provide a copy of the hearing official's final decision to

Treasury for implementation with respect to the subject garnishment order.

Subpart F—Administrative Reviews for Administrative Offset, Administrative Wage Garnishment, and Disclosure to Credit Reporting Agencies

§ 3.60 Applicability.

(a) This section establishes consolidated administrative review procedures for debts subject to administrative offset, administrative wage garnishment, and disclosure to credit reporting agencies, under subparts D and E of this part. A hearing or review under this section will satisfy the required opportunity for administrative review by the agency of the determination of a debt for both administrative offset and administrative wage garnishment that is required before transfer to Treasury for collection or collection by the agency through non-centralized administrative offset.

(b) For debt collection proceedings initiated by FSA, CCC (with respect to domestic programs), FCIC, the Rural Housing Service, the Rural Business-Cooperative Service, the Risk Management Agency, the Natural Resources Conservation Service, Rural Development, and the Rural Utilities Service (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901–950cc–2), part 11 of this title will be applicable and not the provisions of this subpart.

[85 FR 36672, June 17, 2020, as amended at 88 FR 89276, Dec. 27, 2023]

§ 3.61 Presiding employee.

An agency reviewing officer may be an agency employee, or the agency may provide for reviews to be done by another agency through an interagency agreement. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

§ 3.62 Procedures.

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset, Notice of Disclosure to Credit Reporting Agencies, or Notice of Intent to Collect by Administrative Wage Garnishment, or more than one of the above simultaneously, may request administrative review of the agency's determination that the debt exists and the amount of the debt. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and requests review. The request must be received by the creditor agency within 60 days of the date of the notice in the case of a Notice of Intent to Collect by Administrative Offset that includes referral to Treasury for offset against other Federal payments including tax refunds and 30 days in the case of all other notices.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. An oral hearing is not necessary with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. The agency will provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. If the debtor requests a hearing, and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The agency must also advise the debtor of the procedures to be used in reviewing the documentary record, or of the date, location and procedures to be used if review is by a hearing.

(c) An oral hearing may, at the debtor's option, be conducted either in-person or by telephone conference. All travel expenses incurred by the debtor in connection with an in-person hearing will be borne by the debtor. All telephonic charges incurred during the hearing will be the responsibility of the agency.

(d) After the debtor requests a hearing, the hearing official will notify the debtor of:

(1) The date and time of a telephonic hearing;

(2) The date, time, and location of an in-person oral hearing; or

(3) The deadline for the submission of evidence for a documentary review.

(e) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, any documentary review or hearing will be conducted not less than 10 days and no more than 45 days after receipt of the request for review.

(f) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, a documentary review or hearing will be based on agency records plus other relevant documentary evidence which may be submitted by the debtor within 10 days after the request for review is received.

(g) The hearing procedure will consist of:

(1) Hearings will be as informal as possible and will be conducted by a reviewing officer in a fair and expeditious manner. The reviewing officer need not use the formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. However, clearly irrelevant material should not be admitted, whether or not any party objects. Any party to the hearing may offer exhibits, such as copies of financial records, telephone memoranda, or agreements, provided the opposing party is notified at least 5 days before the hearing.

(2) The agency will have the burden of going forward to prove the existence or amount of the debt.

(i) Thereafter, if the debtor disputes the existence or amount of the debt, the debtor must prove by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect.

(ii) In addition, the debtor may present evidence that repayment would cause a financial hardship to the debtor or that collection of the debt may not be pursued due to operation of law.

(3) Witnesses must testify under oath or affirmation.

(4) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(5) The substance of all significant matters discussed at the hearing must be recorded. No official record or transcript of the hearing need be created, but if a debtor requested that a transcript be made, it will be at the debtor's expense.

(h) In the absence of good cause shown, a debtor who fails to appear at a hearing scheduled pursuant to paragraph (d) of this section will be deemed as not having timely filed a request for a hearing.

(i) The determination will be made:

(1) Within no more than 30 days after the hearing or receipt of documentation for the documentary review, the reviewing officer will issue a written decision to the debtor and the agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 days.

(2) The written decision will include:

(i) A summary of the facts presented;

(ii) The hearing official's findings, analysis and conclusions; and

(iii) Resolution of any significant procedural matter which was in dispute before or during the hearing or documentary review.

(j) The reviewing officer's decision constitutes final agency action for purposes of judicial review under the Administrative Procedure Act (5 U.S.C. 701–703) as to the following issues:

(1) All issues of fact relating to the basis of the debt (including the existence of the debt and the propriety of administrative offset), in cases where the debtor previously had not been afforded due process; and

(2) The existence of the debt and the propriety of administrative offset, in cases where the debtor previously had been afforded due process as to issues of fact relating to the basis of the debt.

(k) The reviewing officer will promptly distribute copies of the decision to the USDA CFO, the agency CFO (if any), the agency debt management officer, the debtor, and the debtor's representative, if any.

Subpart G—Federal Salary Offset

AUTHORITY: 5 U.S.C. 5514; and 5 CFR part 550, subpart K.

§ 3.70 Scope.

(a) The provisions of this subpart specify USDA procedures for the collection of a Federal employee's pay by salary offset to satisfy certain valid and past due debts owed the government.

(b) This subpart applies to:

(1) Current USDA employees and employees of other agencies who owe debts to USDA; and

(2) Current USDA employees who owe debts to other agencies.

(c) This subpart does not apply to debts owed by FSA county executive directors or non-Federal county office employees. For debts owed by FSA county executive directors or non-Federal county office employees to CCC or FSA, the salaries of these employees are subject to administrative offset not to exceed 15 percent of the employee's disposable pay. CCC and FSA will follow the notification requirements and procedures for collection by administrative offset as specified in 31 CFR part 285 and 31 U.S.C. 3716.

(d) This subpart does not apply to debts or claims arising under the Internal Revenue Code of 1986 (26 U.S.C. 1–8023); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another law (for example travel advances in 5 U.S.C. 5705 or employee training expense in 5 U.S.C. 4108).

(e) This subpart identifies the types of salary offset available to USDA, as well as certain rights provided to the employee, which include a written notice before deductions begin and the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. The rights provided by this section do not extend to:

(1) Any adjustment to pay arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the four pay periods preceding the adjustment and, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to $50 or less, if, at the time of such adjustment, or as soon thereafter as practical, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

(f) These regulations do not preclude an employee from:

(1) Requesting waiver of an erroneous overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716;

(2) Requesting waiver of any other type of debt, if waiver is available by law; or

(3) Questioning the amount or validity of a debt, in the manner prescribed by this part.

(g) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under USDA regulations contained elsewhere.

§ 3.71 Definitions.

As used in this subpart the following definitions will apply:

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld (other than deductions to execute garnishment orders in accordance with 5 CFR parts 581 and 582). Among the legally required deductions that must be applied first to determine disposable pay are levies pursuant to the Internal Revenue Code (title 26, United States Code) and deductions described in 5 CFR 581.105(b) through (f).

Salary offset means a reduction of a debt by offset(s) from the disposable

pay of an employee without his or her consent.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

§ 3.72 Coordinating offset with another Federal agency.

(a) When USDA is owed a debt by an employee of another agency, the other agency will not initiate the requested offset until USDA provides the agency with a written certification that the debtor owes USDA a debt (including the amount and basis of the debt and the due date of the payment) and that USDA has complied with these regulations.

(b) USDA may use salary offset against one of its employees who is indebted to another agency, if requested to do so by that agency. Such a request must be accompanied by;

(1) A certification by the requesting agency that the person owes the debt (including the amount and basis of the debt and the due date of the payment).

(2) That the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

(c) Debts may be referred to Treasury under § 3.44 for collection through salary offset in accordance with 31 CFR 285.7.

§ 3.73 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 31 CFR parts 900 through 904 have been satisfied and that salary offset is appropriate, USDA will review the debt to make sure that it is valid and past due.

(b) If USDA determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness will be made and salary offset will not proceed until USDA is assured that the requirements have been met.

§ 3.74 Notice requirements before offset.

Except as provided in paragraph (b) of this section, salary offset will not be made unless USDA first provides the employee with a minimum of 30 days written notice. This Notice of Intent to Offset Salary will state:

(a) That USDA has reviewed the records relating to the debt and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(b) USDA's intention to collect the debt by means of deduction from the employee's current disposable pay until the debt and all accumulated interest are paid in full;

(c) The approximate beginning date, frequency, and amount of the intended deduction (stated as a fixed dollar amount or as a percentage of pay, not to exceed 15 percent of disposable pay), and the intention to continue the deductions until the debt is paid in full or otherwise resolved;

(d) An explanation of USDA requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.17;

(e) The employee's right to inspect and copy USDA records relating to the debt;

(f) The employee's right to enter into a written agreement with USDA for a repayment schedule differing from that proposed by USDA, so long as the terms of the repayment schedule proposed by the employee are agreeable to USDA;

(g) The employee's right to a hearing conducted by a hearing official on USDA's determination of the debt, the amount of the debt, or percentage of disposable pay to be deducted each pay period, so long as a petition is filed by the employee as prescribed by USDA;

(h) That the timely filing of a petition for hearing will stay the collection proceedings;

(i) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(j) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. chapter 75, 5 CFR

part 752, or any other applicable laws or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority; or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002 or any other applicable statutory authority;

(k) Any other rights and remedies available to the employee under laws or regulations governing the program for which the collection is being made;

(l) That amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary;

(m) The method and time period for requesting a hearing; and

(n) The name and address of an official of USDA to whom communications must be directed.

§ 3.75 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition to request a hearing that is received by USDA not later than 30 days from the date of the USDA notice described in § 3.74, if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) USDA's proposed salary offset schedule (including percentage).

(b) The petition must be signed by the employee and must identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support his or her position. If the employee objects to the percentage of disposable pay to be deducted from each check, the petition must state the objection and the reasons for it.

(c) If the employee files a petition for a hearing later than the 30 days as described in paragraph (a) of this section, the hearing officer may accept the request if the employee can show that the delay was because of circumstances beyond his or her control or because of failure to receive notice of the filing deadline (unless the employee has actual notice of the filing deadline).

§ 3.76 Result if employee fails to meet deadlines.

An employee will not be granted a hearing and will have his or her disposable pay offset as specified in USDA's offset schedule if the employee:

(a) Fails to file a petition for a hearing as prescribed in § 3.75; or

(b) Is scheduled to appear and fails to appear at the hearing.

§ 3.77 Hearing.

(a) If an employee timely files a petition for a hearing under § 3.75, USDA will select the time, date, and location for the hearing.

(b) A hearing will not be held and Federal salary offset will not be pursued if the cost of the hearing is greater than the delinquent debt.

(c)(1) Hearings will be conducted by the hearing official designated in accordance with 5 CFR 550.1107; and

(2) Rules of evidence will not be adhered to, but the hearing official will consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing and weigh it accordingly, given all of the facts and circumstances surrounding the debt.

(d) USDA will have the burden of going forward to prove the existence of the debt.

(e) The employee requesting the hearing will bear the ultimate burden of proof.

(f) The evidence presented by the employee must prove that no debt exists or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

§ 3.78 Written decision following a hearing.

Written decisions provided after a hearing will include:

(a) A statement of the facts presented at the hearing to support the nature and origin of the alleged debt and those presented to refute the debt;

(b) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alleged debt determined as a result of the hearing;

(d) The payment schedule (including percentage of disposable pay), if applicable;

(e) The determination that the amount of the debt at this hearing is the final agency action on this matter regarding the existence and amount of the debt for purposes of executing salary offset under 5 U.S.C. 5514. However, even if the hearing official determines that a debt may not be collected by salary offset, but the creditor agency finds that the debt is still valid, the creditor agency may still pursue collection of the debt by other means authorized by this part; and

(f) Notice that the final determination by the hearing official regarding the existence and amount of a debt is subject to referral to Treasury under §3.33 in the same manner as any other delinquent debt.

§3.79 Review of USDA records related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy USDA records related to the debt must send a letter to USDA stating his or her intention. The letter must be received by USDA within 30 days of the date of the Notice of Intent to Offset Salary.

(b) *USDA response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, USDA will notify the employee of the location and time when the employee may inspect and copy USDA records related to the debt.

§3.80 Written agreement to repay debts as alternative to salary offset.

(a)(1) The employee may propose, in response to a Notice of Intent to Offset Salary, a written agreement to repay the debt as an alternative to salary offset. Any employee who wishes to do this must submit a proposed written agreement to repay the debt that is received by USDA within 30 days of the date of the Notice of Intent to Offset Salary or 15 days after the date of a hearing decision issued under §3.78.

(2) For FSA FLP debt, an alternative repayment agreement submitted after a hearing decision must include a payment schedule similar to the payment schedule in the hearing decision and include payment amounts that are at least equal to the payment amounts in the hearing decision.

(b) USDA will notify the employee whether the employee's proposed written agreement for repayment is acceptable. USDA may accept a repayment agreement instead of proceeding by offset. In making this determination, USDA will balance the USDA interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, USDA will accept a repayment agreement, instead of offset, for good cause such as, if the employee is able to establish that offset would result in undue financial hardship or would be against equity and good conscience. For FSA FLP debt, a decision by USDA under this paragraph is not subject to review by NAD under part 11 of this title.

§3.81 Procedures for salary offset: when deductions may begin.

(a) Deductions to liquidate an employee's debt will be by the method and in the amount stated in USDA's Notice of Intent to Offset Salary to collect from the employee's current pay.

(b) If the employee filed a petition for a hearing with USDA before the expiration of the period provided for in §3.75, then deductions will begin after the hearing officer has provided the employee with a hearing, and a final written decision has been rendered in favor of USDA.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected according to the procedures for administrative offset (see subpart D of this part).

§3.82 Procedures for salary offset: types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of disposable pay for an ordinary pay period. In these cases, deduction will be by installments, as specified in §3.83.

§ 3.83 Procedures for salary offset: methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and USDA agree to alternative arrangements for repayment under § 3.80.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. However, the amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made, unless the employee has agreed in writing to the deduction of a greater amount. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than 3 years. Installment payments of less than $25 per pay period or $50 a month will be accepted only in the most unusual circumstances.

(c) *Sources of deductions.* USDA will make deductions only from basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay.

§ 3.84 Procedures for salary offset: imposition of interest, penalties, and administrative costs.

Interest, penalties and administrative costs will be charged in accordance with § 3.17.

§ 3.85 Non-waiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under 5 U.S.C. 5514.

§ 3.86 Refunds.

USDA will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owed to the United States (unless expressly prohibited by law or regulation); or

(b) USDA is directed by an administrative or judicial order to refund amounts deducted from the employee's current pay.

§ 3.87 Agency regulations.

USDA agencies may issue regulations or policies not inconsistent with OPM regulations (5 CFR part 550, subpart K) and regulations in this subpart governing the collection of a debt by salary offset.

Subpart H—Cooperation With the Internal Revenue Service

AUTHORITY: 26 U.S.C. 61; 31 U.S.C. 3720A.

§ 3.90 Reporting discharged debts to the Internal Revenue Service.

When USDA discharges a debt, whether for the full value or less, it will report the discharge to the Internal Revenue Service (IRS) in accordance with current IRS instructions.

Subpart I—Adjusted Civil Monetary Penalties

AUTHORITY: 28 U.S.C. 2461 note.

§ 3.91 Adjusted civil monetary penalties.

(a) *In general*—(1) *Adjustments.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b) of this section, to take account of inflation as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, as amended.

(2) *Timing.* Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section applies only to violations occurring after May 29, 2025.

(3) *Illustrative purposes.* The descriptions of the civil monetary penalties listed in paragraph (b) of this section are for illustrative purposes only. This section does not amend, interpret, implement, or alter in any way the statutory provisions in which the civil monetary penalties listed in paragraph (b) of this section are set. Moreover, the descriptions of the civil monetary penalties listed in paragraph (b) of this section do not necessarily contain a

complete description of the circumstances (for example, requirements regarding the ''state of mind'' of the violator(s), requirements regarding the type of law or issuance violated, etc.) under which the penalties are assessed. Persons should consult the statutory text in which the civil monetary penalties are set and any implementing regulations to make applicability determinations.

(b) *Penalties*—(1) *Agricultural Marketing Service.* (i) Civil penalty for improper record keeping codified at 7 U.S.C. 136i–1(d), has: A maximum of $1,182 in the case of the first offense, and a minimum of $2,296 in the case of subsequent offenses, except that the penalty will be less than $2,296 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of $6,435.

(iii) Civil penalty for violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of $2,054 for each such offense and not more than $513 for each day it continues, or a maximum of $513 for each offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum penalty of $4,108 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C. 586, has a minimum of $187 and a maximum of $18,767.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of $358 and a maximum of $35,910.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of $3,592. Each day the violation continues is a separate violation.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of $358.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $122 and a maximum of $2,449.

(x) Civil penalty for failure to collect any assessment or fee for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of $3,592.

(xi) Civil penalty for failure to pay, collect, or remit any assessment or fee for a violation of a program under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of $1,610 and a maximum of $14,847.

(xii) Civil penalty for failure to obey a cease-and-desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of $1,610. Each day the violation continues is a separate violation.

(xiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of $1,861 and a maximum of $18,611.

(xiv) Civil penalty for failure to obey a cease-and-desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of $1,861. Each day the violation continues is a separate violation.

(xv) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of $14,519.

(xvi) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of $3,592.

(xvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C.

4314(b)(1), has a minimum of $1,691 and a maximum of $16,899.

(xviii) Civil penalty for failure to obey a cease-and-desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of $1,691. Each day the violation continues is a separate violation.

(xix) Civil penalty for violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of $3,124.

(xx) Civil penalty for pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum of $939 and a maximum of $9,624.

(xxi) Civil penalty for failure to obey a cease-and-desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of $961. Each day the violation continues is a separate violation.

(xxii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of $2,905.

(xxiii) Civil penalty for failure to obey a cease-and-desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of $1,453. Each day the violation continues is a separate violation.

(xxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of $1,453 and a maximum of $14,519.

(xxv) Civil penalty for failure to obey a cease-and-desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of $1,453. Each day the violation continues is a separate violation.

(xxvi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of $2,364 and a maximum of $23,634.

(xxvii) Civil penalty for failure to obey a cease-and-desist order under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of $2,362.

(xxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of $1,149 and a maximum of $11,489.

(xxix) Civil penalty for failure to obey a cease-and-desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(e), has a maximum of $1,149. Each day the violation continues is a separate violation.

(xxx) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of $1,149 and a maximum of $11,489.

(xxxi) Civil penalty for failure to obey a cease-and-desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of $1,149. Each day the violation continues is a separate violation.

(xxxii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified a 7 U.S.C. 6307(c)(1)(A), has a maximum of $2,364.

(xxxiii) Civil penalty for failure to obey a cease-and-desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of $11,767. Each day the violation continues is a separate violation.

(xxxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of $1,149 and a maximum of $11,489, or in the case of a violation that is willful, codified at 7

U.S.C. 6411(c)(1)(B), has a minimum of $22,576 and a maximum of $229,739.

(xxxv) Civil penalty for failure to obey a cease-and-desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of $11,823. Each day the violation continues is a separate violation.

(xxxvi) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(c), has a maximum of $22,974.

(xxxvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(c)(1)(A)(i), has a minimum of $1,083 and a maximum of $10,831.

(xxxviii) Civil penalty for failure to obey a cease-and-desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of $10,831. Each day the violation continues is a separate violation.

(xxxix) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of $2,111.

(xl) Civil penalty for failure to obey a cease-and-desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of $1,055. Each day the violation continues is a separate violation.

(xli) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of $1,992 and a maximum of $19,939 for each violation.

(xlii) Civil penalty for failure to obey a cease-and-desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of $1,992 and a maximum of $19,939. Each day the violation continues is a separate violation.

(xliii) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1)(A)(i), has a maximum of $1,992 for each violation.

(xliv) Civil penalty for failure to obey a cease-and-desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of $9,970. Each day the violation continues is a separate violation.

(xlv) Civil penalty for violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of $998 and a maximum of $9,970 for each violation.

(xlvi) Civil penalty for failure to obey a cease-and-desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of $998. Each day the violation continues is a separate violation.

(xlvii) Civil penalty for a violation of an order or regulation under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of $1,992 for each violation.

(xlviii) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $11,489 for each violation.

(xlix) Civil penalty for violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of $1,812 and a maximum of $18,124 for each violation.

(l) Civil penalty for failure to obey a cease-and-desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of $18,141 for each offense. Each day the violation continues is a separate violation.

(li) Civil penalty for violation of certain provisions of the Livestock Mandatory Reporting Act of 1999, codified a 7 U.S.C. 1636b(a)(1), has a maximum of $18,767 for each violation.

(lii) Civil penalty for failure to obey a cease-and-desist order under the

Livestock Mandatory Reporting Act of 1999, codified a 7 U.S.C. 1636b(g)(3), has a maximum of $18,767 for each violation. Each day the violation continues is a separate violation.

(liii) Civil penalty for failure to obey an order of the Secretary issued pursuant to the Dairy Product Mandatory Reporting program, codified at 7 U.S.C. 1637b(c)(4)(D)(iii), has a maximum of $18,141 for each offense.

(liv) Civil penalty for a willful violation of the Country of Origin Labeling program by a retailer or person engaged in the business of supplying a covered commodity to a retailer, codified at 7 U.S.C. 1638b(b)(2), has a maximum of $1,458 for each violation.

(lv) Civil penalty for violations of the Dairy Research Program, codified at 7 U.S.C. 4535 and 4510(b), has a maximum of $3,124 for each violation.

(lvi) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of $35,904.

(lvii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of $2,448 and not more than $122 for each day the violation continues.

(lviii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of $2,449 and not more than $122 for each day the violation continues.

(lix) Civil penalty for a stockyard owner, livestock market agency, or dealer, who engages in or uses any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock, codified at 7 U.S.C. 213(b), has a maximum of $35,904.

(lx) Civil penalty for a stockyard owner, livestock market agency, or dealer, who knowingly fails to obey any order made under the provisions of 7 U.S.C. 211, 212, or 213, codified at 7 U.S.C. 215(a), has a maximum of $2,449.

(lxi) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b–2(b), has a maximum of $104,446.

(lxii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of $350,870.

(lxiii) Civil penalty for failure to comply with certain provisions of the U.S. Warehouse Act, codified at 7 U.S.C. 254, has a maximum of $45,354 per violation if an agricultural product is not involved in the violation.

(2) *Animal and Plant Health Inspection Service.* (i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $122 and a maximum of $2,449.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $14,575, and knowing failure to obey a cease-and-desist order has a civil penalty of $2,185.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspection by USDA, codified at 7 U.S.C. 2279e(a), has a maximum of $18,141.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of $36,461.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided for in the PPA, codified a 7 U.S.C. 7734(b)(1), has a maximum of the greater of: $90,708 in the case of any individual (except that the civil penalty may not exceed $1,813 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), $453,537 in the case of any other person for each violation, $728,765 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,457,528 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the

gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized us, defacing, or destruction of a certificate, permit, or other document provided for in the PPA that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person (except as provided in 7 U.S.C. 8309(d)) that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a maximum of the greater of: $87,055 in the case of any individual, except that the civil penalty may not exceed $1,741 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, $435,273 in the case of any other person for each violation, $728,765 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,457,528 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of $435,273 in the case of an individual and $870,550 in the case of any other person.

(viii) Civil penalty for violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of $7,183.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of $14,037.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d) (other than regulations relating to record keeping or filing reports), (f), or (g), as specified at 16 U.S.C. 1540(a)(1), has a maximum of $65,656 for each violation.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation under the Endangered Species Act of 1973, as specified at 16 U.S.C. 1540(a)(1), has a maximum of $31,441 for each violation.

(xii) Civil penalty for violating, with respect to terrestrial plants, the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as specified at 16 U.S.C. 1540(a)(1), has a maximum of $1,657 for each violation.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of $206 and a maximum of $1,055.

(xiv) Civil penalty for a violation of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. 1901 note, and its implementing regulations in 9 CFR part 88, as specified in 9 CFR 88.6, has a maximum of $6,240. Each horse transported in violation of 9 CFR part 88 is a separate violation.

(xv) Civil penalty for knowingly violating section 3(d) or 3(f) of the Lacey Act Amendments of 1981, or for violating any other provision provided that, in the exercise of due care, the violator should have known that the plant was taken, possessed, transported, or sold in violation of any underlying law, treaty, or regulation, has a maximum of $32,648 for each violation, as specified in 16 U.S.C. 3373(a)(1) (but if the plant has a market value of less than $436, and involves only the transportation, acquisition, or receipt of a plant taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian Tribal

law, any foreign law, or any law or regulation of any State, the penalty will not exceed the maximum provided for violation of said law, treaty, or regulation, or $32,648, whichever is less).

(xvi) Civil penalty for violating section 3(f) of the Lacey Act Amendments of 1981, as specified in 16 U.S.C. 3373(a)(2), has a maximum of $816.

(3) *Food and Nutrition Service.* (i) Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of $145,754 for each violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $52,522 for each violation, except that the maximum penalty for violations occurring during a single investigation is $94,578.

(iii) Civil penalty for the sale of firearms, ammunitions, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of $47,289 for each violation, except that the maximum penalty for violations occurring during a single investigation is $94,578.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate, or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of $222,610,188.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $19,247 for each violation, except that the maximum penalty for violations occurring during a single investigation is $76,992.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosive, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $18,774 for each violation, except that the maximum penalty for violations occurring during a single investigation is $76,992.

(4) *Food Safety and Inspection Service.* (i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $11,489 for each violation.

(ii) [Reserved]

(5) *Forest Service.* (i) Civil penalty for willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of $1,182,251 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of $177,360 per violation.

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of $118,225 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of $1,182,251.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S. C. 4307(a)(2), has a maximum of $25,838.

(6) [Reserved]

(7) *Federal Crop Insurance Corporation.* (i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to any insurance plan or policy that is offered under the

authority of the Federal Crop Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified in 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: The amount of the pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or $15,335.

(ii) [Reserved]

(8) *Rural Housing Service.* (i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified in 42 U.S.C. 1490p(e)(2), has a maximum of $251,321 in the case of an individual, and a maximum of $2,513,215 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Housing Act of 1949, codified in 42 U.S.C. 1490s(a)(2), has a maximum of $45,354.

(iii) Civil penalty under section 543b of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights laws and regulations, codified in 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: Twice the damages USDA, guaranteed lender, or project that is secured for a loan under Title V suffered or would have suffered as a result of the violation; or $90,708 per violation.

(9) [Reserved]

(10) *Commodity Credit Corporation.* (i) Civil penalty for willful failure or refusal to furnish information, or willful furnishing of false information under of section 156 of the Federal Agricultural Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $19,940 for each violation.

(ii) Civil penalty for willful failure or refusal to furnish information or willful furnishing of false data by a processor, refiner, or importer of sugar, syrup, and molasses under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $19,940 for each violation.

(iii) Civil penalty for filing a false acreage report that exceeds tolerance under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $19,940 for each violation.

(iv) Civil penalty for knowingly violating any regulation of the Secretary of the Commodity Credit Corporation pertaining to flexible marketing allotments for sugar under section 359h(b) of the Agricultural Adjustment Act of 1938, codified at 7 U.S.C. 1359hh(b), has a maximum of $14,575 for each violation.

(v) Civil penalty for knowing violation of regulations promulgated by the Secretary pertaining to cotton insect eradication under section 104(d) of the Agricultural Act of 1949, codified at 7 U.S.C. 1444a(d), has a maximum of $17,956 for each offense.

(11) *Office of the Secretary.* (i) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent claim as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(1), has a maximum of $14,309.

(ii) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent written statement as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(2), has a maximum of $14,309.

[85 FR 36672, June 17, 2020, as amended at 86 FR 24699, May 10, 2021; 86 FR 30535, June 9, 2021; 87 FR 8395, Feb. 15, 2022; 88 FR 30029, May 10, 2023; 89 FR 48495, June 7, 2024; 90 FR 22607, May 29, 2025]

PART 4 [RESERVED]

PART 5—DETERMINATION OF PARITY PRICES

Sec.

5.1 Parity index and index of prices received by farmers.
5.2 Marketing season average price data.
5.3 Selection of calendar year price data.
5.4 Commodities for which parity prices shall be calculated.

5.5 Publication of season average, calendar year, and parity price data.
5.6 Revision of the parity price of a commodity.

AUTHORITY: 7 U.S.C. 1301, 1375.

EDITORIAL NOTE: Nomenclature changes to part 5 appear at 62 FR 8361, Feb. 25, 1997.

§ 5.1 Parity index and index of prices received by farmers.

(a) The parity index and related indices for the purpose of calculating parity prices after May 1, 1976, according to the formula contained in section 301(a) of the Agricultural Adjustment Act of 1938, as amended by the Agricultural Acts of 1948, 1949, 1954, and 1956 (hereinafter referred to as section 301(a)) shall be the index of prices paid by farmers, interest, taxes, and farm wage rates, as revised May 1976 and published in the May 28, 1976, and subsequent issues of the monthly report, ''Agricultural Prices.'' The publication of these indices by the National Agricultural Statistics Service in the monthly report, ''Agricultural Prices'', shall be continued.

(b) The measure of the general level of prices received by farmers as provided for in section 301(a)(1)(B)(ii) after January 1, 1959, shall be the index of prices received by farmers as revised January 1959 and published in the January 30, 1959, and subsequent issues of ''Agricultural Prices''. The simple average of the 120 monthly indices included in the preceding 10 calendar years plus an adjustment to take account of the effect on the index of any adjustment made on average prices of individual commodities as hereinafter specified shall be used in the calculation of the adjusted base prices. Parity prices heretofore published for periods prior to January 1, 1959 shall not be revised.

(c) The term *milkfat* as used in these regulations is synonymous with the term *butterfat*, and when any statute requires calculation of the parity price of butterfat, the parity price of milkfat shall be the parity price of butterfat.

[24 FR 697, Jan. 31, 1959, as amended by Amdt. 6, 24 FR 9778, Dec. 5, 1959; Amdt. 29, 41 FR 22333, June 3, 1976]

§ 5.2 Marketing season average price data.

It is hereby found that it is impractical to use averages of prices received by farmers on a calendar year basis for the following agricultural commodities for the purpose of calculating adjusted base prices and, therefore, marketing season average prices will be used. An allowance for any supplemental payment resulting from price support operations shall be included in the determination of the adjusted base prices. For cigar binder tobacco, types 51–52, for each of the marketing seasons beginning in the years 1949 through 1958, 37.9 cents per pound shall be used in lieu of the average of prices received by farmers for such tobacco during each such marketing season.

BASIC COMMODITIES

Extra long staple cotton; peanuts; rice, and the following types of tobacco: Flue-cured, types 11–14; Virginia fire-cured, type 21; Kentucky-Tennessee fire-cured, types 22–23; burley, type 31; dark air-cured, types 35–36; suncured, type 37; Pennsylvania seedleaf, type 41; cigar filler and binder, types 42–44 and 53–55; Puerto Rican filler, type 46 (price refers to year of harvest); and cigar binder, types 51–52.

DESIGNATED NONBASIC COMMODITIES

Tung nuts; honey, wholesale extracted.

WOOL AND MOHAIR

Wool and mohair.

OTHER NONBASIC COMMODITIES

CITRUS FRUIT

Grapefruit; lemons; limes; oranges; tangerines; and Temples.

DECIDUOUS AND OTHER FRUIT

Apples for processing; apricots for fresh consumption; apricots for processing (except dried); dried apricots; avocados; blackberries; boysenberries; gooseberries; loganberries; black raspberries; red raspberries; youngberries; tart cherries; sweet cherries; cranberries; dates; grapes, raisins, dried; all grapes excluding raisins, dried; nectarines for fresh consumption, nectarines for processing; olives for processing (except crushed for oil); olives, crushed for oil; olives for canning; papayas (Hawaii), for fresh consumption; peaches for fresh consumption; clingstone peaches for processing (except dried); freestone peaches for processing (except dried); dried peaches; pears for fresh consumption; pears for processing (except

dried); dried pears; plums (California), for fresh consumption; plus (California), for processing; dried prunes (California); prunes and plums (excluding California), for processing (except dried); strawberries for fresh consumption; and strawberries for processing.

SEED CROPS

Alfalfa, bentgrass, crimson clover, Chewings fescue, red fescue, tall fescue, Marion Kentucky bluegrass, Ladino clover, lespedeza, orchard grass, red clover, timothy, and hairy vetch.

SUGAR CROPS

Sugar beets and sugarcane for sugar.

TREE NUTS

Almonds; filberts; pecans, all; and walnuts.

VEGETABLES FOR FRESH MARKET

Artichokes, asparagus, snap beans, broccoli, cabbage, cantaloupe, carrots, cauliflower, celery, sweet corn, cucumbers, eggplant, escarole, garlic, honeydew melons, lettuce, onions, green peppers, spinach, tomatoes, and watermelons.

VEGETABLES FOR PROCESSING

Asparagus, lima beans, snap beans, beets, cabbage, sweet corn, cucumbers, green peas, spinach, and tomatoes.

OTHER COMMODITIES

Beeswax; cottonseed; hops; peas; dry field; peppermint oil; popcorn; potatoes; spearmint oil; and tobacco, types 61–62. All other commodities for which monthly price data are not available.

[21 FR 761, Feb. 3, 1956]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 5.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

§ 5.3 Selection of calendar year price data.

In computing the adjusted base price for those commodities for which calendar year price data are used, ''* * * the average of the prices received by farmers for such commodity, at such times as the Secretary may select during each year * * *,'' as used in section 301(a)(1)(B)(i), shall be the simple average of the 12 monthly estimates of the prices received by farmers as published by the National Agricultural Statistics Service in ''Agricultural Prices'' for those commodities for which such prices are available. An allowance for unredeemed loans and purchase agreement deliveries, any supplemental payments resulting from price support operations, and the value of marketing certificates, such as those received by producers of wheat pursuant to the Agricultural Adjustment Act of 1938, as amended, and others of generally similar character and effect, shall be added to the price specified above. Prices received for milk wholesale, milkfat, beef cattle, sheep, and lambs shall include wartime subsidy payments as provided by section 301(a)(1)(B). For Maryland Tobacco, type 32, the price data for each calendar year shall be the weighted average price of type 32 tobacco sold during the period January 1–December 31.

[Amdt. 14, 29 FR 12451, Sept. 1, 1964]

§ 5.4 Commodities for which parity prices shall be calculated.

Parity prices shall be calculated for the following commodities:

BASIC COMMODITIES

Wheat; corn; American upland cotton; extra long staple cotton; rice; peanuts;[1] and the following types of tobacco: flue-cured, types 11–14; Virginia fire-cured, type 21; Kentucky-Tennessee fire-cured, types 22–23; burley, type 31; Maryland, type 32; dark air-cured, types 35–36; sun-cured, type 37; Pennsylvania seedleaf, type 41; cigar filler and binder, types 42–44 and 53–55; Puerto Rican filler, type 46; and cigar binder, types 51–52.

DESIGNATED NONBASIC COMMODITIES

Milk sold to plants; milkfat in cream; tung nuts; honey, wholesale extracted.

WOOL AND MOHAIR

Wool and mohair.

OTHER NONBASIC COMMODITIES

CITRUS FRUIT

Grapefruit; lemons; limes; oranges; tangerines; and Temples.

DECIDUOUS AND OTHER FRUIT

Apples (primarily for fresh use); apples for processing; apricots for fresh consumption;

[1] For the purpose of calculating parity prices the commodity peanuts shall exclude peanuts produced for oil in 1950 and 1951 under the provisions of subsections (g) and (h) of section 359 of the Agricultural Adjustment Act of 1938 as amended.

apricots for processing (except dried); dried apricots; avocados; blackberries; boysenberries; gooseberries; loganberries; black raspberries; red raspberries; youngberries; tart cherries; sweet cherries; cranberries; dates; grapes, raisins, dried; all grapes, excluding raisins, dried; nectarines for fresh consumption; nectarines for processing; olives for processing (excluding crushed for oil); olives, crushed for oil; olives for canning; papayas (Hawaii), for fresh consumption; peaches for fresh consumption; clingstone peaches for processing (except dried); freestone peaches for processing (except dried); dried peaches; pears for fresh consumption; pears for processing (except dried); dried pears; plums (California), for fresh consumption; plums (California), for processing; dried prunes (California); prunes and plums (excluding California), for processing (except dried); strawberries for fresh consumption; and strawberries for processing.

SEED CROPS

Alfalfa, bentgrass, crimson clover, Chewings fescue, red fescue, tall fescue, Marion Kentucky bluegrass, Ladino clover, lespedeza, orchard grass, red clover, timothy, and hairy vetch.

SUGAR CROPS

Sugar beets, and sugarcane for sugar.

TREE NUTS

Almonds; filberts; pecans, all; and walnuts.

VEGETABLES FOR FRESH MARKET

Artichokes, asparagus, snap beans, broccoli, cabbage, cantaloups, carrots, cauliflower, celery, sweet corn, cucumbers, eggplant, escarole, garlic, honeydew melons, lettuce, onions, green peppers, spinach, tomatoes, and watermelons.

VEGETABLES FOR PROCESSING

Asparagus, lima beans, snap beans, beets, cabbage, sweet corn, cucumbers, green peas, spinach and tomatoes.

OTHER COMMODITIES

Beef cattle; hogs; lambs; calves; sheep; turkeys; eggs; beeswax; potatoes; hops; peppermint oil; popcorn; spearmint oil; tobacco, Types 61 and 62; barley; beans, dry edible; cottonseed; peas, dry field; flaxseed; hay, all baled; oats; rye; sorghum grain; soybeans; sweetpotatoes; and crude pine gum.

[21 FR 763, Feb. 3, 1956, as amended by Amdt. 1, 22 FR 693, Feb. 2, 1957; Amdt. 3, 23 FR 1565, Mar. 5, 1958; Amdt. 17, 31 FR 10767, Aug. 13, 1966; Amdt. 23, 34 FR 1132, Jan. 24, 1969; Amdt. 25, 34 FR 15785, Oct. 14, 1969; Amdt. 26, 35 FR 3158, Feb. 19, 1970; Amdt. 27, 36 FR 15516, Aug. 17, 1971; 38 FR 10795, May 2, 1973]

§ 5.5 Publication of season average, calendar year, and parity price data.

(a) New adjusted base prices for all of the commodities on a calendar year basis and for as many of the commodities on a marketing season average basis as are practicable shall be published on or about January 31 of each year. In cases where preliminary marketing season average price data are used in estimating the adjusted base prices published in January, any additional price data which becomes available shall be used in estimating a revised adjusted base price which shall be published prior to the beginning of the marketing season for the commodity.

(b) The official parity prices determined under section 301(a)(1) and the regulations in this part and the indexes and relevant price data shall be published in the monthly report ''Agricultural Prices'' issued by the National Agricultural Statistics Service. Parity prices for all commodities for which parity prices are computed shall be so published in the January and July issues each year. The parity prices published in other issues may be restricted to those which the National Agricultural Statistics Service, after consultation with the Agricultural Marketing Service, the Farm Service Agency, and any other interested government agency, considers necessary or desirable. The parity prices determined in accordance with this part shall be the parity prices used in other reports, determinations, or documents of the Department.

[21 FR 763, Feb. 3, 1956, as amended by Amdt. 16, 30 FR 2521, Feb. 26, 1965]

§ 5.6 Revision of the parity price of a commodity.

(a) *Initiation of hearings.* The ''modernized'' parity formula specified in section 301(a)(1) of the Agricultural Adjustment Act of 1938, as amended, takes into consideration the average prices received by farmers for agricultural commodities during the last ten years and is designed gradually to adjust relative parity prices of specific commodities for persistent or continuing changes in demand and supply conditions which are reflected in market prices. Accordingly, only in rare

cases is it possible for the parity price of any agricultural commodity to become seriously out of line with the parity prices of other agricultural commodities. In any case, however, in which producers of any agricultural commodity believe that the parity price of such commodity, as computed pursuant to the provisions of section 301(a)(1), is seriously out of line with the parity prices of other agricultural commodities, a request for a public hearing under section 301(a)(1)(F) may be submitted to the Secretary of Agriculture by a substantial number of interested producers. The producers shall also furnish to the Secretary, with such request or separately, data supporting their conclusion that the parity price of such commodity is seriously out of line with the parity prices of other commodities. Upon receipt of such a request with supporting data, or at any time upon the Secretary's own motion, this Department will make a preliminary study of the relationship between the parity price of such commodity and the parity prices of other commodities, and if the Secretary concludes that there appears to be reasonable grounds for believing that the parity price of such commodity is seriously out of line with the parity prices of other agricultural commodities, a hearing will be held pursuant to the provisions of section 301(a)(1)(F).

(b) *Notice of hearing.* If the Secretary of Agriculture determines that such a hearing shall be held, he shall issue a notice of the hearing, which shall be filed with the Hearing Clerk of the United States Department of Agriculture, who shall promptly (1) cause such notice to be published in the FEDERAL REGISTER, and (2) mail a copy thereof to each of the producers who requested the hearing and to grower organizations known to be interested in the hearing. Legal notice of the hearing shall be deemed to be given upon filing such notice with the FEDERAL REGISTER for publication, and failure to give notice in the manner otherwise provided in this paragraph shall not affect the legality of the notice. The notice of hearing shall state the purpose of the hearing and the time and place of the hearing. The time of the hearing shall not be less than fifteen days after the date of publication of the notice in the FEDERAL REGISTER, unless the Secretary shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Secretary determines to be reasonable in the circumstances.

(c) *Conduct of hearing*—(1) *Presiding officer.* Each hearing held under section 301(a)(1)(F) shall be presided over by a Hearing Examiner of the Office of Administrative Law Judges or such other employee of the Department as the Secretary may designate for the purpose.

(2) *Time and place of hearing.* Each hearing shall be heard at the time and place set forth in the notice of hearing but may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement thereof at the hearing.

(3) *Order of procedure.* At the commencement of the hearing, the presiding officer shall file as an exhibit a copy of the FEDERAL REGISTER containing the notice of the hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received from interested persons in such order as the presiding officer shall prescribe.

(4) *Submission of evidence.* The hearing shall be conducted in such a way as to obtain a clear and orderly record. All interested persons appearing at the hearing shall be given reasonable opportunity to offer data, views, or arguments relevant to (i) whether the parity price for the agricultural commodity involved is or is not seriously out of line with the parity prices of other agricultural commodities, and (ii) the proper relationship between the parity price of such commodity and the parity prices of other agricultural commodities and the revisions, if any, which should be made in computing the parity price of such commodity. All documentary exhibits shall be submitted in duplicate. The presiding officer shall, insofar as possible, exclude irrelevant, immaterial, or unduly repetitious evidence but shall not apply technical judicial rules of evidence. Every witness shall be subject to questioning by the presiding officer or by

any other representative of the Department, but cross-examination by other persons shall not be allowed, except in the discretion of the presiding officer. The proceedings at the hearing shall be transcribed verbatim.

(5) *Written arguments.* The presiding officer shall fix a time, not to exceed ten days from the close of the hearing, within which interested persons may file written arguments with the Hearing Clerk.

(d) *Preparation and issuance of determination*—(1) *Preparation of recommendation.* As soon as practicable after the close of the hearing, the presiding officer, or such employees of the Department as may be assigned for the purpose, shall review, consider, and weigh all evidence of probative value, views, and arguments which have been submitted, and may consider other pertinent information and data which is available in the Department of Agriculture, and shall submit a recommendation thereon to the Secretary.

(2) *Determination by the Secretary.* As soon as possible after receipt of the recommendation, the Secretary shall determine whether the parity price of such commodity computed in accordance with section 301(a)(1) appears to be seriously out of line with the parity prices of other agricultural commodities whether the facts require a revision of the method of computing the parity price of such commodity, and the revision, if any, which is required in the method of computing the parity price of such commodity. Such determination by the Secretary shall be final. The Secretary's determination shall be filed with the Hearing Clerk who shall cause the determination to be published promptly in the FEDERAL REGISTER. The Hearing Clerk shall also mail a copy of the determination to each producer and grower organization which participated in or is known to be interested in the hearing. Upon application to the Hearing Clerk, any person shall be entitled to a copy of the determination.

[23 FR 9252, Nov. 29, 1958]

PART 6—IMPORT QUOTAS AND FEES

Subpart A—General Provisions

Sec.

6.2 Responsibility for actions under section 22 and section 8(a).
6.3 Requests by interested persons for action by Department of Agriculture.
6.4 Investigations.
6.5 Hearings under section 22.
6.6 Submission of recommendations under section 22.
6.7 Submission of recommendations under section 8(a) (emergency treatment).
6.8 Representation at Tariff Commission hearings.
6.9 Information.

Subpart B—Dairy Tariff-Rate Quota Import Licensing

6.20 Introduction.
6.21 Definitions.
6.22 Requirement for a license.
6.23 Eligibility to apply for a license.
6.24 Application for a license.
6.25 Allocation of licenses.
6.26 Surrender and reallocation.
6.27 Limitations on use of license.
6.28 Transfer of license.
6.29 Use of licenses.
6.30 Record maintenance and inspection.
6.31 Debarment and suspension.
6.32 Globalization of licenses.
6.33 License fee.
6.34 Adjustment of Appendices.
6.35 Correction of errors.
6.36 Miscellaneous.

Subpart C—Price-Undercutting of Domestic Cheese by Quota Cheeses

6.40 General.
6.41 Definitions.
6.42 Complaints of price-undercutting.
6.43 Determinations.
6.44 Delegation of authority.

CROSS REFERENCE: For United States International Trade Commission regulations on investigations of effects of imports on agricultural programs, see 19 CFR part 204.

Subpart A—General Provisions

AUTHORITY: Sec. 8, 65 Stat. 75; 19 U.S.C. 1365.

SOURCE: 17 FR 8287, Sept. 16, 1952; 19 FR 57, Jan. 6, 1954, unless otherwise noted. Redesignated at 85 FR 31937, May 28, 2020.

§ 6.2 Responsibility for actions under section 22 and section 8(a).

The primary responsibility within the Department of Agriculture for action on matters for which the Secretary is responsible under section 22 of the Agricultural Adjustment Act of 1933, as amended, and section 8(a) of the Trade Agreements Extension Act of 1951 is assigned to the Administrator, Foreign Agricultural Service (referred to in this part as the ''Administrator''), but the other offices, agencies, and bureaus of the Department whose activities will be affected by any action under section 22 or section 8(a) shall be consulted by the Administrator in discharging his responsibility under this part.

§ 6.3 Requests by interested persons for action by Department of Agriculture.

(a) *Section 22.* A request for action under section 22 should be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington 25, D.C. Such request shall include a statement of the reasons why action would be warranted under section 22 and shall be supported by appropriate information and data.

(b) *Section 8(a).* A request for action under section 8(a) should be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington 25, D.C. Such request shall include a statement of the reasons why the commodity is perishable, and why, due to such perishability, a condition exists requiring emergency treatment, and shall be supported by appropriate information and data. A request under section 8(a) submitted in connection with a proposed section 7 (Trade Agreements Extension Act of 1951) investigation shall not be acted upon until a section 7 application has been properly filed by the person making the request with the Tariff Commission, and a copy of such application and supporting information and data are furnished the Administrator.

§ 6.4 Investigations.

(a) *Section 22.* The Administrator shall cause an investigation to be made whenever, based upon a request submitted pursuant to § 6.3 or upon other information available to him, he determines that there is reasonable ground to believe that the imposition of import quotas or fees under section 22 may be warranted, or that the termination or modification of import quotas or fees in effect under section 22 may be warranted.

(b) *Section 8(a).* The Administrator shall cause an immediate investigation to be made whenever (1) a request is received for emergency treatment in connection with an application properly filed with the Tariff Commission under section 7; (2) a request is received for emergency treatment under section 22 if the Administrator determines that there is reasonable ground to believe that the imposition of import quotas or fees under section 22 may be warranted; or (3) the Administrator, upon the basis of other information available to him, has reasonable ground for believing that emergency treatment under section 8(a) is necessary. The Administrator shall expedite to the fullest practicable extent his attention to requests for emergency treatment under section 8(a), and such requests shall receive priority over requests for other action under section 22. The investigation shall cover (1) whether the commodity is a perishable agricultural commodity; (2) whether, due to the perishability of the commodity, a condition exists requiring emergency treatment as indicated by such factors as (i) the marketing season for the commodity, (ii) past and prospective domestic production, stocks, requirements, and prices, (iii) past and prospective imports; and (3) such other matters as the Administrator determines are relevant to a determination as to whether emergency treatment for the commodity is necessary. No public hearing shall be held in connection with investigations under this paragraph.

§ 6.5 Hearings under section 22.

The Administrator is authorized to provide for such public hearings as he deems necessary to discharge the responsibility for action under section 22 vested in him by §§ 6.2 and 6.4(a). In view of the need, however, for prompt

action on requests for action under section 22, public hearings shall be held in connection with investigations conducted under §6.4(a) only when the Administrator determines that a public hearing is necessary to obtain supplementary information not otherwise available. Any public hearing which is held shall be conducted by representatives designated for the purpose by the Administrator; shall be preceded by such public notice as, in the opinion of the Administrator, will afford interested persons reasonable opportunity to attend and present information; and minutes of the proceedings at such hearing shall be obtained. Hearings shall be informal and technical rules of evidence shall not apply. Such hearings are for the purpose of obtaining information for the assistance of the Secretary. However, in discharging his responsibilities under section 22, the Secretary is not restricted to the information adduced at the hearings.

§6.6 Submission of recommendations under section 22.

(a) The Administrator shall make a report to the Secretary upon the completion of each investigation made by him pursuant to §6.4(a). The report shall summarize the information disclosed by the investigation; shall contain the recommendations of the Administrator; and, in case action under section 22 is recommended, shall be accompanied by a suggested letter from the Secretary to the President recommending that the Tariff Commission be directed to conduct an investigation. Such report shall be submitted to the other offices, agencies, and bureaus of the Department of Agriculture whose activities would be affected, for concurrence or comment.

(b) The Secretary will recommend that the President direct the Tariff Commission to conduct an investigation under section 22 only if he has reason to believe, upon the basis of the information available to him, that import quotas or fees should be imposed.

§6.7 Submission of recommendations under section 8(a) (emergency treatment).

(a) *Section 22.* The Administrator's report submitted pursuant to §6.6 shall indicate whether or not emergency treatment is necessary. If emergency treatment is recommended, the report shall discuss the condition which requires emergency treatment and be accompanied by suggested letters from the Secretary to the President, to the Tariff Commission, and to the petitioner (if any) advising them of the Secretary's determination. The suggested letter from the Secretary to the President shall include a recommendation as to whether such emergency treatment should take the form of action by the President prior to receiving the recommendations of the Tariff Commission, or whether a decision by the President may appropriately be withheld until the recommendations of the Tariff Commission are received. If emergency treatment requested is not recommended, the report to the Secretary shall be accompanied by suggested letters from the Secretary to the petitioner and the Tariff Commission stating the action taken.

(b) *Section 7.* The Administrator shall make a report to the Secretary upon the completion of each investigation made by him pursuant to §6.4(b). The report shall summarize the information disclosed by the investigation, including the points listed in §6.4(b) which were considered in reaching the recommendation, and shall contain the recommendations of the Administrator as to whether or not emergency treatment is required. If emergency treatment is recommended, the report shall discuss the condition which requires emergency treatment and shall be accompanied by suggested letters from the Secretary to the President, to the Tariff Commission, and to the petitioner advising them of the Secretary's determination. The suggested letter from the Secretary to the President shall include a recommendation as to whether such emergency treatment should take the form of action by the President prior to receiving the recommendations of the Tariff Commission, or whether a decision by the President may appropriately be withheld until the recommendations of the Tariff Commission are received. If emergency treatment is not recommended, the report to the Secretary

shall be accompanied by suggested letters from the Secretary to the petitioner and to the Tariff Commission stating the action taken. Each such report shall be submitted to the other offices, agencies, and bureaus of the Department of Agriculture whose activities would be affected, for concurrence or comment.

§ 6.8 Representation at Tariff Commission hearings.

The Department of Agriculture shall be represented at all hearings conducted by the Tariff Commission under section 22 by persons designated by the Administrator, assisted by a representative of the Office of the General Counsel. Such representatives shall present the recommendations of the Department of Agriculture, shall submit such information and data in support thereof as are available, and shall exercise the right of examining other witnesses which is granted to the Secretary.

[17 FR 8287, Sept. 16, 1952; 20 FR 1830, Mar. 25, 1955]

§ 6.9 Information.

Persons desiring information from the Department of Agriculture regarding section 22 or section 8(a), or any action with respect thereto, should address such inquiries to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington 25, DC.

Subpart B—Dairy Tariff-Rate Quota Import Licensing

AUTHORITY: Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701), and secs. 103 and 404, Pub. L. 103–465, 108 Stat. 4819 (19 U.S.C. 3513 and 3601).

SOURCE: 61 FR 53007, Oct. 9, 1996, unless otherwise noted. Redesignated at 85 FR 31938, May 28, 2020.

§ 6.20 Introduction.

(a) Presidential Proclamation 6763 of December 23, 1994, modified the Harmonized Tariff Schedule of the United States affecting the import regime for certain articles of dairy products. The Proclamation terminated quantitative restrictions that had been imposed pursuant to section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624); proclaimed tariff-rate quotas for such articles pursuant to Public Law 103–465; and specified which of such articles may be entered only by or for the account of a person to whom a license has been issued by the Secretary of Agriculture.

(b) Effective January 1, 1995, the prior regime of absolute quotas for certain dairy products was replaced by a system of tariff-rate quotas. The articles subject to licensing under the tariff-rate quotas are listed in Appendices 1, 2, and 3 to be published annually in a notice in the FEDERAL REGISTER. Licenses permit the holder to import specified quantities of the subject articles into the United States at the applicable in-quota rate of duty. If an importer has no license for an article subject to licensing, such importer will, with certain exceptions, be required to pay the applicable over-quota rate of duty.

(c) The Secretary of Agriculture has determined that this subpart will, to the fullest extent practicable, result in fair and equitable allocation of the right to import articles subject to such tariff-rate quotas. The subpart will also maximize utilization of the tariff-rate quotas for such articles, taking due account of any special factors which may have affected or may be affecting the trade in the articles concerned.

[80 FR 44254, July 27, 2015]

§ 6.21 Definitions.

As used in this subpart and the appendices thereto, the following terms are defined as follows:

Article. One of the products listed in Appendices 1, 2, or 3, which are the same as those described in Additional U.S. Notes 6, 7, 8, 12, 14, 16–23 and 25 to Chapter 4 of the Harmonized Tariff Schedule.

Article other than cheese or cheese products. Any article that is a dairy product, but not a cheese or cheese product.

CBP. United States Customs and Border Protection, U.S. Department of Homeland Security.

Cheese or cheese products. Articles in headings 0406, 1901.90.34, and 1901.90.36 of the Harmonized Tariff Schedule.

Commercial entry. Any entry except those made by or for the account of the United States Government or for a foreign government, for the personal use of the importer or for sampling, taking orders, research, or the testing of equipment.

Country. Country of origin as determined in accordance with CBP rules and regulations, except that ''EC'', and ''Other countries'' shall each be treated as a country.

DAIRIES. The ''Dairy Accelerated Importer Retrieval and Information Exchange System''. The web-based user interface system which persons must utilize to apply for and manage licenses, and through which the Licensing Authority will communicate all program notices.

Dairy products. Articles in headings 0401 through 0406, margarine cheese listed under headings 1901.90.34 and 1901.90.36, ice cream listed under heading 2105, and casein listed under heading 3501 of the Harmonized Tariff Schedule.

Department. The United States Department of Agriculture.

EC. Those countries listed in Additional U.S. Note 2 to Chapter 4 of the Harmonized Tariff Schedule.

Enter or Entry. To make or making entry for consumption, or withdrawal from warehouse for consumption in accordance with CBP regulations and procedures.

Harmonized Tariff Schedule or HTS. The Harmonized Tariff Schedule of the United States.

Licensee. A person to whom a license has been issued under this subpart.

Licensing Authority. Any officer or employee of the U.S. Department of Agriculture designated to act in this position by the Director of the Division charged with managing the Dairy Tariff-Rate Quota Import Licensing System.

Other countries. Countries not listed by name as having separate tariff-rate quota allocations for an article.

Person. An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

Process or processing. Any additional preparation of a dairy product, such as melting, grating, shredding, cutting and wrapping, or blending with any additional ingredient.

Quota year. The 12-month period beginning on January 1 of a given year.

Tariff-rate quota amount or TRQ amount. The amount of an article subject to the applicable in-quota rate of duty established under a tariff-rate quota.

United States. The customs territory of the United States, which is limited to the 50 states, the District of Columbia, and Puerto Rico.

[80 FR 44254, July 27, 2015]

§ 6.22 Requirement for a license.

A person who seeks to enter, or cause to be entered an article as a commercial entry, shall obtain a license, in accordance with this subpart.

[80 FR 44254, July 27, 2015]

§ 6.23 Eligibility to apply for a license.

(a) *In general*. To apply for any license, a person shall have:

(1) A business office, and be doing business, in the United States, and

(2) An agent in the United States for service of process, and

(3) An email address to be used for correspondence regarding licensing activities and reports.

The licensee is responsible to continuously maintain a valid email address in DAIRIES for use in communicating with the Licensing Authority.

(b) *Eligibility for 2016 and subsequent quota years*. (1) Historical licenses (Appendix 1). A person issued a historical license for an article for the current quota year may apply for a historical license (Appendix 1) for the next quota year for the same article from the same country, if such person was, during the 12-month period ending August 31 prior to the quota year, either:

(i) Where the article is cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of cheese or cheese products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) The owner of and importer of record for at least eight separate commercial entries of cheese or cheese products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period; or

(C) The owner or operator of a plant listed in Section II or listed in Section I as a processor of cheese of the most current issue of ''Dairy Plants Surveyed and Approved for USDA Grading Service'' and had processed or packaged at least 450,000 kilograms of cheese or cheese products in its own plant in the United States; or

(ii) Where the article is not cheese or cheese product,

(A) The owner of and importer of record for at least three separate commercial entries of dairy products totaling not less than 57,000 kilograms net weight, each of the three entries not less than 2,000 kilograms net weight;

(B) The owner of and importer of record for at least eight separate commercial entries of dairy products, from at least eight separate shipments, totaling not less than 19,000 kilograms net weight, each of the eight entries not less than 450 kilograms net weight, with a minimum of two entries in each of at least three quarters during that period;

(C) The owner or operator of a plant listed in the most current issue of ''Dairy Plants Surveyed and Approved for USDA Grading Service'' and had manufactured, processed or packaged at least 450,000 kilograms of dairy products in its own plant in the United States; or

(D) The exporter of dairy products in the quantities and number of shipments required under (A) or (B) above.

(2) Nonhistorical licenses for cheese or cheese products (Appendix 2). A person may annually apply for a nonhistorical license for cheese or cheese products (Appendix 2) if such person meets the requirements of paragraph (b)(1)(i) of this section.

(3) Nonhistorical licenses for articles other than cheese or cheese products (Appendix 2). A person may annually apply for a nonhistorical license for articles other than cheese or cheese products (Appendix 2) if such person meets the requirements of paragraph (b)(1)(ii) of this section.

(4) Designated license (Appendix 3). A designated license may be issued to a person who has applied for a license, has met the requirements of paragraph (b)(1)(i) of this section, and is designated by the government of a country for such license according to §6.25(d).

(c) *Exceptions.* (1) A licensee that fails in a quota year to enter at least 85 percent of the amount of an article permitted under a license shall not be eligible to receive a license for the same article from the same country for the next quota year. For the purpose of this paragraph, the amount of an article permitted under the license will exclude any amounts surrendered pursuant to §6.26(a), but will include any additional allocations received pursuant to §6.26(b).

(2) Paragraph (c)(1) of this section will not apply where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the article, act of God or force majeure.

(3) Paragraph (c)(1) of this section may not apply in the case of historical or nonhistorical licenses, where the licensee demonstrates to the satisfaction of the Licensing Authority that the country specified on the license maintains or permits an export monopoly to control the dairy articles concerned and the licensee petitions the Licensing Authority to waive this requirement. The licensee shall submit evidence that the country maintains an export monopoly as defined in this paragraph. For the purposes of this paragraph ''export monopoly'' means a privilege vested in one or more persons consisting of the exclusive right to carry on the exportation of any article of dairy products from a country to the United States.

(4) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is affiliated with another applicant to whom the Licensing Authority is

issuing a non-historical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is affiliated with another applicant to whom the Licensing Authority is issuing a historical butter license of 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed affiliated with another applicant if:

(i) The applicant is the spouse, brother, sister, parent, child or grandchild of such other applicant;

(ii) The applicant is the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant;

(iii) The applicant is owned or controlled by the spouse, brother, sister, parent, child or grandchild of an individual who owns or controls such other applicant.

(iv) Both applicants are 5 percent or more owned or directly or indirectly controlled, by the same person;

(v) The applicant, or a person who owns or controls the applicant, benefits from a trust that controls such other applicant.

(5) The Licensing Authority will not issue a nonhistorical license (Appendix 2) for an article from a country during a quota year to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a nonhistorical license for the same article from the same country for that quota year. Further, the Licensing Authority will not issue a nonhistorical license for butter to an applicant who is associated with another applicant to whom the Licensing Authority is issuing a historical butter license for 57,000 kilograms or greater. For the purpose of this paragraph, an applicant will be deemed associated with another applicant if:

(i) The applicant is an employee of, or is controlled by an employee of, such other applicant;

(ii) The applicant manages or is managed by such other applicant, or economically benefits, directly or indirectly, from the use of the license issued to such other applicant.

(6) The Licensing Authority will not issue a nonhistorical license for an article from a country during a quota year, for which the applicant receives a designated license.

[80 FR 44254, July 27, 2015]

§ 6.24 Application for a license.

(a) Application for license shall be made on electronic forms designated for the purpose by the Licensing Authority. All parts of the application shall be completed. The application shall be transmitted no earlier than September 1 and no later than midnight October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete applications.

(b)(1) Where the applicant seeks to establish eligibility on the basis of imports, applications shall include identification of entries sufficient to establish the applicant as the importer of record of entries required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought. For qualifying licensed entries, verification will be only processed through DAIRIES and cross checked with entries in the CBP system. For qualifying unlicensed entries, the applicant will submit an electronic copy (*e.g.* scanned PDF) of CBP Form 7501 to the Licensing Authority.

(2) Where the applicant seeks to establish eligibility on the basis of exports, applications shall include:

(i) Census Form 7525 or a copy of the electronic submission of such form, and

(ii) The commercial invoice or bill of sale for the quantities and number of export shipments required under § 6.23, during the 12-month period ending August 31 prior to the quota year for which license is being sought.

(c) An applicant requesting more than one nonhistorical license must rank order these requests by the applicable Additional U.S. Note number. Cheese and cheese products must be ranked separately from dairy articles other than cheese or cheese products.

[80 FR 44254, July 27, 2015]

§ 6.25 Allocation of licenses.

(a) *Licensing Authority.* The Licensing Authority will issue historical, nonhistorical and designated licenses.

(b) *Historical licenses for the 2016 and subsequent quota years (Appendix 1).* A person issued a historical license for the current quota year will be issued a historical license in the same amount for the same article from the same country for the next quota year except that beginning with the 2024 quota year, a person who has surrendered more than 50 percent of such historical license in at least three of the prior 5 quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those 5 quota years.

(c) *Nonhistorical licenses (Appendix 2).* The Licensing Authority will allocate nonhistorical licenses on the basis of a rank-order lottery system, which will operate as follows:

(1) The minimum license size shall be:

(i) Where the article is cheese or cheese product:

(A) The total amount available for nonhistorical license where such amount is less than 9,500 kilograms;

(B) 9,500 kilograms where the total amount available for nonhistorical license is between 9,500 kilograms and 500,000 kilograms, inclusive;

(C) 19,000 kilograms where the total amount available for nonhistorical license is between 500,001 kilograms and 1,000,000 kilograms, inclusive;

(D) 38,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms; or

(E) An amount less than the minimum license size established in paragraphs (c)(1)(i) (A) through (D) of this section, if requested by the licensee;

(ii) Where the article is not cheese or cheese product:

(A) The total amount available for nonhistorical license where such amount is less than 19,000 kilograms;

(B) 19,000 kilograms where the total amount available for nonhistorical license is between 19,000 kilograms and 550,000 kilograms, inclusive;

(C) 38,000 kilograms where the total amount available for nonhistorical license is between 550,001 kilograms and 1,000,000 kilograms, inclusive; and

(D) 57,000 kilograms where the total amount available for nonhistorical license is greater than 1,000,000 kilograms;

(E) An amount less than the minimum license sizes established in paragraphs (c)(1)(i)(A) through (D) of this section, if requested by the licensee.

(2) Taking into account the order of preference expressed by each applicant, as required by §6.24(c), the Licensing Authority will allocate licenses for an article from a country by a series of random draws. A license of minimum size will be issued to each applicant in the order established by such draws until the total amount of such article in Appendix 2 has been allocated. An applicant that receives a license for an article will be removed from the pool for subsequent draws until every applicant has been allocated at least one license, provided that the licenses for which they applied are not already fully allocated. Any amount remaining after the random draws which is less than the applicable minimum license size may, at the discretion of the licensing Authority, be prorated equally among the licenses awarded for that article.

(d) *Designated licenses (Appendix 3).* (1) With respect to an article listed in Appendix 3, the government of the applicable country may, not later than October 31 prior to the beginning of a quota year, submit directly by email to the Licensing Authority:

(i) The names, addresses and emails of the importers that it is designating to receive licenses; and

(ii) The amount, in kilograms, of such article for which each such importer is being designated. Where quantities for designation result from both Tokyo Round concessions and Uruguay Round concessions, the designations should be made in terms of each.

(2) To the extent practicable, the Licensing Authority will issue designated licenses to those importers, and in those amounts, indicated by the government of the applicable country, provided that the importer designated meets the eligibility requirements set forth in §6.23. Consistent with the international obligations of the United States, the Licensing Authority may disregard a designation if the Licensing Authority determines that the person

designated is not eligible for any of the reasons set forth in § 6.23(c)(1) or (2).

(3) If a government of a country which negotiated in the Uruguay Round for the right to designate importers has not done so, but determines to designate importers for the next quota year, it shall indicate its intention to do so directly and in writing to the Licensing Authority not later than July 1 prior to the beginning of such next quota year. Furthermore, if a government that has designated importers for a quota year determines that it will not continue to designate importers for the next quota year, it shall so indicate directly and in writing to the Licensing Authority, not later than July 1 prior to such next quota year.

[80 FR 44254, July 27, 2015, as amended at 87 FR 52852, Aug. 30, 2022]

§ 6.26 Surrender and reallocation.

(a) If a licensee determines that it will not enter the entire amount of an article permitted under its license, such licensee shall surrender its license right to enter the amount that it does not intend to enter. Surrender shall be made to the Licensing Authority no later than October 1. Any surrender shall be final and shall be only for that quota year, except as provided in § 6.25(b). The amount of the license not surrendered shall be subject to the license use requirements of § 6.23(c)(1).

(b) For each quota year, the Licensing Authority will, to the extent practicable, reallocate any amounts surrendered.

(c) Any person who qualified for or was issued a cheese or cheese product license for a quota year may apply to receive additional license, or addition to an existing license for a portion of the amount being reallocated. A person who did not qualify for a cheese or cheese product license for a quota year, but qualified only for a license for articles other than cheese or cheese products, may only apply to receive an additional license for articles other than cheese or cheese products, or addition to an existing license for articles other than cheese or cheese products for a portion of the amount being reallocated. The application shall be submitted to the Licensing Authority no earlier than September 1 and not later than September 15, and shall specify:

(1) The name and control number of the applicant;

(2) The article and country being requested, the applicable HTS Additional U.S. Note number and, if more than one article is requested, a rank-order by Additional U.S. Note number; and

(3) If applicable, the number of the license issued to the applicant for that quota year permitting entry of the same article from the same country.

(d) The Licensing Authority will reallocate surrendered amounts among applicants as follows:

(1) The minimum license size, or addition to an existing license, will be the total amount of the article from a country surrendered, or 10,000 kilograms, whichever is less;

(2) Minimum size licenses, or additions to an existing license, will be allocated among applicants requesting articles on the basis of the rank-order lottery system described in § 6.25(c);

(3) If there is any amount of an article from a country left after minimum size licenses have been issued, the Licensing Authority may allocate the remainder in any manner it determines equitable among applicants who have requested that article; and

(4) No amount will be reallocated to a licensee who has surrendered a portion of its license for the same article from the same country during that quota year unless all other licensees applying for a reallocated quantity have been allocated a license;

(e) However, if the government of an exporting country chooses to designate eligible importers for surrendered amounts under Appendix 3, the Licensing Authority shall issue the licenses in accordance with § 6.25(d)(2), provided that the government of the exporting country notifies the Licensing Authority of its designations no later than September 1. Such notification shall contain the names, addresses, and emails addresses of the importers that it is designating and the amount in kilograms of such article for which each importer is being designated. In such case the requirements of paragraph (c) of this section shall not apply.

[80 FR 44254, July 27, 2015]

§ 6.27 Limitations on use of license.

(a) A licensee shall not obtain or use a license for speculation, brokering, or offering for sale, or permit any other person to use the license for profit.

(b) A licensee who is eligible as a manufacturer or processor, pursuant to § 6.23, shall process at least 75 percent of its licensed imports in such person's own facilities and maintain the records necessary to so substantiate.

[80 FR 44254, July 27, 2015]

§ 6.28 Transfer of license.

(a) If a licensee sells or conveys its business involving articles covered by this subpart to another person, including the complete transfer of the attendant assets, the Licensing Authority will transfer to such other person the historical, nonhistorical or designated license issued for that quota year. Such sale or conveyance must be unconditional, except that it may be in escrow with the sole condition for return of escrow being that the Licensing Authority determines that such sale does not meet the requirements of this paragraph.

(b) The parties seeking transfer of license shall give written notice to the Licensing Authority of the intended sale or conveyance described in paragraph (a) of this section by email. The notice must be received by the Licensing Authority at least 20 working days prior to the intended consummation of the sale or conveyance. Such notice shall include electronic copies of the documents of sale or conveyance. The Licensing Authority will review the documents for compliance with the requirements of paragraph (a) of this section and advise the parties in writing of its findings by the end of the 20-day period. The parties shall have the burden of demonstrating to the satisfaction of the Licensing Authority that the contemplated sale or conveyance complies with the requirements of paragraph (a) of this section. Within 15 days of the consummation of the sale or conveyance, the parties shall email the final documents to the Licensing Authority. The Licensing Authority will not transfer the licenses unless the documents are submitted in accordance with this paragraph.

(c) The eligibility for a license of a person to whom a business is sold or conveyed will be determined for the next quota year in accordance with § 6.23. For the purposes of § 6.23(b)(1) the person to whom a business is sold or conveyed shall be deemed to be the person to whom the historical licenses were issued during the quota year in which the sale or conveyance occurred. Further, for the purposes of § 6.23(b) and (c), the entries made under such licenses by the original licensee during the year in which the sale of conveyance is made, shall be considered as having been made by the person to whom the business was sold or conveyed.

[80 FR 44254, July 27, 2015]

§ 6.29 Use of licenses.

(a) An article entered under a license shall be an article produced in the country specified on the license.

(b) An article entered or withdrawn from warehouse for consumption under a license must be entered in the name of the licensee as the importer of record by the licensee or its agent, and must be owned by the licensee at the time of such entry.

(c) If the article entered or withdrawn from warehouse for consumption was purchased by the licensee through a direct sale from a foreign supplier, the licensee shall present the following documents or their authorized electronic equivalent, when available, at the time of entry:

(1) A true and correct copy of a through bill of lading from the country; and

(2) A commercial invoice or bill of sale from the seller, showing the quantity and value of the product, the date of purchase and the country; or

(3) Where the article was entered into warehouse by the foreign supplier, CBP Form 7501 endorsed by the foreign supplier, and the commercial invoice.

(d) If the article entered was purchased by the licensee via sale-in-transit, the licensee shall present the following documents or their authorized electronic equivalent, when available, at the time of entry:

(1) A true and correct copy of a through bill of lading endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(e) If the article entered was purchased by the licensee in warehouse, the licensee shall present the following documents or their authorized electronic equivalent, when available, at the time of entry:

(1) CBP Form 7501 endorsed by the original consignee of the goods;

(2) A certified copy of the commercial invoice or bill of sale from the foreign supplier to the original consignee of the goods; and

(3) A commercial invoice or bill of sale from the original consignee to the licensee.

(f) The Licensing Authority may waive the requirements of paragraphs (c), (d) or (e), if it determines that because of strikes, lockouts or other unusual circumstances, compliance with those requirements would unduly interfere with the entry of such articles.

(g) Nothing in this subpart shall prevent the use of immediate delivery in accordance with the provisions of CBP regulations relating to tariff-rate quotas.

[80 FR 44254, July 27, 2015, as amended at 81 FR 87802, Dec. 6, 2016]

§ 6.30 Record maintenance and inspection.

A licensee shall retain all records relating to its purchases, sales and transactions governed by this subpart, including all records necessary to establish the licensee's eligibility, for five years subsequent to the end of the quota year in which such purchases, sales or transactions occurred. During that period, the licensee shall, upon reasonable notice and during ordinary hours of business, grant officials of the U.S. Department of Agriculture full and complete access to the licensee's premises to inspect, audit or copy such records.

[80 FR 44254, July 27, 2015]

§ 6.31 Debarment and suspension.

The provisions in 2 CFR parts 417 and 421 apply to this subpart.

[85 FR 31938, May 28, 2020]

§ 6.32 Globalization of licenses.

If the Licensing Authority determines that entries of an article from a country are likely to fall short of that country's allocated amount as indicated in Appendices 1, 2, and 3, the Licensing Authority may permit, with the approval of the Office of the United States Trade Representative, the applicable licensees to enter the remaining balance or a portion thereof from any country during that quota year. Requests for consideration of such adjustments must be submitted to the Licensing Authority no later than September 1. The Licensing Authority will obtain prior consent for such an adjustment of licenses from the government of the exporting country for quantities in accordance with the Uruguay Round commitment of the United States. No globalization requests will be considered prior to April 1 of each year.

[80 FR 44254, July 27, 2015]

§ 6.33 License fee.

(a) A fee will be assessed each quota year for each license to defray the Department's costs of administering the licensing system. To the extent practicable, the fee will be announced by the Licensing Authority in a notice published in the FEDERAL REGISTER no later than August 31 of the year preceding the quota year for which the fee is assessed.

(b) The license fee for each license issued is due and payable in full no later than March 15 of the year for which the license is issued. The fee for any license issued after March 15 of any quota year is due and payable in full no later than 10 days from the date of issuance of the license. Fee payments are payable to the Treasurer of the United States and shall be made solely utilizing the electronic software designated for the purpose by the Licensing Authority as provided in § 6.36(b).

(c) If the license fees for all licenses issued to a licensee are not paid by the final payment date, a hold will be

placed on the use of all licenses issued to the licensee and no articles will be permitted entry under those licenses. The Licensing Authority shall send a warning by email advising the licensee that if payment is not made in accordance with § 6.36(b) and received within 10 calendar days from the date of the email, all licenses issued to that licensee will be revoked. Where the license at issue is a historical license, this will result, pursuant to § 6.23(b), in the person's loss of historical eligibility for such license.

[80 FR 44254, July 27, 2015]

§ 6.34 Adjustment of appendices.

(a) Whenever a historical license (Appendix 1) is not issued to an applicant pursuant to the provisions of § 6.23, is permanently surrendered or is revoked by the Licensing Authority, the amount of such license will be transferred to Appendix 2.

(b) The cumulative annual transfers to Appendix 2 made in accordance with paragraph (a) of this section will be published by Notice in the FEDERAL REGISTER each year. If a transfer results in the addition of a new article, or an article from a country not previously listed in Appendix 2, the Licensing Authority shall afford all eligible applicants for that quota year the opportunity to apply for a license for such article.

[80 FR 44254, July 27, 2015]

§ 6.35 Correction of errors.

(a) If a person demonstrates, to the satisfaction of the Licensing Authority, that errors were made by officers or employees of the United States Government, the Licensing Authority will review and rectify the errors to the extent permitted under this subpart.

(b) To be considered, a person must provide sufficient documentation regarding the error to the Licensing Authority by email, not later than August 31 of the calendar year following the calendar year in which the error was alleged to have been committed.

(c) If the error resulted in the loss of a historical license by a license holder, the Licensing Authority will transfer the amount of such license from Appendix 2 to Appendix 1 in order to provide for the issuance of such license in the calendar year following the calendar year for which the license was revoked. The cumulative annual transfers to Appendix 1 in accordance with this paragraph will be published in the FEDERAL REGISTER.

[80 FR 44254, July 27, 2015]

§ 6.36 Miscellaneous.

(a) If any deadline date in this subpart falls on a Saturday, Sunday, or a Federal holiday, then the deadline shall be the next business day.

(b) All applications and fee payments required under this subpart shall be made utilizing the electronic software designated for this purpose by the Licensing Authority, and official correspondence with the Licensing Authority, except as provided under § 6.28(b), shall be by email. Digital scanned versions (*e.g.* PDF, JPEG, TIF, etc.) of hardcopy documents submitted by email are acceptable electronic communications.

[80 FR 44254, July 27, 2015]

Subpart C—Price-Undercutting of Domestic Cheese by Quota Cheeses

AUTHORITY: Sec. 702, Pub. L. 96–39, 93 Stat. 144, 19 U.S.C. 1202 note.

SOURCE: 45 FR 9883, Feb. 13, 1980, unless otherwise noted.Redesignated at 85 FR 31938, May 28, 2020.

§ 6.40 General.

This subpart sets forth the procedures applicable to the determination by the Secretary of Agriculture as to whether the price at which any article of quota cheese is being offered for sale in the United States on a duty-paid wholesale basis is less than the domestic wholesale market price of similar articles produced in the United States (i.e., price-undercutting) in accordance with section 702 of the Trade Agreements Act of 1979 (Pub. L. 96–39, 93 Stat. 144, 19 U.S.C. 1202 note) (hereinafter referred to as the Act).

§ 6.41 Definitions.

(a) *Complainant* means the person who has filed with the Investigating

Authority, in accordance with the procedures set forth in this subpart, a written complaint alleging that price-undercutting is occurring.

(b) *Country of origin* means the country, as defined in 19 CFR 134.1(b), in which the quota article subject to this regulation was produced or manufactured.

(c) *Foreign government* means the government of the country of origin or, for purposes of determining whether a subsidy has been provided for the member states of the European Economic Community, the subsidy granting bodies of the European Economic Community.

(d) *Investigating Authority* means the Director, Dairy, Livestock and Poultry Division, Commodity Programs, Foreign Agricultural Service.

(e) *Quota cheese* means the articles provided for in the following items of the Tariff Schedules of the United States:

117.00 (except Stilton produced in the United Kingdom);
117.05 (except Stilton produced in the United Kingdom);
117.15;
117.20;
117.25;
117.42;
117.44;
117.55;
117.60 (except Gammelost and Nokkelost);
117.75 (except goat's milk cheeses and soft-ripened cow's milk cheeses);
117.81;
117.86;
117.88 (except goat's milk cheeses and soft-ripened cow's milk cheeses);

(f) *Secretary* means the Secretary of Agriculture.

(g) *Subsidy* has the same meaning as such term has in section 771(5) of the Tariff Act of 1930 as added by section 101 of the Trade Agreements Act of 1979 (19 U.S.C. 1677(5)).

(h) The *United States* means the Customs Territory of the United States, which is limited to the United States, District of Columbia and Puerto Rico.

§ 6.42 Complaints of price-undercutting.

(a) *Submission of complaint.* Any person who has reason to believe that the price at which any article of quota cheese is offered for sale or sold in the United States on a duty-paid wholesale price basis is less than the domestic wholesale market price of similar articles produced in the United States and that a foreign government is providing a subsidy with respect to such article of quota cheese may file with the Investigating Authority a written complaint making such allegation.

(b) *Contents of complaint.* Such complaint shall contain, or be accompanied by, information to substantiate complainant's allegations, in substantially the following form:

(1) The name and address of the complainant.

(2) The location of the domestic wholesale market in which price-undercutting is alleged to be occurring.

(3) The article of quota cheese involved in the alleged price-undercutting.

(4) The country of origin of such article of quota cheese.

(5) The similar domestic article, the price of which the complainant believes is being undercut.

(6) The month and year that the complainant first concluded that the price-undercutting was taking place.

(7) To extent known to the complainant, all pertinent facts with regard to the alleged subsidy, and, if known, the statutory or other authority under which it is paid, the manner in which it is paid, and the value of such subsidy when received and used by producers or sellers of such quota cheese.

(8) All other information which the complainant believes substantiates the allegation of price-undercutting, including the complainant's estimate of the domestic wholesale market price of the similar article produced in the United States and the duty-paid wholesale price of the quota cheese involved. If available, samples of the domestic and imported cheese products should be submitted.

§ 6.43 Determinations.

(a) *Making determinations.* Not later than 30 days after receiving an acceptable complaint, as described in § 6.42(b), alleging price-undercutting, the Secretary shall make a determination as to the validity of the allegation. In making such determination, the following shall apply:

(1) The ''domestic wholesale market'' shall be one or more of the three major U.S. market areas, viz., New York City, Chicago, and San Francisco, and/or any other market area within the Customs Territory of the United States, which the Investigating Authority determines most representative of the area specified by the complainant as the one in which price-undercutting is alleged to be occurring (hereinafter referred to as ''designated area'').

(2) The ''duty-paid wholesale price'' determined by the Investigating Authority shall be the average of prices at which wholesalers have sold or offered for sale in the designated area the article of quota cheese alleged to be involved in price-undercutting, as obtained in a survey directed by the Investigating Authority during the investigation: *Provided,* That whenever the designated area is not or does not include one of the major market areas specified in paragraph (a)(1) of this section, the Investigating Authority may adjust the average of prices determined for such designated area on the basis of the average of prices determined for the major market area which is determined to be the most representative of the designated area, taking into consideration any special factors which may be affecting prices in the designated area.

(3) The ''domestic wholesale market price'' determined by the Investigating Authority for a similar article produced in the United States to that article of quota cheese which is alleged to be involved in price-undercutting shall be the average of prices at which wholesalers have sold the similar article produced in the United States in the designated area, as obtained in a survey directed by the Investigating Authority during the investigation: *Provided,* That whenever the designated area is not or does not include one of the major market areas specified in paragraph (a)(1) of this section, the Investigating Authority may adjust the average of prices determined for such designated area on the basis of the average of prices determined for the major market area which is determined to be the most representative of the designated area, taking into consideration any special factors which may be affecting prices in the designated area.

(4) ''Similar article produced in the United States'' shall be an article of cheese, cheese product, or imitation cheese produced in the United States and marketed in the domestic wholesale market, which is determined by the Investigating Authority, based upon available information to be most like the imported article of quota cheese alleged to be involved in price-undercutting, in terms of its physical properties and end use. In making this determination, first consideration shall be given to the normal end uses of the article produced in the United States in comparison with the end use of the article of quota cheese alleged to be involved in price-undercutting. If the end use of both articles is determined to be the same (e.g., processing or retail sale), the physical characteristics of the two articles shall be considered.

If the common end use of the two articles is processing, the representative samples of the two articles shall be examined in terms of processing quality, taking special note of processing yields. If the common end use of the two articles is retail sale, representative samples of the two articles shall be examined in terms of similarities of taste, texture, general appearance, quality, age, and packaging. Imported imitation quota cheese shall only be compared with imitation domestic cheese. If it is determined that the domestic cheese the price of which is claimed to be undercut is not similar to the quota cheese allegedly undercutting it, there shall be no finding of price-undercutting.

(b) *Reporting determinations.* Determinations by the Secretary as to the validity of allegations of price-undercutting made under this subpart shall be published in the FEDERAL REGISTER not later than 5 days after the date the determination is made.

§ 6.44 Delegation of authority.

The powers vested in the Administrator, FAS, insofar as such powers relate to the functions of the Investigating Authority by this regulation are hereby delegated to the Investigating Authority. This final rule has

been reviewed under the USDA criteria established to implement Executive Order 12044, ''Improving Government Regulations.'' a determination has been made that this action should not be classified ''significant'' under those criteria. A Final Impact Statement has been prepared and is available from Carol M. Harvey in room 6622, South Agriculture Building, 14th and Independence Ave., SW., Washington, DC 20250.

PART 7—SELECTION AND FUNCTIONS OF FARM SERVICE AGENCY STATE AND COUNTY COMMITTEES

Sec.

7.1 Administration.
7.2 General.
7.3 Definitions.
7.4 Selection of committee members.
7.5 Eligible voters.
7.6 Establishment of local administrative areas.
7.7 Calling of elections.
7.8 Nominations for county committee.
7.9 Slate of candidates.
7.10 Conduct of county committee elections.
7.11 Election of county committee members.
7.12 Composition of a county committee.
7.13 Tie votes.
7.14 Vacancies.
7.15 Challenges and appeals.
7.16 Report of election.
7.17 Remedial measures.
7.18 Eligibility requirements of county committee members.
7.19 Eligibility requirements of all other personnel.
7.20 Prohibition on dual office.
7.21 Terms of office of county committee members.
7.22 State committee duties.
7.23 County committee duties.
7.24 Chairperson of the county committee duties.
7.25 County executive director duties.
7.26 Private business activity and conflicts of interest.
7.27 Political activity.
7.28 Removal from office or employment for cause.
7.29 Delegation of authority to Deputy Administrator.
7.30 Custody and use of books, records, and documents.
7.31 Administrative operations.
7.34 Retention of authority.

AUTHORITY: 7 U.S.C. 2279–1, 16 U.S.C. 590d and 590h.

SOURCE: 77 FR 33070, June 5, 2012, unless otherwise noted.

§ 7.1 Administration.

(a) The regulations in this part apply to the election and functions of the Farm Service Agency (FSA) county committees and the functions of FSA State committees (''county committees'' and ''State committees,'' respectively). State and county committees will be under the general supervision of the FSA Administrator.

(b) State and county committees, and representatives and employees of those committees, do not have authority to modify or waive any of the provisions of this part.

(c) State committees will take any actions required by these regulations that have not been taken by a county committee. State committees will also:

(1) Correct, or require a county committee to correct, any action taken by such county committee that is not in accordance with this part, or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee will preclude the FSA Administrator, or designee, from determining any question arising under this part, or from reversing or modifying any determination made by a State or county committee.

(e) These regulations will be administered in accordance with the Uniform Guidelines for Conducting FSA County Committee Elections.

(f) Unless specifically provided in this part, the Deputy Administrator, Field Operations, FSA (Deputy Administrator), is authorized to issue the official instructions and procedures referred to in this part to implement the provisions of this part.

(g) This part applies to the United States, its territories, and Puerto Rico.

§ 7.2 General.

State and county committees will, as directed by the Secretary, or a designee of the Secretary, carry out the programs and functions of the Secretary.

§ 7.3 Definitions.

The following definitions apply to this part. The definitions in § 718.2 of this title also apply to this part, except where they conflict with the definitions in this section.

Cooperate means to enroll a farming operation or agricultural property with a county office.

Deputy Administrator means Deputy Administrator for Field Operations, Farm Service Agency, U.S. Department of Agriculture or the designee.

Local administrative area means an elective area for FSA committees in a single county or multi-county jurisdiction.

Participate means to receive assistance, services, or benefits directly from the United States Department of Agriculture (USDA), or from USDA indirectly through another governmental agency.

Socially disadvantaged farmer or rancher is an individual or entity who is a member of a group whose members have been subject to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. These groups consist of: American Indians or Alaskan Natives, Asians, Blacks or African Americans, Native Hawaiians or other Pacific Islanders, Hispanics, and women.

State committee means the FSA State committee.

Uniform Guidelines means the Uniform Guidelines for Conducting Farm Service Agency County Committee Elections, which are available in FSA Handbook 15–AO.

§ 7.4 Selection of committee members.

(a) State committee members will be selected by the Secretary and will serve at the pleasure of the Secretary.

(b) County committee members will be elected as specified in § 7.11 of this part or appointed as specified in § 7.17 of this part.

§ 7.5 Eligible voters.

(a) Persons must meet the requirements of paragraphs (b) or (c) of this section to be eligible to vote in direct elections of county committee members.

(b) Farmers and ranchers who are of legal voting age in the State in which their farms or ranches are located, regardless of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status, and any farmers or ranchers not of legal voting age who are in charge of the supervision and conduct of the farming operations on an entire farm, are eligible to vote for direct election of county committee members, if they:

(1) Participated in a program administered within a county, or area under the jurisdiction of the county committee, within 1 year of the date of the election; or

(2) Not later than the final date to return ballots, cooperate as evidenced in county office records.

(c) In any State having a community property law, the spouse of a person who is eligible to vote in accordance with paragraph (b) of this section is also eligible to vote.

(d) If an eligible voter is a legal entity, the eligible voter's vote may be cast by a duly authorized representative of such entity, as determined by the Deputy Administrator, Field Operations, FSA.

(e) Each county office will maintain a list of eligible voters for each local administrative area within the county. A county office must disclose a list containing the names of eligible voters to the public. A county office must disclose a list containing the names and addresses of eligible voters to a candidate for a county committee position at the request of the candidate.

(f) Farmers and ranchers who are not on the list of eligible voters who believe that they meet eligibility requirements may file a written challenge with the county committee and may appeal county committee voting ineligibility determinations to the State committee.

(g) Each eligible voter will be entitled to only one ballot in any election held in any one local administrative area. If the eligible voter has an interest in land located in more than one local administrative area in a single county, such voter will not be entitled

to vote in more than one local administrative area in that county. There will be no voting by proxy.

§ 7.6 Establishment of local administrative areas.

(a) The Secretary, or the Secretary's designee, may designate local administrative areas within a county or a larger area under the jurisdiction of a county committee.

(1) There will be a minimum of three local administrative areas in each county. In counties that have been combined or consolidated into a multiple county office, there will be 3 to 11 local administrative areas. In single-county offices, there will be three to five local administrative areas. With respect to Alaska and Puerto Rico, the county will be the area so designated by the State committees. In Louisiana, the term ''county'' applies to parishes.

(2) Each local administrative area will have not more than one elected county committee member.

(3) The boundaries of the local administrative areas will be determined by the State committee after considering recommendations by the county committee in which the local administrative areas are located.

(4) The county committee must give public notice of the local administrative area boundaries in advance of the election and nomination processes.

(b) [Reserved]

§ 7.7 Calling of elections.

(a) The Secretary will establish a county committee in each county or area under the jurisdiction of a multiple county office.

(b) Each election of county committee members must be held on a date, or within a specified period of time, determined by the Deputy Administrator. Each such election must be held in accordance with instructions issued by the Deputy Administrator, and the instructions must be available for public examination in each county office.

(c) If the number of eligible voters voting in any election of county committee members is so small that the State committee determines that the result of that election does not represent the views of a substantial number of eligible voters, the State committee may declare the election void and call a new election. If it is determined by the State committee that the election for any position on a county committee has not been held substantially in accordance with official instructions, the State committee will declare such election void and call a new election.

§ 7.8 Nominations for county committee.

(a) Nominations to the county committee will be publicly solicited with a closing date for nominations not less than 90 days prior to the election date.

(b) Each solicitation for nomination will include the nondiscrimination statement used by the Secretary.

(c) To be eligible for nomination for election in a single county jurisdiction in the local administrative area conducting the election, a person must be a farmer or rancher residing within that local administrative area under the jurisdiction of the county committee. In a multiple county jurisdiction, or in the case where an local administrative area or county boundary runs through a farm, a person will only be eligible for nomination in the jurisdiction and local administrative area in which the person's records are administered.

(d) To be eligible, nominees must be farmers or ranchers who:

(1) Participated in a program administered within an area under the jurisdiction of the county committee; or

(2) At the time of the deadline to submit nominations, cooperate as evidenced in county office records.

(e) Nominations of eligible farmers and ranchers will be solicited and accepted from organizations representing the interests of socially disadvantaged farmers and ranchers.

(f) Eligible farmers and ranchers may nominate themselves or other farmers and ranchers who meet the nomination criteria in paragraph (d) of this section, and who certify their willingness to serve on the county committee.

(g) If elected, nominees must meet all the eligibility requirements in § 7.18 to serve as county committee members.

§ 7.9 Slate of candidates.

(a) Except as provided in paragraph (b) of this section, a slate of candidates will consist of one or more eligible farmers and ranchers nominated through public solicitation of nominees as specified in § 7.8.

(b) If no nominations are received by the closing date for nominations, the county committee must develop a slate of candidates in accordance with the Uniform Guidelines.

(c) A slate developed by the county committee must include at least one individual representing the interests of socially disadvantaged farmers and ranchers.

(d) Candidates must certify their willingness to serve on the county committee if elected as a member or alternate.

(e) The county committee must accept write-in candidates on ballots.

(f) Write-in candidates, if elected as a member or an alternate, must meet the eligibility requirements of § 7.18 and must certify their willingness to serve on the county committee before they will be certified as a member or alternate.

§ 7.10 Conduct of county committee elections.

(a) The county committee serving at the time of the election will be responsible for the conduct of the county committee election in accordance with the Uniform Guidelines and with any instructions issued by the Deputy Administrator.

(b) County committee elections must not be associated with, or held in conjunction with, any other election or referendum conducted for any other purpose.

(c) The county committee must give advance public notice at least 30 calendar days prior to the election date of how, when, and where eligible voters may vote.

(d) The county committee must provide at least 10 calendar days of public notice of the date, time, and place at which election ballots will be opened and counted.

(e) The county committee must provide at least 10 calendar days of public notice that any person may observe the opening and counting of the election ballots.

(f) The county executive director must notify all nominees of the outcome of the election within 5 calendar days of the election date. The notification must be in writing.

§ 7.11 Election of county committee members.

(a) Where there are three local administrative areas as specified in § 7.6, there will be an election of a county committee member and, if available, any alternates, for a term of not more than 3 years, or until such person's successor is elected and qualified, in only one of the local administrative areas so that the term of office of one county committee member and any alternates within one of the local administrative areas will expire each year.

(b) Where there are more than three local administrative areas as specified in § 7.6, there will be an election in at least one of the local administrative areas each year, such that the term of office of the county committee member(s) and any alternates within at least one-third of the local administrative areas will expire each year.

(c) Every 3 years, the eligible voters in a local administrative area will elect a county committee member and may elect first and second alternates, as available, to serve. The alternates will serve, in the order of the number of votes received, as acting members of the county committee, in case of the temporary absence of a member, or to become a member of the county committee in that same order elected in case of the resignation, disqualification, removal, or death of a member. In other words, the candidate receiving the most votes will be elected as the committee member, and the candidates receiving the second and third most votes, if there are multiple candidates, will be elected as first and second alternates, respectively.

(d) An alternate serving as an acting member of the county committee will have the same duties, responsibilities, and authority as a regular member of such committee. In the event an alternate fills a permanent vacancy on the county committee, such person will assume the remainder of the unexpired

term of the county committee member who was replaced.

(e) The election must be conducted in all counties by mail or other distribution of ballots in accordance with the Uniform Guidelines, except that the Deputy Administrator may authorize use of the meeting or polling place method in any county where such exception is deemed justified.

(f) Elections will be by secret ballot with each eligible voter allowed to cast one vote and having the option of writing in the name of a candidate.

(g) Failure to elect alternates at the regular election will not invalidate such election or require a special election to elect alternates.

§ 7.12 Composition of a county committee.

(a) A committee established under this part will consist of not fewer than 3 nor more than 11 elected members.

(b) Committee members must be fairly representative of the farmers and ranchers within their respective LAA from which they are elected.

(c) The county committee must select a secretary who must be the county executive director or other employee of the county committee. The secretary cannot be a county committee member.

(d) The county committee must select a chairperson and vice-chairperson.

§ 7.13 Tie votes.

Tie votes in county committee elections will be settled by lot in a manner that is open to the public.

§ 7.14 Vacancies.

(a) In case of a vacancy in the office of chairperson of a county committee, the respective vice chairperson will become chairperson. In case of a vacancy in the office of vice chairperson of a three member committee, the respective third member will become vice chairperson. In case of a vacancy in the office of a member, a respective first alternate, if available, will become a member. In case of a vacancy in the office of vice chairperson of a four to five member county committee, the first alternate, if available, for the LAA of the vice chairperson will become a member and the county committee will conduct an organizational meeting to select a vice chairperson; and in case of a vacancy in the office of the first alternate, a respective second alternate, if available, will become the first alternate. When unanimously recommended by the members of the county committee, as constituted under this paragraph, and approved by the State committee, the offices of chairperson and vice chairperson of the county committee may be filled by any county committee member without regard to the order of succession specified in this paragraph.

(b) In the event that a vacancy, other than one caused by temporary absence, occurs in the membership of the county committee and no alternate is available to fill the vacancy, a special election may be held to fill such vacancies as exist in the membership.

(c) In the event that a vacancy, other than one caused by temporary absence, occurs in the membership of the county committee and no alternate is available to fill the vacancy, the State committee may designate a person to serve out the balance of the term of the vacant position on the county committee.

§ 7.15 Challenges and appeals.

(a) Challenges and appeals by nominees regarding voter eligibility or the results of a county committee election must be handled in accordance with the Uniform Guidelines.

(b) Any nominee has the right to challenge an election in writing, in person, or both within 15 calendar days after the results of the election are posted.

(c) Challenges to the election must be made to the county committee, which will provide a decision on the challenge to the appellant within 7 calendar days of the receipt of the challenge.

(d) The county committee's decision may be appealed to the State Committee within 15 calendar days of receipt of the notice of the decision if the appellant desires.

(e) In the event that an election is nullified as a result of a challenge or

appeal, or an error in the election process, a special election must be conducted by the county office and closely monitored by the FSA State office.

§ 7.16 Report of election.

(a) The county committee must file an election report with the Secretary through the Deputy Administrator's office not later than 20 days after the date an election is held.

(b) The election report must include:

(1) The number of eligible voters in the local administrative area;

(2) The number of ballots cast in the election by eligible voters;

(3) The percentage of eligible voters that cast ballots;

(4) The number of ballots disqualified in the election;

(5) The percentage of ballots disqualified;

(6) The number of nominees for each seat up for election;

(7) The race, ethnicity, and gender of each nominee, as provided by the voluntary self identification of each nominee; and

(8) The final election results, including the number of ballots received by each nominee.

§ 7.17 Remedial measures.

(a) FSA will consider additional efforts to achieve the objective that county committees are fairly representative of farmers and ranchers within areas covered by the committees. Such efforts may include, but are not limited to, compliance reviews of selected counties, further centralization of the election process, and the appointment of socially disadvantaged farmers and ranchers to particular committees in accordance with a notice published in the FEDERAL REGISTER issued by the Secretary authorizing such appointments.

(b) The Secretary may ensure inclusion of socially disadvantaged farmers and ranchers by appointment of 1 additional voting member to a county committee when a significant population of socially disadvantaged farmers and ranchers exist in the committee jurisdiction and no member is elected from that socially disadvantaged population. The appointment of the socially disadvantaged voting member will be in accordance with standards and qualifications furnished by the State committee.

§ 7.18 Eligibility requirements of county committee members.

(a) To be eligible to hold office as a county committee member or an alternate to any county office, a person must meet the conditions specified in this section.

(b) Such person must:

(1) Meet the eligibility for nomination criteria specified in § 7.8;

(2) Reside in the local administrative area in which the election is held, in cases where a State line, a county line, or a local administrative area boundary runs through a farm, eligible farmers and ranchers residing on such farm may hold office in the county and local administrative area in which the farm has been determined to be located for program participation purposes;

(3) Not be ineligible based on prohibited political activities, as specified in the Uniform Guidelines;

(4) Not have been dishonorably discharged from any branch of the armed services; removed for cause from any public office; convicted of any fraud, larceny, embezzlement, or felony, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(5) Not have been removed as a county committee member, alternate to any county office, or as an employee for: Failure to perform the duties of the office; committing, attempting, or conspiring to commit fraud; incompetence; impeding the effectiveness of any program administered in the county; refusal to carry out or failure to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfering with others in carrying out such policy; or for violation of official instructions, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(6) Not have been disqualified for future service because of a determination by a State committee that during previous service as a county committee member, alternate to any county office, or as an employee of the county

committee, the person has: Failed to perform the duties of such office or employment; committed, attempted, or conspired to commit fraud; impeded the effectiveness of any program administered in the county; in the course of their official duties, refused to carry out or failed to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfered with others in carrying out such policy; or violated official instructions, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(7) Not be an employee of the U.S. Department of Agriculture during the term of office;

(8) Not be a sales agent or employee of the Risk Management Agency or their affiliates during the term of office;

(9) Not be already serving as a county committee member with 1 or more years remaining in their current term of office; and

(10) Not have served more than 9 consecutive years (three consecutive terms as an elected member) as an elected or appointed county committee member just prior to the current election in which elected office is sought. After a break in service of at least 1 year, a member who has previously served 9 consecutive years may run for re-election or be re-appointed.

§ 7.19 Eligibility requirements of all other personnel.

(a) The county executive director and other employees of the county committee must not have been: Dishonorably discharged from any branch of the armed services; removed for cause from any public office; or convicted of any fraud, larceny, embezzlement, or any other felony, unless any such disqualification is waived by the State committee or the Deputy Administrator.

(b) The county executive director or any other employee of the county committee must not have been removed as a county committee member, alternate to any county office, county executive director, or other employee of the county committee for: Failure to perform the duties of the office; committing, attempting, or conspiring to commit fraud; incompetence; impeding the effectiveness of any program administered in the county; refusal to carry out or failure to comply with the Department's policy relating to equal opportunity and civil rights, including equal employment policy, or interfering with others in carrying out such policy; or for violation of official instructions, unless such disqualification is waived by the State committee or the Deputy Administrator.

(c) The county executive director or any other employee of the county committee must not have been disqualified for future employment because of a determination by a State committee that during previous service as a county committee member, alternate to any county office, or as an employee of the county committee, the person has: Failed to perform the duties of such office or employment; committed, attempted, or conspired to commit fraud; impeded the effectiveness of any program administered in the county; refused to carry out or failed to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfered with others in carrying out such policy; or violated official instructions, unless such disqualification is waived by the State committee or the Deputy Administrator.

§ 7.20 Prohibition on dual office.

(a) A member of the county committee cannot, during the time they are a committee member, also serve as:

(1) The secretary to the county committee;

(2) A member of the State committee; or

(3) A county executive director or any other county office employee.

(b) [Reserved]

§ 7.21 Terms of office of county committee members.

(a) The term of office of county committee members and alternates to such office will begin on a date fixed by the Deputy Administrator, which will be after their election or appointment.

(b) Before any county committee member or alternate to the county committee may take office as a county committee member, such person must

sign an oath of office to pledge that they will faithfully, fairly, and honestly perform to the best of their ability all of the duties devolving on them as committee members.

(c) A term of office will continue until a successor is elected and qualified as specified in §§ 7.8 and 7.9 or appointed as specified in § 7.17.

§ 7.22 State committee duties.

The State committee, subject to the general direction and supervision of the Deputy Administrator, will be generally responsible for carrying out all Farm Programs in the State or any other functions assigned by the Secretary or a designee of the Secretary.

§ 7.23 County committee duties.

(a) The county committee, subject to the general direction and supervision of the State committee, will be generally responsible for carrying out in the county Farm Programs and any other program or function assigned by the Secretary or a designee of the Secretary.

(b) The county committee will:

(1) Employ the county executive director, subject to standards and qualifications furnished by the State committee, except that incumbent directors must not be removed except as specified in § 7.28. There must be no employment discrimination due to race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, or marital or family status. The county executive director may not be removed for advocating or carrying out the Department's policy on equal opportunity and civil rights, including the equal employment policy. In the event it is claimed that dismissal is for such reasons, the dismissal will not become effective until the State committee and the Deputy Administrator have determined that dismissal was not because of such reasons;

(2) Direct outreach activities to reach and inform socially disadvantaged farmers and ranchers of all programs and county committee election processes;

(3) Follow official instructions to review, approve, and certify forms, reports, and documents requiring such action;

(4) Recommend to the State committee needed changes in boundaries of local administrative areas;

(5) Make available to farmers, ranchers, and the public information concerning the objectives and operations of the programs administered through the county committee;

(6) Make available to agencies of the Federal Government and others information with respect to the county committee activities in accordance with official instructions issued;

(7) Give public notice of the designation and boundaries of each local administrative area within the county prior to the election of county committee members;

(8) Direct the giving of notices in accordance with applicable regulations and official instructions;

(9) Recommend to the State committee desirable changes in or additions to existing programs;

(10) Conduct such hearings and investigations as the State committee may request; and

(11) Perform such other duties as may be prescribed by the State committee.

§ 7.24 Chairperson of the county committee duties.

The chairperson of the county committee or the person acting as the chairperson will preside at meetings of the county committee, certify such documents as may require the chairperson's certification, and perform such other duties as may be prescribed by the State committee.

§ 7.25 County executive director duties.

(a) The county executive director will execute the policies established by the county committee and be responsible for the day-to-day operations of the county office.

(b) The county executive director will:

(1) In accordance with standards and qualifications furnished by the State committee, employ the personnel of the county office. There must be no employment discrimination due to

race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. An employee may not be removed under this paragraph for advocating or carrying out the Department's policy on equal opportunity and civil rights, including the equal employment policy. In the event it is claimed that the dismissal is for such reason, the dismissal will not become effective until the State committee and the Deputy Administrator have determined that dismissal was not because of such reason;

(2) Receive, dispose of, and account for all funds, negotiable instruments, or property coming into the custody of the county committee.

§ 7.26 Private business activity and conflicts of interest.

(a) No county committee member, alternate to any such office, or county office employee, may at any time use such office or employment to promote any private business interest.

(b) County committee members, alternates, and any person employed in the county office will be subject to the official instructions issued with respect to conflicts of interest and proper conduct.

§ 7.27 Political activity.

Permitted and prohibited political activities, with respect to any State committee member, county committee member, county executive director, or any other county employee, will be determined in accordance with applicable policies specified in FSA handbooks and directives.

§ 7.28 Removal from office or employment for cause.

(a) Adverse personnel actions involving any county committee member or alternate member, county executive director, or other county office employee will be taken for failing to perform the duties of their office, impeding the effectiveness of any program administered in the county, violating official instructions, or for misconduct.

(b) Any person whom FSA proposes to suspend or remove from office or employment must be given advance written notice of the reason for such action and must be advised of the right to reply to such a proposal and any right of further review and appeal if the person is removed or suspended.

§ 7.29 Delegation of authority to Deputy Administrator.

(a) Notwithstanding the authority vested by this part to a State committee, a county committee, and the county executive director, the Deputy Administrator has the authority to take adverse personnel actions involving any county committee member or alternate member, county executive director, or other county office employee for failing to perform the duties of their office or for misconduct.

(b) Any person whom FSA proposes to suspend or remove from office or employment must be given advance written notice of the reason for such action and must be advised of the right to reply to such a proposal and any right of further review and appeal if the person is removed or suspended.

§ 7.30 Custody and use of books, records, and documents.

(a) All books, records, and documents of or used by the county committee in the administration of programs assigned to it, or in the conduct of elections, will be the property of FSA or the United States Department of Agriculture, as applicable, and must be maintained in good order in the county office.

(b) Voted ballots must be placed into and remain in sealed containers, such containers not being opened until the prescribed date and time for counting. Following the counting of ballots, the ballots must be placed in sealed containers and retained for 1 year unless otherwise determined by the Deputy Administrator.

(c) The books, records, and documents referred to in paragraph (a) of this section must be available for use and examination:

(1) At all times by authorized representatives of the Secretary, the Administrator, or a designee of the Administrator.

(2) By State and county committee members, and authorized employees of the State and county office in the performance of duties assigned to them

under this part, subject to instructions issued by the Deputy Administrator;

(3) At any reasonable time to any program participant insofar as such person's interests under the programs administered by the county committee may be affected, subject to instructions issued by the Deputy Administrator; and

(4) To any other person only in accordance with instructions issued by the Deputy Administrator.

§ 7.31 Administrative operations.

The administrative operations of county committees including, but not limited to, the following, must be conducted, except as otherwise provided in this part, in accordance with official instructions issued: Annual, sick, and other types of employee leave; the calling and conduct of elections; and the maintenance of records of county committee meetings.

§ 7.34 Retention of authority.

(a) Nothing in this part will preclude the Secretary, the Administrator, or the Deputy Administrator from administering any or all programs, or exercising other functions delegated to the county committee, State committee, or any employee of such committees.

(b) In exercising this authority, the Secretary, the Administrator, or the Deputy Administrator may designate for such period of time as deemed necessary a person or persons of their choice to be in charge with full authority to carry out the programs or other functions without regard to the normal duties of such committees or employees.

PART 8—4-H CLUB NAME AND EMBLEM

Sec.

8.1 Policy.
8.2 Delegation of authority.
8.3 Definitions.
8.4 Basic premises.
8.5 Revocation of present authorizations.
8.6 Authorization for use.
8.7 Continued use.
8.8 Use by public informational services.
8.9 Use in 4-H fund raising.

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 707.

SOURCE: 50 FR 31582, Aug. 2, 1985, unless otherwise noted.

§ 8.1 Policy.

The Cooperative Extension Service, of which the 4-H Club program is a part, invites and appreciates the cooperation of all organizations, agencies, and individuals whose interest, products, or services will contribute to the educational effort of the Cooperative Extension Service as conducted through the 4-H Club program.

§ 8.2 Delegation of authority.

The Director of the National Institute of Food and Agriculture, United States Department of Agriculture, may authorize the use of the 4-H Club Name and Emblem in accordance with the regulations in this part.

[50 FR 31582, Aug. 2, 1985, as amended at 60 FR 52293, Oct. 6, 1995; 76 FR 4803, Jan. 27, 2011]

§ 8.3 Definitions.

4-H Club Name and Emblem as used in this part means the emblem consisting of a green four-leaf clover with stem and the letter ''H'' in white or gold on each leaflet, or any insignia in colorable imitation thereof, or the words, ''4-H Club,'' ''4-H Clubs'' or any combination of these or other words or characters in colorable imitation thereof.

Cooperative Extension Service, as used in this part includes the entire Cooperative Extension System consisting of the National Institute of Food and Agriculture, United States Department of Agriculture; the State Cooperative Extension Services; and the County Cooperative Extension Services.

County Cooperative Extension Service as used in this part refers to a county Extension office or equivalent Extension office operating under a State Cooperative Extension Service.

National Institute of Food and Agriculture as used in this part means the Federal agency within the United States Department of Agriculture that administers Federal agricultural cooperative extension programs.

State Cooperative Extension Service as used in this part means an organization established at the land-grant college or university under the Smith-

Lever Act of May 8, 1914, as amended (7 U.S.C. 341–349); section 209(b) of the Act of October 26, 1974, as amended (D.C. Code, through section 31–1719(b)); or section 1444 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3221).

[50 FR 31582, Aug. 2, 1985, as amended at 52 FR 8432, Mar. 17, 1987; 52 FR 47660, Dec. 15, 1987; 60 FR 52293, Oct. 6, 1995; 76 FR 4803, Jan. 27, 2011]

§ 8.4 Basic premises.

(a) The 4-H Club Name and Emblem are held in trust by the Secretary of Agriculture of the United States Department of Agriculture for the educational and character-building purposes of the 4-H program and can be used only as authorized by the statute and according to the authorization of the Secretary or designated representative.

(b) The 4-H Club Name and Emblem may be used by authorized representatives of the United States Department of Agriculture, the Cooperative Extension Services, the land-grant institutions, and the National 4-H Council, according to these regulations, for serving the educational needs and interests of 4-H youth.

(c) Any use of the 4-H Club Name and Emblem is forbidden if it exploits the 4-H programs, its volunteer leaders or 4-H youth participants or the United States Department of Agriculture, the Cooperative Extension Services, or the land-grant institutions, or their employees.

(d) The 4-H Club Name and Emblem shall not be used to imply endorsement of commercial firms, products, or services.

§ 8.5 Revocation of present authorizations.

Effective September 16, 1985, authorization permits for the use of the 4-H Club Name and Emblem presently in effect will be revoked. However, such authorizations may be renewed upon written request.

§ 8.6 Authorization for use.

(a) The Director of the National Institute of Food and Agriculture may grant authorization for use of the 4-H Club Name and Emblem:

(1) For educational or informational uses which the Cooperative Extension Service deems to be in the best interests of the 4-H program and which can be properly controlled by the Cooperative Extension Service.

(2) For services to youth which the Cooperative Extension Service determines it is not in a position itself to perform.

(b) Authorizations, when issued, will be valid for specified purposes and periods of time only. Application forms for requesting authorization to use the 4-H Club Name and Emblem may be obtained from the Director of the National Institute of Food and Agriculture, United States Department of Agriculture, Washington, D.C. 20250.

(c) Granting an authorization to an individual, organization, or institution for a specific use does not preclude granting a similar authorization to another individual, organization, or institution for the same or a similar purpose.

(d) All uses of the 4-H Club Name or Emblem shall be consistent with the educational purposes, character-building objectives, and dignity of the 4-H program and the 4-H Club Name or Emblem shall be given a position of prominence. It is not permissible to superimpose any letter, design, or object on the 4-H Club Emblem, or to materially alter its intended shape.

(e) Specific authorization is not required to use the 4-H Club Name or Emblem in media such as newspapers, periodicals, and radio and television programs when such use is primarily for educational or informational purposes. Likewise, specific authorization is not required to use the 4-H Club Name or Emblem in those exhibits, displays, etc., which are designed primarily to pay tribute to or salute the 4-H program and are in keeping with the policies enunciated herein.

(f) Authorization must be obtained for use of the 4-H Club Name or Emblem by other than representatives of the Cooperative Extension Services, the land-grant institutions, and the National 4-H Council in connection with contests and awards, books, booklets, charts, posters, and all other

forms of publications; all calendars regardless of origin or use; theatrical and nontheatrical motion pictures; slides, slide films, and other visual and audio-visual materials; supplies (whether to be sold or provided without charge); and titles of persons.

(g) Any authorization or permission for use of the 4-H Club Name and Emblem may be revoked at any time after written notice.

[50 FR 31582, Aug. 2, 1985, as amended at 60 FR 52293, Oct. 6, 1995; 76 FR 4803, Jan. 27, 2011]

§ 8.7 Continued use.

(a) The Cooperative Extension Services, land-grant institutions, local 4-H Clubs and groups and other officially affiliated 4-H organziations recognized by the Secretary of Agriculture and the Cooperative Extension Service are authorized to use the 4-H Club Name or Emblem:

(1) For their own educational or informational purposes according to these regulations;

(2) On materials which are originated, requested, purchased, distributed, or sold by them for use in their respective geographical areas of responsibilities;

(3) Except as specifically authorized by the above-named organizations for use within the respective geographic boundaries specified (club or group, county, area, State) and as provided for in paragraph (a)(4) of this section, manufacturers, wholesalers, jobbers, retailers, purchasers or others cannot manufacture, sell, or distribute materials bearing the 4-H Club Name or Emblem.

(4) Any proposal for distribution on an interstate, regional, or nationwide basis of materials, supplies, and similar items bearing the 4-H Club Name or Emblem which originates with an organization or individual not affiliated with the Cooperative Extension Service shall be brought to the attention of the Director of the National Institute of Food and Agriculture, United States Department of Agriculture, for approval.

(b) [Reserved]

[50 FR 31582, Aug. 2, 1985, as amended at 60 FR 52293, Oct. 6, 1995; 76 FR 4803, Jan. 27, 2011]

§ 8.8 Use by public informational services.

(a) In any advertisement, display, exhibit, visual and audio-visual material, news release, publication in any form, radio and television program devoted in whole or in part to 4-H, the 4-H message or salute must be distinctly set apart from any commercial product message or reference.

(b) Advertisements, news releases, publications in any form, visuals and audio-visuals, or displays in any form must not include actual or implied testimonials or endorsements of business firms, commercial products or services, either by 4-H Clubs, other 4-H organizations and affiliated groups, 4-H youth participants, volunteer 4-H leaders, the Cooperative Extension Services, the land-grant institutions, USDA, or by any employees associated with any of the foregoing. Statements that a product is used or preferred to the exclusion of similar products are not permitted.

(c) The granting of an authorization to a non-Extension affiliated agency, organization or individual, for production of films, visual and audio-visual materials, books, publications in any form, etc., is contingent upon approval of the initial proposal and subject to review of the script of the visual or audio-visual or draft of the publication when the draft is in the final working form.

§ 8.9 Use in 4-H fund raising.

(a) Fund-raising programs using the 4-H Name or Emblem may be carried out for specific educational purposes. Such fund-raising programs and use of the 4-H name and emblem on, or associated with, products, and services for such purposes must have the approval of appropriate Cooperative Extension office, as follows:

(1) Approval of the County Cooperative Extension Service, or the appropriate land-grant institution, if the fund-raising program is confined to the area served by the County Cooperative Extension Service.

(2) Approval of the State Cooperative Extension Service, or the appropriate land-grant institution, if the fund-raising program is multi-county or Statewide.

(3) Approval of the Director of the National Institute of Food and Agriculture, United States Department of Agriculture, or a designee, if the fund-raising program is multi-State or Nationwide.

(b) When used to promote 4-H educational programs, the 4-H Club name and emblem, subject to obtaining authorization as provided in these regulations, may be used on or associated with products and services sold in connection with 4-H fund-raising programs so long as no endorsement or the appearance of an endorsement of a commercial firm, product or service is either intended or effected. Tributes to 4-H contained on or associated with commercial products or services, when such products or services are used for the fund-raising activities, are subject to the requirements of this paragraph. All moneys received from 4-H fund-raising programs, except those necessary to pay reasonable expenses, must be expended to further the 4-H educational programs.

[52 FR 8432, Mar. 17, 1987, as amended at 60 FR 52293, Oct. 6, 1995; 76 FR 4803, Jan. 27, 2011]

PART 9—PANDEMIC ASSISTANCE PROGRAMS

Subpart A—CFAP General Provisions

Sec.

9.1 Applicability and administration.
9.2 Definitions.
9.3 Producer eligibility requirements.
9.4 Time and method of application.
9.5 [Reserved]
9.6 Eligibility subject to verification.
9.7 Miscellaneous provisions.
9.8 Perjury.

Subpart B—CFAP 1

9.101 Definitions.
9.102 Calculation of payments.

Subpart C—CFAP 2

9.201 Definitions.
9.202 Eligibility.
9.203 Calculation of payments.

Subpart D—Pandemic Assistance Revenue Program

9.301 Applicability and administration.
9.302 Definitions.
9.303 Producer eligibility requirements.
9.304 Allowable gross revenue.
9.305 Time and method of application.
9.306 Payment calculation.
9.307 Adjusted gross income limitation, payment limitation, and attribution.
9.308 Eligibility subject to verification.
9.309 Miscellaneous provisions.
9.310 Perjury.

AUTHORITY: 15 U.S.C. 714b and 714c; Division B, Title I, Pub. L. 116–136, 134 Stat. 505; and Division N, Title VII, Subtitle B, Chapter 1, Pub. L. 116–260.

SOURCE: 85 FR 30830, May 21, 2020, unless otherwise noted.

Subpart A—CFAP General Provisions

SOURCE: Redesignated at 85 FR 59384, Sept. 22, 2020, unless otherwise noted.

§9.1 Applicability and administration.

(a) Subparts A through C of this part specify the eligibility requirements and payment calculations for the Coronavirus Food Assistance Program (CFAP). CFAP will provide payments with respect to commodities that have been significantly impacted by the effects of the COVID–19 outbreak. CFAP is being implemented through two rounds of payments, with the first round (CFAP 1) determined as specified in subpart B of this part, and the second round (CFAP 2) determined as specified in subpart C of this part. To be eligible for CFAP payments, participants must comply with all provisions under this subpart and the relevant particular subpart for CFAP 1 or CFAP 2. Payments will be made with respect to only commodities produced in the United States; commodities other than livestock that are imported into the United States may not be used to determine any CFAP payment. For livestock, ''produced in the United States'' means physically located in the United States:

(1) For assistance under subpart B of this part:

(i) On January 15, 2020, and remaining in the United States until sold, for livestock sold between January 15, 2020, and April 15, 2020; or

(ii) On the applicable date selected for livestock in inventory between April 16, 2020, and May 14, 2020; and

(2) For assistance under subpart C of this part, on the applicable date selected for livestock in inventory between April 16, 2020, and August 31, 2020.

(b) The program is administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA) with the assistance of the Agricultural Marketing Service (AMS).

(c) The FSA State committee will take any action required by subparts A through C of this part that an FSA county committee has not taken. The FSA State committee will also:

(1) Correct, or require an FSA county committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of subparts A through C of this part; or

(2) Require an FSA county committee to withhold taking any action that is not in accordance with subparts A through C of this part.

(d) No provision or delegation to an FSA State or county committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the CFAP, or from reversing or modifying any determination made by an FSA State or county committee.

[85 FR 30830, May 21, 2020, as amended at 85 FR 59174, Sept. 21, 2020; 85 FR 59384, Sept. 22, 2020; 86 FR 4881, Jan. 19, 2021; 88 FR 1876, Jan. 11, 2023]

§ 9.2 Definitions.

The following definitions apply to subparts A through C of this part. The definitions in parts 718 and 1400 of this title apply, except where they conflict with the definitions in this section.

AMS means USDA's Agricultural Marketing Service.

Application means the CFAP application form.

Cattle means commercially raised or maintained bovine animals, excluding beefalo, bison, and animals used for dairy production or intended for dairy production.

Commodity means an agricultural commodity produced in the United States and intended to be marketed for commercial production that has been designated as eligible for payments under CFAP.

Controlled environment means an environment in which everything that can practicably be controlled by the producer with structures, facilities, and growing media (including but not limited to water, soil, or nutrients), is in fact controlled by the producer, as determined by industry standards.

Foreign entity means a corporation, trust, estate, or other similar organization that has more than 10 percent of its beneficial interest held by individuals who are not:

(1) Citizens of the United States; or

(2) Lawful aliens possessing a valid Alien Registration Receipt Card.

Foreign person means any person who is not a citizen or national of the United States or who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

Hogs means any swine 120 pounds or more.

NOFA means a Notice of Funding Availability published in the FEDERAL REGISTER.

Ownership interest means to have either legal ownership interest or beneficial ownership interest in a legal entity. For the purposes of administering CFAP, a person or legal entity that owns a share or stock in a legal entity that is a corporation, limited liability company, limited partnership, or similar type entity, and shares in the profits or losses of such entity is considered to have an ownership interest in such legal entity. A person or legal entity that is a beneficiary of a trust or heir of an estate who benefits from the profits or losses of such entity is also considered to have an ownership interest in such legal entity.

Pigs means any swine weighing less than 120 pounds.

Wool means the fiber sheared from a live sheep and includes, unless noted otherwise, graded and nongraded wool. Graded wool is paid on a clean basis,

and ungraded wool is paid on a greasy basis.

[85 FR 30830, May 21, 2020, as amended at 85 FR 35799, June 12, 2020; 85 FR 59175, Sept. 21, 2020; 85 FR 59384, Sept. 22, 2020; 88 FR 1876, Jan. 11, 2023]

§ 9.3 Producer eligibility requirements.

To be eligible for a CFAP payment, a producer must:

(a) Meet all of the requirements in subparts A through C of this part;

(b) Be a:

(1) Citizen of the United States;

(2) Resident alien, which for purposes of subparts A through C of this part means ''lawful alien'' as defined in part 1400 of this title;

(3) Partnership of citizens of the United States;

(4) Corporation, limited liability company, or other organizational structure organized under State law;

(5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304); or

(6) Foreign person or foreign entity who meets all requirements as described in part 1400 of this title; and

(c) For payments under § 9.102 of this part, have had a share in the eligible commodity on January 15, 2020, or April 16, 2020, through May 14, 2020.

[85 FR 30830, May 21, 2020, as amended at 85 FR 59384, Sept. 22, 2020; 88 FR 1876, Jan. 11, 2023]

§ 9.4 Time and method of application.

(a) A completed application under this subpart must be submitted in person, by mail, email, or facsimile to any FSA county office by the close of business on:

(1) September 11, 2020, for payments issued under § 9.102; and

(2) October 12, 2021, for payments issued under § 9.203.

(b) Failure of an individual, entity, or a member of an entity to submit the following payment limitation and payment eligibility forms within 60-days from the date of signing the CFAP application, may result in no payment or a reduced payment:

(1) A farm operating plan for an individual or legal entity as provided in part 1400 of this title;

(2) Form CCC–901 Member Information for Legal Entities (if applicable);

(3) An average adjusted gross income statement for the 2020 program year for the person or legal entity, including the legal entity's members, partners, or shareholders, as provided in part 1400 of this title; form CCC–941 Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information;

(4) CCC–942 Certification of Income From Farming, Ranching and Forestry Operations (optional); and

(5) A highly erodible land conservation (sometimes referred to elsewhere as HELC) and wetland conservation certification as provided in part 12 of this title (form AD–1026 Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification for CFAP applicant and applicable affiliates).

(c) If requested by USDA, the applicant must provide documentation that:

(1) Establishes the applicant's ability and intent to harvest, transport, and market the commodity for the intended market or crop's expected production in a quantity determined based on the producer's approved yield, expected level of production, or inventory of the livestock, crop, or commodity;

(2) Establishes the applicant's ownership share in the commodity; and

(3) Establishes the applicant's value at risk in the commodity.

(d) A producer applying for assistance for a crop subject to § 9.203(a) or (b) must file a report of all acreage of the crop on FSA–578, Report of Acreage.

(e) To receive an additional payment under § 9.203(p), a producer must submit form CCC–860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, with a certification applicable to the 2020 program year by the date announced by the Deputy Administrator.

[85 FR 30830, May 21, 2020, as amended at 85 FR 49594, Aug. 14, 2020; 85 FR 59384, Sept. 22, 2020; 86 FR 4882, Jan. 15, 2021; 86 FR 48017, Aug. 27, 2021; 88 FR 1876, Jan. 11, 2023]

§ 9.5 [Reserved]

§ 9.6 Eligibility subject to verification.

(a) Producers who are approved for participation in CFAP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Participants receiving CFAP payments or any other person who furnishes such information to USDA must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the agricultural operation and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

§ 9.7 Miscellaneous provisions.

(a) If a CFAP payment resulted from erroneous information provided by a participant, or any person acting on their behalf, the payment will be recalculated and the participant must refund any excess payment with interest calculated from the date of the disbursement of the payment.

(1) If FSA determines that the applicant intentionally misrepresented either the total amount or applicant's share of the commodities, acres, sales, or revenue on their application, the application will be disapproved and the applicant must refund the full payment to FSA with interest from the date of disbursement.

(2) Any required refunds must be resolved in accordance with part 3 of this title.

(b) The regulations in part 718, subpart D, and parts 11 and 780 of this title apply to determinations made under subparts A through C of this part.

(c) Any payment under subparts A through C of this part will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity. The regulations governing offsets in part 3 of this title do not apply to payments made under subparts A through C of this part.

(d) The $900,000 average AGI limitation provisions in part 1400 of this title relating to limits on payments for persons or legal entities, excluding joint ventures and general partnerships, apply to each applicant for CFAP unless at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry-related activities. The average AGI will be calculated for a person or such legal entity based on the 2016, 2017, and 2018 tax years. If the person or such legal entity's average AGI is below $900,000 or at least 75 percent of the person or legal entity's average AGI is derived from farming, ranching, or forestry-related activities, the person or legal entity, is eligible to receive payments under subparts A through C of this part.

(e)(1) The total amount of CFAP payments that a program applicant who is an individual may receive directly or through the attribution of payments as provided in paragraph (e)(3) of this section is $250,000 under each of subparts B and C. The total amount of payments that a program applicant who is a legal entity created under State law may receive is $250,000 under each of subparts B and C, except as provided in paragraph (e)(2) of this section. Payments made to a program applicant who is a joint venture or a general partnership are limited to the aggregated amount of payments that individual or legal entity members of the joint venture or general partnership may otherwise receive.

(2)(i) The total amount of CFAP payments a corporation, limited liability company, limited partnership, trust, or estate may receive is $250,000 under each of subparts B and C unless the members, partners, stockholders, beneficiaries, or heirs of the legal entity meet the provisions of paragraphs (e)(2)(ii) or (iii) of this section.

(ii) The total amount of CFAP payments a corporation, limited liability company, limited partnership, trust, or estate may receive is $500,000 under each of subparts B and C if two different individual persons who are members, partners, stockholders, beneficiaries, or heirs of the legal entity each provided at least 400 hours of active personal labor or active personal management or combination thereof

with respect to the production of commodities for which an application or applications are made in accordance with subparts A through C of this part.

(iii) The total amount of CFAP payments a corporation, limited liability company, limited partnership, trust, or estate may receive is $750,000 under each of subparts B and C if three different individual persons who are members, partners, stockholders, beneficiaries, or heirs of the legal entity each provided at least 400 hours of active personal labor or active personal management or combination thereof with respect to the production of commodities for which an application or applications are made in accordance with subparts A through C of this part.

(3)(i) Except for payments subject to the increased payment limitation in (e)(2)(ii) and (e)(2)(iii) of this section, a CFAP payment made to any legal entity will be attributed to individuals or legal entities with an ownership interest in the legal entity in accordance with §1400.105 of this title. Payments attributed to a legal entity with an ownership interest in the legal entity will be further attributed as provided in §1400.105 of this title. If the legal entity does not qualify for an increased payment limitation under (e)(2)(ii) or (iii) of this section and the total amount of CFAP payments made directly or indirectly to an individual or legal entity has met the applicable amount specified in paragraph (e)(1) of this section, the payment to the legal entity will be reduced commensurate with the amount of the ownership interest of the individual or legal entity in the legal entity. CFAP payments subject to attribution under this paragraph will be attributed to individuals and legal entities until the attribution is made only to an individual except the attribution will stop at the fourth level of ownership.

(ii) A payment subject to the increased payment limitation in (e)(2)(ii) or (iii) of this section will be limited to the lesser of the amount specified in either (e)(2)(ii) or (iii) of this section, or the sum of the amount specified in (e)(1) of this section that each eligible member, stockholder, partner, heir, or beneficiary of the legal entity may receive, regardless of ownership share. Payments attributed to a legal entity with an ownership interest in the legal entity will be further attributed to individuals and legal entities until the attribution is made only to an individual, except the attribution will stop at the fourth level of ownership.

(4) If an individual or legal entity is not eligible to receive CFAP payments due to the individual or legal entity failing to satisfy some other payment eligibility provision such as AGI in or conservation compliance provisions or some other payment eligibility impediment, the payment made either directly or indirectly to the individual or legal entity will be reduced to zero. The amount of the reduction for the direct payment to the applicant will be commensurate with the direct or indirect ownership interest of the ineligible individual or ineligible legal entity. The application of this ineligibility to receive a CFAP payment due to the excessive AGI of an individual or legal entity will stop at the fourth level of ownership.

(f) For the purposes of the effect of a lien on eligibility for Federal programs (28 U.S.C. 3201(e)), USDA waives the restriction on receipt of funds under CFAP but only as to beneficiaries who, as a condition of the waiver, agree to apply the CFAP payments to reduce the amount of the judgment lien.

(g) In addition to any other Federal laws that apply to CFAP, the following laws apply: 15 U.S.C. 714; 18 U.S.C. 286, 287, 371, 1001; and 31 U.S.C. 1001.

(h) Subparts A through C of this part apply to applications submitted under CFAP through the applicable date in §9.4(a), or until funds made available for CFAP are exhausted.

(i) To be eligible to receive a CFAP payment and facilitate administration of paragraphs (d) and (e) of this section, a person or legal entity must provide their name, address, and taxpayer identification number to USDA. In addition, a legal entity must provide the name taxpayer identification number, address and ownership share of each person or legal entity that holds or acquires a direct or indirect ownership interest in the legal entity. CFAP payments to a legal entity will be reduced in proportion to a member's ownership share when the taxpayer identification

number for a person or legal entity that holds less than a 10 percent direct or indirect ownership interest at, or above, the fourth level of ownership in the business structure is not provided to USDA. Additionally, a legal entity will not be eligible to receive CFAP payments when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of 10 percent or greater, at or above the fourth level of ownership in the business structure, is not provided to USDA.

[85 FR 30830, May 21, 2020, as amended at 85 FR 49594, Aug. 14, 2020; 85 FR 59385, Sept. 22, 2020; 86 FR 48017, Aug. 27, 2021; 88 FR 1876, Jan. 11, 2023]

§ 9.8 Perjury.

In either applying for or participating in CFAP, or both, the producer is subject to laws against perjury and any penalties and prosecution resulting therefrom, with such laws including but not limited to 18 U.S.C. 1621. If the producer willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the producer knows or believes not to be true, in the course of either applying for or participating in CFAP, or both, then the producer is guilty of perjury and, except as otherwise provided by law, may be fined, imprisoned for not more than 5 years, or both, regardless of whether the producer makes such verbal or written declaration, certification, statement, or verification within or without the United States.

Subpart B—CFAP 1

SOURCE: 85 FR 59385, Sept. 22, 2020, unless otherwise noted.

§ 9.101 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

All other cattle means commercially raised or maintained bovine animals not meeting the definition of another category of cattle in this subpart, excluding beefalo, bison, and animals used for dairy production or intended for dairy production.

Aquaculture means only those species as announced in a NOFA.

Cattle raised or maintained for breeding purposes means animals commercially raised or maintained for use as either a sire or dam for the production of livestock offspring or lactation.

Crop means non-specialty crops and specialty crops.

Feeder cattle 600 pounds or more means cattle weighing more than 600 pounds but less than the weight of slaughter cattle-fed cattle as defined in this section.

Feeder cattle less than 600 pounds means cattle weighing less than 600 pounds.

First quarter means January, February, and March of 2020.

Lambs and yearlings means all sheep less than 2 years old.

Non-specialty crop means any of the following crops: Barley, canola, corn, durum wheat, hard red spring wheat, millet, oats, sorghum, soybeans, sunflowers, and upland cotton. The term excludes crops intended for grazing.

Producer means a person or legal entity who shares in the risk of producing a crop or livestock and who is entitled to a share in the crop or livestock available for marketing or would have shared had the crop or livestock been produced and marketed. A contract grower who does not own the livestock, will be considered a producer if the contract allows the grower to have risk in the livestock.

Second quarter means April, May, and June of 2020.

Slaughter Cattle—fed cattle means cattle with a weight of 1,200 pounds or more that are intended for slaughter.

Slaughter cattle—mature cattle means culled cattle raised or maintained for breeding purposes, but which were removed from inventory and are intended for slaughter.

Specialty crops means any of the following crops: Almonds; apples; artichokes; asparagus; avocados; beans; blueberries; broccoli; cabbage; cantaloupe; carrots; cauliflower; celery;

corn, sweet; cucumbers, eggplant; garlic; grapefruit; kiwifruit; lemons; lettuce, iceberg; lettuce, romaine; mushrooms; onions, dry; onions, green; oranges; papayas; peaches; pears; pecans; peppers, bell type; peppers, other; potatoes; raspberries; rhubarb; spinach; squash; strawberries; sweet potatoes; tangerines; taro; tomatoes; walnuts; watermelons; and any crops for which funds are made available. The term excludes crops intended for grazing.

Unpriced means not subject to an agreed-upon price in the future through a forward contract, agreement, or similar binding document as of January 15, 2020.

[85 FR 59385, Sept. 22, 2020, as amended at 88 FR 1876, Jan. 11, 2023]

§ 9.102 Calculation of payments.

(a) Payments for eligible non-specialty crops will be the sum of:

(1) Unpriced inventory that is harvested but held in inventory as of January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the Coronavirus Aid, Relief, and Economic Stability Act (CARES Act) payment rate in paragraph (h) of this section; and

(2) Unpriced inventory as of January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the Commodity Credit Corporation (CCC) payment rate in paragraph (h) of this section.

(b) CFAP covers losses for specialty crops that experienced immediate losses, a price decline, spoiled, were unpaid, or were unharvested due to market conditions between January 15, 2020, and April 15, 2020. Specialty crops in inventory or in storage facilities that may be sold after April 15, 2020, are not eligible. Specialty crops that were under an agreed upon set price before January 15, 2020, and were or will be paid at that price or higher, do not qualify for assistance under paragraph (b)(1) of this section, but may qualify under paragraphs (b)(2) or (b)(3) of this section. Payments for eligible specialty crops will be the sum of:

(1) For specialty crops listed in paragraph (h) of this section that were sold between January 15, 2020, and April 15, 2020, the quantity sold multiplied by the payment rate in column 2 of Table 1 in paragraph (h) of this section;

(2) For specialty crops harvested and shipped but that were subsequently spoiled or unpaid due to loss of marketing channels between January 15, 2020, and April 15, 2020, the harvested and shipped quantity that spoiled or is unpaid multiplied by the payment rate in column 3 of Table 1 in paragraph (h) of this section; and

(3) For specialty crops that did not leave the farm, were donated, or were mature crops that remained unharvested between January 15, 2020, and April 15, 2020, due to loss of marketing channel, the sum of the quantity of crops that did not leave the farm or were donated, or the quantity of mature crops that remained unharvested, multiplied by the payment rate in column 4 of Table 1 in paragraph (h) of this section.

(c) Payments for cattle will be the sum of the results of the following three calculations:

(1) Unpriced cattle sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section;

(2) Cattle inventory owned between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section; and

(3) Cattle inventory owned between April 16, 2020, to May 14, 2020, multiplied by:

(i) $14.75 for slaughter cattle—mature cattle;

(ii) $63 for slaughter cattle—fed cattle;

(iii) $7 for feeder cattle less than 600 pounds;

(iv) $25.50 for feeder cattle 600 pounds or more; and

(v) $17.25 for all other cattle.

(d) Payments for hogs and pigs will be equal to the sum of the results of the following two calculations:

(1) Unpriced hogs and pigs sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) Hog and pig inventory owned between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section.

(e) Payments for dairy will be equal to the sum of the results of the following two calculations:

(1) First quarter production, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) First quarter production, multiplied by 1.014, multiplied by the CCC payment rate in paragraph (h) of this section.

(3) Dairy operations that dissolved on or before March 31, 2020, are eligible for payment under paragraph (e)(1) of this section. Dairy operations that dissolve or have dissolved after March 31, 2020, are eligible for a prorated payment under paragraph (e)(2) of this section for the number of days the dairy operation commercially markets milk in the second quarter.

(f) Payments for lambs and yearlings will be equal to the sum of the results of the following two calculations:

(1) Unpriced lambs and yearlings sold between January 15, 2020, to April 15, 2020, multiplied by the CARES Act payment rate in paragraph (h) of this section; and

(2) Lambs and yearlings in inventory owned between April 16, 2020, to May 14, 2020, multiplied by the CCC payment rate in paragraph (h) of this section.

(g) Payments for wool are the sum of:

(1) Unpriced inventory on January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the CARES Act payment rate paragraph (h) of this section; and

(2) Unpriced inventory on January 15, 2020, not to exceed 50 percent of 2019 total production, multiplied by 50 percent, multiplied by the CCC payment rate in paragraph (h) of this section.

(h) The payment rates in Tables 1 and 2 of this paragraph (h) will be used to calculate CFAP payments:

TABLE 1 TO PARAGRAPH (h)—PAYMENT RATES FOR SPECIALTY CROPS

[Including, but not limited to, the listed commodities]

Commodity	CARES Act payment rate for sales losses ($/lb)	CARES Act payment rate for product that left the farm but spoiled due to loss of marketing channel ($/lb)	CCC Payment rate ($/lb)
Almonds	$0.26	$0.57	$0.11
Apples	$0.05	$0.22	$0.04
Artichokes	0.88	0.69	0.13
Asparagus		0.25	0.05
Avocados		0.14	0.03
Beans	0.17	0.16	0.03
Blueberries	0.20	0.93	0.18
Broccoli	0.62	0.49	0.10
Cabbage	0.04	0.07	0.01
Cantaloupes		0.14	0.03
Carrots	0.02	0.11	0.02
Cauliflower	0.11	0.31	0.06
Celery		0.07	0.01
Corn, sweet	0.09	0.13	0.03
Cucumbers	0.18	0.17	0.03
Eggplant	0.07	0.15	0.03
Garlic	0.17	1.10	0.22
Grapefruit		0.11	0.02
Kiwifruit		0.44	0.09
Lemons	0.08	0.21	0.04
Lettuce, iceberg	0.20	0.15	0.03
Lettuce, romaine	0.07	0.12	0.02
Mushrooms		0.58	0.11
Onions, dry	0.01	0.05	0.01
Onions, green	$0.51	$0.70	$0.14
Oranges		0.14	0.03
Papaya		0.31	0.06
Peaches		0.30	0.06
Pears	0.08	0.18	0.03
Pecans	0.28	0.93	0.18
Peppers, bell type	0.14	0.22	0.04
Peppers, other	0.15	0.22	0.04
Potatoes fresh—other	0.01	0.04	0.01
Potatoes fresh—Russets	0.07	0.09	0.02

TABLE 1 TO PARAGRAPH (h)—PAYMENT RATES FOR SPECIALTY CROPS—Continued

[Including, but not limited to, the listed commodities]

Commodity	CARES Act payment rate for sales losses ($/lb)	CARES Act payment rate for product that left the farm but spoiled due to loss of marketing channel ($/lb)	CCC Payment rate ($/lb)
Potatoes—processing	0.02	0.03	0.01
Potatoes—seed	0.02	0.04	0.01
Raspberries	0.44	1.69	0.33
Rhubarb		0.76	0.15
Spinach	0.37	0.37	0.07
Squash	0.72	0.39	0.08
Strawberries	0.84	0.72	0.14
Sweet potatoes		0.18	0.04
Tangerines	0.05	0.25	0.05
Taro	0.12	0.29	0.06
Tomatoes	0.64	0.38	0.07
Walnuts	0.26	0.34	0.07
Watermelons	0.04	0.06	0.01

TABLE 2 TO PARAGRAPH (h)—PAYMENT RATES FOR NON-SPECIALTY CROPS, DAIRY, LIVESTOCK, AND WOOL

Commodity	Unit	CARES Act payment rate ($/unit)	CCC payment rate ($/unit)
Barley	Bu	0.34	0.37
Canola	lb	0.01	0.01
Corn	bu	0.32	0.35
Durum wheat	bu	0.19	0.20
Hard red spring wheat	bu	0.18	0.20
Millet	bu	0.31	0.34
Oats	bu	0.15	0.17
Sorghum	bu	0.30	0.32
Soybeans	bu	0.45	0.50
Sunflowers	lb	0.02	0.02
Upland cotton	lb	0.09	0.10
Dairy	cwt	4.71	1.47
Slaughter cattle—mature cattle	head	92	33
Slaughter cattle—fed cattle	head	214	33
Feeder cattle less than 600 pounds	head	102	33
Feeder cattle 600 pounds or more	head	139	33
All other cattle	head	102	33
Pigs	head	28	17
Hogs	head	18	17
Lambs and yearlings	head	33	7
Wool (graded, clean basis)	lb	0.71	0.78
Wool (non-graded, greasy basis)	lb	0.36	0.39

(i) Payments for cattle and hogs will be calculated separately for the following categories:

(1) Slaughter cattle—mature cattle;

(2) Slaughter cattle—fed cattle;

(3) Feeder cattle less than 600 pounds;

(4) Feeder cattle 600 pounds or more;

(5) All other cattle;

(6) Pigs; and

(7) Hogs.

(j)(1) USDA may make payments with respect to other commodities. In order to determine whether other commodities will be included in CFAP, a notice will be issued that will specify the types of market information the public may submit for consideration by USDA. After receipt of the information and the use of other related information available to USDA, a NOFA will specify the other eligible commodities and the manner in which payments will be determined.

(2) Producers that are privately owned aquaculture businesses growing freshwater and saltwater products in controlled environments, including raceways, ponds, tanks, and recirculating systems, extending to all farmed

shrimp and salmonids (trout and salmon) are included in CFAP to the extent USDA determines individual types of the products have incurred qualifying losses between January 15, 2020, and April 15, 2020. The determination of which species are included will be specified in the NOFA referenced in paragraph (j)(1) of this section. CFAP does not provide assistance for molluscan shellfish and marine algae.

(k) An initial payment will be issued for 80 percent of each CFAP payment calculated. A final payment will be issued on a date determined by the Secretary, to the extent such funds are available. The total of all CFAP payments made, including all initial and final payments, cannot exceed a total of $9.5 billion for CARES Act funds and $6.5 billion for CCC funds.

[85 FR 30830, May 21, 2020, as amended at 85 FR 35799, June 12, 2020' 85 FR 41329, July 10, 2020; 85 FR 49594, Aug. 14, 2020; 85 FR 59175, Sept. 21, 2020. Redesignated at 85 FR 59385, Sept. 22, 2020; 86 FR 4882, Jan. 19, 2021; 87 FR 1876, Jan. 11, 2023]

Subpart C—CFAP 2

SOURCE: 85 FR 59386, Sept. 22, 2020, unless otherwise noted.

§ 9.201 Definitions.

The following definitions apply to this subpart. The definitions in parts 718 and 1400 of this title also apply, except where they conflict with the definitions in this section.

Aquaculture means any species of aquatic organisms grown as food for human consumption, fish raised as feed for fish that are consumed by humans, ornamental fish propagated and reared in an aquatic medium. Eligible aquacultural species must be raised by a commercial operator and in water in a controlled environment.

Average revenue loss level means the average percentage of revenue loss for contract producers determined by USDA for a geographic area based on the best available data including, but not limited to, losses reported by contract producers for the same area and type of livestock or poultry.

Beginning farmer or rancher means a farmer or rancher who has not operated a farm or ranch for more than 10 years and who materially and substantially participates in the operation. For a legal entity to be considered a beginning farmer or rancher, at least 50 percent of the interest must be beginning farmers or ranchers.

Breeding stock means:

(1) For cattle, bulls and cows;

(2) For hogs and pigs, boars and sows; and

(3) For lambs and sheep, rams and ewes.

Broilers includes any chicken that has been commercially produced for meat purposes that has left the farm for slaughter, and not used for laying or breeding purposes.

Contract producer means a producer who grows or produces an eligible commodity under contract for or on behalf of another person or entity. The contract producer does not have ownership in the commodity and is not entitled to a share from sales proceeds of the commodity.

Crop insurance means an insurance policy reinsured by Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended. It does not include private plans of insurance.

Eggs means dried, frozen, liquid, and shell eggs.

Eligible contract livestock or poultry means broilers, pullets, layers, poultry eggs, turkeys, ducks, geese, pheasants, quail, hogs, pigs, and other livestock or poultry types determined eligible and announced by USDA, including breeding stock of those eligible livestock and poultry types.

Eligible revenue means the revenue received by a contract producer for contract production of eligible contract livestock or poultry, as reported on Internal Revenue Service Form 1099.

Experimental means a crop for which all of the following apply:

(1) The crop is planted for experimental purposes conducted under the direct supervision of a State experiment station or commercial company;

(2) Production of the crop is destroyed before harvest or used for testing or other experimental purposes; and

(3) A representative of the State experiment station or the commercial company certifies that any production

harvested from the experiment will not be marketed in any form.

Flat-rate crop means alfalfa, amaranth grain, buckwheat, canola, cotton, Extra Long Staple (ELS) cotton, crambe (colewort), einkorn, emmer, flax, guar, hemp, indigo, industrial rice, kenaf, khorasan, millet, mustard, oats, peanuts, quinoa, rapeseed, rice, rice, sweet, rice, wild, rye, safflower, sesame, speltz, sugar beets, sugarcane, teff, and triticale. The term excludes hay, except alfalfa, and crops with intended uses of grazing, green manure, or left standing.

Floriculture means cut flowers and cut greenery from annual and perennial flowering plants grown in a container or controlled environment for commercial sale. Floriculture is included in sales commodities.

Fruits means any of the following fruits: Abiu, acerola (Barbados cherry), achachairu, antidesma, apples, apricots, aronia (chokeberry), atemoya (custard apple), avocados, bananas, blueberries, breadfruit, cacao, caimito, calabaza melon, canary melon, canary seed, caneberries, canistel, cantaloupes, carambola (star fruit), casaba melon, cherimoya (sugar apple), cherries, Chinese bitter melon, citron, citron melon, coconuts, cranberries, crenshaw melon, dates, donaqua (winter melon), durian, elderberries, figs, genip, gooseberries, grapefruit, grapes, ground cherry, guamabana (soursop), guava, guavaberry, honeyberries, honeydew, huckleberries, Israel melons, jack fruit, jujube, juneberries, kiwiberry, kiwifruit, Korean golden melon, kumquats, langsat, lemons, limequats, limes, longan, loquats, lychee, mangos, mangosteen, mayhaw berries, mesple, mulberries, nectarines, noni, olives, oranges, papaya, passion fruits, pawpaw, peaches, pears, persimmons, pineapple, pitaya (dragon fruit), plantain, plumcots, plums, pomegranates, prunes, pummelo, quinces, raisins, rambutan, sapodilla, sapote, schizandra berries, sprite melon, star gooseberry, strawberries, tangelos, tangerines, tangors, wampee, watermelon, wax jamboo fruit, and wolfberry (goji).

Hemp means the plant species *Cannabis sativa L.* and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis, that is grown under a license or other required authorization issued by the applicable governing authority that permits the production of the hemp.

Horticulture means any of the following horticulture: Anise, basil, cassava, chervil (Fresh parsley), chia, chicory (radicchio), cilantro, cinnamon, curry leaves, galanga, ginger, ginseng, guayule, herbs, hops, lotus root, marjoram, meadowfoam, mint, moringa, niger seed, oregano, parsley, pennycress, peppermint, pohole, psyllium, rosemary, sage, savory, shrubs (forbs), sorrel, spearmint, tangos, tea, thyme, turmeric, vanilla, wasabi, water cress, and yu cha.

Ineligible commodities for CFAP 2 means any of the following commodities: Birdsfoot and trefoil, clover, cover crop, fallow, forage soybeans, forage sorghum, gardens (commercial and home), grass, kochia (prostrata), lespedeza, milkweed, mixed forage, pelts (excluding mink), perennial peanuts, pollinators, sunn hemp, vetch, and seed of ineligible crops other than grass seed.

Layer means a chicken producing table or commercial type shell eggs.

Limited resource farmer or rancher means a farmer or rancher:

(1) Who is a person whose:

(i) Direct or indirect gross farm sales did not exceed $180,300 in each calendar year for 2017 and 2018 (the relevant years for the 2020 program year); and

(ii) Total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (1)(i) of this definition;[24] or

(2) That is an entity and all members who hold an ownership interest in the entity meet the criteria in paragraph (1) of this definition.

[24] Limited resource farmer or rancher status can be determined using a website available through the Limited Resource Farmer and Rancher Online Self Determination Tool through Natural Resources Conservation Service at *https://lrftool.sc.egov.usda.gov*.

NAP means the Noninsured Crop Disaster Assistance Program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) and part 1437 of this title.

Nursery crops means decorative or nondecorative plants grown in a container or controlled environment for commercial sale. Nursery crops are included in sales commodities.

Other livestock means any of the following livestock: Animals commercially raised for food, fur, fiber, or feathers, including alpacas, bison, buffalo, beefalo, deer, ducks, elk, emus, geese, goats, guinea pigs, llamas, mink, ostrich, pheasants, pullets, quail, rabbits, reindeer, turkey, water buffalo, and yak. It includes by-products of those live animals (such as fleece). It excludes all equine, reptiles, bees, breeding stock (including eggs to be hatched for breeding stock), companion or comfort animals, pets, and animals raised for hunting or game purposes.

Prevented planting means the inability to plant the intended crop acreage with proper equipment by the final planting date for the crop type because of a natural disaster.

Price trigger commodities means price trigger crops and price trigger livestock and products as defined in this section.

Price trigger crops means any of the following crops: Barley, corn, sorghum, soybeans, sunflowers, upland cotton, wheat (all classes), excluding crops with an intended use of grazing, green manure, or left standing.

Price trigger livestock and products means any of the following livestock and products: Beef cattle, broilers, dairy (cow milk), eggs, lambs, sheep, hogs, and pigs; excluding breeding stock.

Producer means a person or legal entity who shares in the risk of producing a commodity. Except for contract producers, producers who are not in the business of farming at the time of application are not considered eligible producers.

Pullet means a young female chicken that has not laid an egg.

Sales-based commodities means, as defined in this section, aquaculture, sales-based crops, nursery crops and floriculture, other livestock, and the following commodities: Goat milk, grass seed, mink (including pelts), mohair wool, and turfgrass sod.

Sales-based crops means ambrosia, arundo, camelina, cactus, cardoon, fruits, honey, horticulture, maple sap, tobacco, tree nuts, and vegetables. Fruits, horticulture, tree nuts, and vegetables are defined in this section. The term excludes crops with an intended use of grazing, green manure, or left standing.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. For entities, at least 50 percent of the ownership interest must be held by individuals who are members of such a group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

(1) American Indians or Alaskan Natives;

(2) Asians or Asian-Americans;

(3) Blacks or African Americans;

(4) Hispanics or Hispanic Americans;

(5) Native Hawaiians or other Pacific Islanders; and

(6) Women.

Tree nuts means any of the following tree nuts: Almonds, carob, cashew, chestnuts, coffee, hazel nuts, jojoba, macadamia nuts, pecans, pine nuts, pistachios, and walnuts.

Turn means a group of eligible contract livestock or poultry that is delivered to a contract producer who provides labor and equipment to produce the livestock or poultry for the integrator or owner.

Underserved farmer or rancher means a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

Vegetables means any of the following vegetables: Alfalfa sprouts, aloe vera, artichokes, arugula (greens), asparagus, bamboo shoots, batatas, bean sprouts, beans (including dry edible), beets, bok choy, broccoflower, broccoli, broccolini, broccolo-cavalo, Brussel sprouts, cabbage, calaloo, carrots, cauliflower, celeriac, celery, chickpea (see

beans, garbanzo), chives, collard greens, coriander, corn, sweet, cucumbers, daikon, dandelion greens, dasheen (taro root, malanga), dill, eggplant, endive, escarole, frisee, gailon (gai lein, Chinese broccoli), garlic, gourds, greens, horseradish, Jerusalem artichokes (sunchoke), kale, kohlrabi, leeks, lentils, lettuce, melongene, mesculin mix, microgreens, mushrooms, okra, onions, parsnip, peas (including dry edible), pejibaye (heart of palm), peppers, potatoes, potatoes sweet, pumpkins, radicchio, radishes, rhubarb, rutabaga, salsify (oyster plant), scallions, seed—vegetable, shallots, spinach, squash, swiss chard, tannier, taro, tomatillos, tomatoes, truffles, turnip top (greens), turnips, yam, and yautia (malanga);

Veteran farmer or rancher means a farmer or rancher:

(1) Who has served in the Armed Forces (as defined in 38 U.S.C. 101(10)[25]) and:

(i) Has not operated a farm or ranch for more than 10 years; or

(ii) Has obtained status as a veteran (as defined in 38 U.S.C. 101(2)[26]) during the most recent 10-year period; or

(2) That is an entity and at least 50 percent of the ownership interest is held by members who meet the criteria in paragraph (1) of this definition.

WHIP+ means the Wildfires and Hurricanes Indemnity Program Plus (WHIP+) under part 760, subpart O, of this title.

[85 FR 59386, Sept. 22, 2020, as amended at 86 FR 4882, Jan. 19, 2021; 86 FR 48017, Aug. 27, 2021; 88 FR 1877, Jan. 11, 2023]

§ 9.202 Eligibility.

(a) Producers, excluding contract producers, are eligible for payment under § 9.203(a) through (i) if they meet all other requirements for eligibility under subpart A of this part and this subpart.

(b) Contract producers are not eligible for payment under § 9.203(a) through (i). Contract producers are eligible for payment under § 9.203(l) if they:

(1) Produced eligible contract livestock or poultry under a contract in either the 2018 or 2019 calendar year and in the 2020 calendar year;

(2) Received revenue under such a contract during the period from January 1, 2020, through December 27, 2020;

(3) Had a loss in eligible revenue for the period from January 1, 2020, through December 27, 2020, as compared to the period from:

(i) January 1, 2018, through December 27, 2018; or

(ii) January 1, 2019, through December 27, 2019; and

(4) Meet all other requirements for eligibility under subpart A of this part and this subpart.

(c) Contract producers must provide a copy of their contract pursuant to which they raised an eligible commodity as specified in paragraph (b)(1) of this section and provide documentation to support the information provided on their application if requested by FSA.

(d) Contract producers are eligible for payment under § 9.203(m) if they:

(1) Did not receive eligible revenue from January 1 through December 27 in 2018 or 2019, but received eligible revenue for the period from January 1, 2020, through December 27, 2020; and

(2) Meet all other requirements for eligibility under subpart A of this part and this subpart.

[86 FR 4882 Jan. 19, 2021, as amended at 86 FR 48017, Aug. 27, 2021; 88 FR 1877, Jan. 11, 2023]

§ 9.203 Calculation of payments.

(a) Payments for price trigger crops will be equal to the greater of:

(1) Eligible acres of the crop multiplied by a rate of $15 per acre; or

(2) Eligible acres of the crop multiplied by the applicable yield, multiplied by the crop marketing percentage in Table 1 of paragraph (j) of this section, multiplied by the crop payment rate in Table 1 of paragraph (j) of this section.

(3) Under paragraph (a) of this section, eligible acres include the producer's share of the determined acres, or reported acres if determined acres

[25] The term ''Armed Forces'' means the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, including the reserve components.

[26] The term ''veteran'' means a person who served in the active military, naval, air, or space service, and who was discharged or released under conditions other than dishonorable.

are not present, of the crop planted for the 2020 crop year, excluding prevented planted and experimental acres. For producers who insured acres of the crop under a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524), the yield will be the average of the producer's 2020 actual production history (APH) approved yield from all of the producer's insured acres nationwide. For producers for whom FSA is unable to obtain a 2020 APH approved yield, the yield will be:

(i) The 2019 Agriculture Risk Coverage-County Option (ARC–CO) benchmark yield if the applicant:

(A) Has coverage for the crop under an Area Risk Protection Insurance Plan, Margin Protection Plan, Stacked Income Protection Plan, Supplemental Coverage Option, or Whole-Farm Revenue Protection Plan under the Federal Crop Insurance Act;

(B) Is a landlord of the applicable acreage and their share is insured by the tenant under a policy or plan of insurance under the Federal Crop Insurance Act;

(C) Is a tenant of the applicable acreage and their share is insured by the landlord under a policy or plan of insurance under the Federal Crop Insurance Act; or

(D) Is a joint venture and the crop is insured by one of the members under a policy or plan of insurance under the Federal Crop Insurance Act; or

(ii) The 2019 Agriculture Risk Coverage-County Option (ARC–CO) benchmark yield multiplied by 85 percent for all other applicants.

(4) ARC–CO yields in paragraph (a)(3) of this section for producers growing a crop in multiple counties will be weighted based on the producer's crop acreage physically located in each county.

(5) An additional payment will be issued for price trigger crops equal to the eligible acres of the crop multiplied by a payment rate of $20 per acre.

(b) Payments for flat-rate crops will be equal to eligible acres of the crop multiplied by a rate of $15 per acre. Eligible acres include the producer's share of the determined acres, or reported acres if determined acres are not present, excluding prevented planted and experimental acres. An additional payment will be issued for flat-rate crops equal to the eligible acres of the crop multiplied by a payment rate of $20 per acre.

(c) Payments for beef cattle will be equal to the lower of the producer's maximum owned inventory of eligible beef cattle, excluding breeding stock, on a date selected by the producer from April 16, 2020, through August 31, 2020, or 4,546 head multiplied by the number of payment limitations for the producer, multiplied by a payment rate of $55 per head.

(d) Payments for hogs and pigs will be equal to the lower of the producer's maximum owned inventory of eligible hogs and pigs, excluding breeding stock, on a date selected by the producer from April 16, 2020, through August 31, 2020, or 10,870 head multiplied by the number of payment limitations for the producer, multiplied by a payment rate of $23 per head.

(e) Payments for lambs and sheep will be equal to the producer's highest owned inventory of eligible lambs and sheep, excluding breeding stock, on a date selected by the producer from April 16, 2020, through August 31, 2020, multiplied by a payment rate of $27 per head.

(f)(1) Payments for broilers will be equal to 75 percent of the producer's 2019 broiler production multiplied by a payment rate of $1.01 per bird (head).

(2) Payments for broiler producers who began farming in 2020 and had no production in 2019 will be calculated as provided in paragraph (f)(1) of this section, except that the payments will be based on the producer's actual 2020 broiler production as of the date the producer submits an application for payment under this subpart.

(g)(1) Payments for dairy (cow milk) will be equal to the sum of the following two calculations:

(i) The producer's total actual milk production from April 1, 2020, to August 31, 2020, multiplied by the payment $1.20 per hundredweight; and

(ii) The producer's estimated milk production from September 1, 2020, to December 31, 2020, based on the daily average production from April 1, 2020, through August 31, 2020, multiplied by

122, multiplied by a payment rate of $1.20 per hundredweight.

(2) Dairy operations that stop commercially marketing milk after the date they apply for CFAP 2 but before December 31, 2020, must notify FSA of the date they stop commercially marketing milk. Those dairies are eligible only for a prorated payment under paragraph (g)(1)(ii) of this section for the number of days the dairy operation commercially markets milk from September 1, 2020, through December 31, 2020.

(h)(1) Payments for eggs will be equal to 75 percent of the producer's 2019 egg production multiplied by the payment rate in Table 1 of paragraph (j) of this section.

(2) Payments for egg producers who began farming in 2020 and had no production in 2019 will be calculated as provided in paragraph (h)(1) of this section, except that the payments will be based on the producer's actual 2020 egg production as of the date the producer submits an application for payment under this subpart.

(i) Payments for sales-based commodities will be:

(1) Based on one of the following as elected by the producer:

(i) The producer's sales for calendar year 2018 and crop insurance indemnities and NAP and WHIP+ payments for the 2018 crop year for all sales-based commodities; or

(ii) The producer's sales for calendar year 2019 and crop insurance indemnities and NAP and WHIP+ payments for the 2019 crop year for all sales-based commodities.

(2) Equal to the sum of the results for the following calculation for each sales range in Table 2 of paragraph (j) of this section:

(i) The sum of the amount of the producer's eligible sales for the sales-based commodities in the applicable calendar year and the producer's crop insurance indemnities and NAP and WHIP+ payments for the sales commodities for the applicable crop year within the specified range, multiplied by the payment rate for that range in Table 2 of paragraph (j) of this section.

(ii) Eligible sales only includes sales of raw commodities grown by the producer; the portion of sales derived from adding value to the commodity, such as processing and packaging, and from sales of products purchased for resale is not included in the payment calculation unless determined eligible by the Secretary.

(3) Payments for producers of sales commodities who began farming in 2020 and had no sales in 2019, calculated as provided in paragraph (i)(2) of this section, except that the payments will be based on the producer's actual 2020 sales, without crop insurance indemnities, NAP or WHIP+ payments, as of the date the producer submits an application for payment under this section.

(j) The payment rates in Tables 1 and 2 of this paragraph (j) will be used to calculate CFAP payments:

TABLE 1 TO PARAGRAPH (J)—PAYMENT RATES FOR PRICE TRIGGER CROPS AND EGGS

Commodity	Units	Crop marketing percentage (percent)	Payment rate ($/unit)
Barley	bu	63	$0.54
Corn	bu	40	0.58
Cotton, Upland	lb	46	0.08
Sorghum	bu	55	0.56
Soybean	bu	54	0.58
Sunflowers	lb	44	0.02
Wheat (all classes)	bu	73	0.54
Shell Eggs	dozen	n/a	0.05
Liquid Eggs	lb	n/a	0.04
Dried Eggs	lb	n/a	0.14
Frozen Eggs	lb	n/a	0.05

TABLE 2 TO PARAGRAPH (J)—PAYMENT RATES FOR SALES COMMODITIES

2018 or 2019 Sales range (including crop insurance indemnities and NAP and WHIP+ payments)	Percent payment factor
Up to $49,999	10.6
$50,000-$99,999	9.9
$100,000-$499,999	9.7
$500,000-$999,999	9.0
All sales over $1 million	8.8

(k) CFAP 2 payments will not be calculated or issued for ineligible commodities.

(l) For eligible contract producers, if eligible revenue for the period from January 1, 2020, through December 27, 2020, decreased compared to eligible revenue for the period from January 1, 2018, through December 27, 2018, or the period from January 1, 2019, through December 27, 2019, then payments will be equal to:

(1) Eligible revenue received from January 1, 2018, through December 27, 2018, or from January 1, 2019, through December 27, 2019; minus

(2) Eligible revenue received from January 1, 2020, through December 27, 2020; multiplied by

(3) 80 percent.

(4) USDA will adjust the eligible revenue based on information certified by the contract producer on form AD–3117B for contract producers who did not have a full period of revenue from January 1 to December 27 for either 2018 or 2019, or who increased their operation size in 2020. Information required to calculate these adjustments may include a contract producer's square footage increase to the operation in 2020, or a contract producer's production or number of turns for 2018, 2019, or 2020, as applicable.

(m) For eligible contract producers who did not receive eligible revenue from January 1 through December 27 in 2018 or 2019, but received eligible revenue for the period from January 1, 2020, through December 27, 2020:

(1) FSA will divide the eligible revenue received from January 1, 2020, through December 27, 2020, by the result of 1 minus the average revenue loss level, determined by USDA for a geographic area based on the best available data including, but not limited to, losses reported by other contract producers for the same area and type of livestock or poultry; and

(2) The payment will be equal to:

(i) The result of the calculation in paragraph (m)(1) of this section minus the contract producer's eligible revenue received from January 1, 2020, through December 27, 2020; multiplied by

(ii) 80 percent.

(n) Payments under paragraphs (l) and (m) of this section and the average revenue loss levels under paragraph (m)(1) of this section will be calculated separately for the following categories:

(1) Chickens—broilers, pullets, and layers;

(2) Chicken eggs;

(3) Turkeys;

(4) Hogs and pigs;

(5) Ducks, geese, pheasants, quail; and

(6) All other eligible poultry eggs.

(o) The calculations in paragraphs (l) and (m) of this section are subject to the availability of funds and will be factored, if needed.

(p) An additional payment equal to 15 percent of a producer's CFAP 2 payment calculated according to paragraphs (a) through (k) of this section will be issued to producers who have certified their status as a beginning farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher applicable to the 2020 program year on CCC–860.

[85 FR 59386, Sept. 22, 2020. Redesignated and amended at 86 FR 4882, 4883, Jan. 19, 2021; 86 FR 48017, Aug. 27 2021; 88 FR 1877, Jan. 11, 2023; 90 FR 30558, July 10, 2025]

Subpart D—Pandemic Assistance Revenue Program

SOURCE: 88 FR 1877, Jan. 11, 2023, unless otherwise noted.

§ 9.301 Applicability and administration.

(a) This subpart specifies the eligibility requirements and payment calculations for the Pandemic Assistance Revenue Program (PARP). FSA is administering PARP to respond to the COVID–19 pandemic by providing support for eligible producers of agricultural commodities who suffered an eligible revenue loss in calendar year 2020

due to the COVID–19 pandemic. To be eligible for PARP payments, participants must comply with all provisions under this subpart.

(b) PARP is administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA).

(c) The FSA State committee will take any action required by this subpart that an FSA county committee has not taken. The FSA State committee will also:

(1) Correct, or require an FSA county committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this subpart; or

(2) Require an FSA county committee to withhold taking any action that is not in accordance with this subpart.

(d) No provision or delegation to an FSA State or county committee will preclude the FSA Administrator, the Deputy Administrator, or a designee or other such person, from determining any question arising under the programs of this subpart, or from reversing or modifying any determination made by an FSA State or county committee.

(e) The Deputy Administrator has the authority to permit State and county committees to waive or modify deadlines (except deadlines specified in a law) and other requirements or program provisions not specified in law, in cases where lateness or failure to meet such other requirements or program provisions do not adversely affect operation of PARP.

§ 9.302 Definitions.

The following definitions apply to this subpart. The definitions in part 1400 of this title apply, except where they conflict with the definitions in this section.

2017 WHIP means the 2017 Wildfires and Hurricanes Indemnity Program under 7 CFR part 760, subpart O.

Agricultural commodity means a crop, aquaculture, livestock, livestock byproduct, or other animal or animal byproduct that is produced as part of a farming operation and is intended to be commercially marketed. It includes only commodities produced in the United States, or produced outside the United States by a producer located in the United States and marketed inside the United States. It excludes:

(1) Wild free-roaming animals;

(2) Horses and other animals used or intended to be used for racing or wagering;

(3) Aquatic species that do not meet the definition of aquaculture;

(4) *Cannabis sativa* L. and any part of that plant that does not meet the definition of hemp; and

(5) Timber.

Applicable pandemic assistance includes payments received directly by an applicant under the following programs:

(1) The Coronavirus Food Assistance Program (CFAP);

(2) The Pandemic Livestock Indemnity Program (PLIP); and

(3) The Spot Market Hog Pandemic Program (SMHPP).

Application means the PARP application form.

Aquaculture means any species of aquatic organisms grown as food for human or livestock consumption or for industrial or biomass uses, fish raised as feed for fish that are consumed by humans, and ornamental fish propagated and reared in an aquatic medium. Eligible aquacultural species must be raised by a commercial operator and in water in a controlled environment.

ARC and PLC means the Agriculture Risk Coverage (ARC) and Price Loss Coverage (PLC) programs under 7 CFR part 1412.

BCAP means the Biomass Crop Assistance Program under 7 CFR part 1450.

Beginning farmer or rancher means a farmer or rancher who has not operated a farm or ranch for more than 10 years and who materially and substantially participates in the operation. For a legal entity to be considered a beginning farmer or rancher, at least 50 percent of the interest must be beginning farmers or ranchers.

Cattle feeder operation means an operation that intensely feeds cattle on behalf of another person or entity for finishing purposes and is compensated based on feed, yardage, or weight gain of the cattle.

CCC means the Commodity Credit Corporation.

CFAP means the Coronavirus Food Assistance Program 1 and 2 under 7 CFR part 9, subparts A through C, excluding assistance for contract producers specified in § 9.203(l) through (o).

Contract producer means a producer who grows or produces an agricultural commodity under contract for or on behalf of another person or entity. The contract producer does not have ownership in the commodity and is not entitled to a share from sales proceeds of the commodity. The term ''contract producer'' does not include cattle feeder operations.

Controlled environment means an environment in which everything that can practicably be controlled by the producer with structures, facilities, and growing media (including but not limited to water, soil, or nutrients), is in fact controlled by the producer, as determined by industry standards.

County means the county or parish of a state. For Alaska, Puerto Rico, and the Virgin Islands, a county is an area designated by the State committee with the concurrence of the Deputy Administrator.

County committee means the FSA county committee.

Crop insurance means an insurance policy reinsured by Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended, or a private plan of insurance.

Deputy Administrator means Deputy Administrator for Farm Programs, Farm Service Agency, U.S. Department of Agriculture, or their designee.

DMC means the Dairy Margin Coverage Program under 7 CFR part 1430, subpart D.

ELAP means the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program under 7 CFR part 1416, subpart B.

ERP means the Emergency Relief Program, which was administered in 2 phases:

(1) ERP Phase 1, administered according to the notice of funds availability published in the FEDERAL REGISTER on May 18, 2022 (87 FR 30164–30172) and the clarification to the notice of funds availability that was published on August 18, 2022 (87 FR 50828–50830); and

(2) ERP Phase 2, administered according to 7 CFR part 760, subpart S.

Farming operation means a business enterprise engaged in the production of agricultural products, commodities, or livestock, operated by a person, legal entity, or joint operation, and that is eligible to receive payments, directly or indirectly, under this subpart. A person or legal entity may have more than one farming operation if the person or legal entity is a member of one or more legal entity or joint operation.

Foreign entity means a corporation, trust, estate, or other similar organization that has more than 10 percent of its beneficial interest held by individuals who are not:

(1) Citizens of the United States; or

(2) Lawful aliens possessing a valid Alien Registration Receipt Card.

Foreign person means any person who is not a citizen or national of the United States or who is admitted into the United States for permanent residence under the Immigration and Nationality Act and possesses a valid Alien Registration Receipt Card issued by the United States Citizenship and Immigration Services, Department of Homeland Security.

Hemp means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis, that is grown under a license or other required authorization issued by the applicable governing authority that permits the production of the hemp.

IRS means the Department of Treasury, Internal Revenue Service.

LDP means the Loan Deficiency Payment programs in 7 CFR parts 1421, 1425, 1427, 1434, and 1435.

Legal entity means a corporation, joint stock company, association, limited partnership, irrevocable trust, estate, charitable organization, or other similar organization including any such organization participating in a business structure as a partner in a general partnership, a participant in a

joint venture, a grantor of a revocable trust, or as a participant in a similar organization. A business operating as a sole proprietorship is considered a legal entity.

Limited resource farmer or rancher means a farmer or rancher:

(1) Who is a person whose:

(i) Direct or indirect gross farm sales did not exceed $180,300 in each calendar year for 2017 and 2018 (the relevant years for the 2020 program year); and

(ii) Total household income was at or below the national poverty level for a family of four in each of the same two previous years referenced in paragraph (1)(i) of this definition;[1] or

(2) That is an entity and all members who hold an ownership interest in the entity meet the criteria in paragraph (1) of this definition.

LFP means the Livestock Forage Disaster Program under CFR part 1416, subpart C.

LIP means the Livestock Indemnity Program under 7 CFR part 1416, subpart D.

Minor child means a person who is under 18 years of age as of June 1, 2020.

MFP means the 2018 Market Facilitation Program under 7 CFR part 1409, subpart A, and the 2019 Market Facilitation Program under 7 CFR part 1409, subpart B.

Milk Loss Program means the Milk Loss Program under 7 CFR part 760, subpart Q.

MLG means a marketing loan gain under the Marketing Assistance Loan programs in 7 CFR parts 1421, 1425, 1427, 1434, and 1435.

MPP-Dairy means the Margin Protection Program for Dairy under 7 CFR part 1430, subpart A.

NAP means the Noninsured Crop Disaster Assistance Program under section 196 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7333) and 7 CFR part 1437.

On-Farm Storage Loss Program means the On-Farm Storage Loss Program under 7 CFR part 760, subpart P.

Ownership interest means to have either legal ownership interest or beneficial ownership interest in a legal entity. For the purposes of administering PARP, a person or legal entity that owns a share or stock in a legal entity that is a corporation, limited liability company, limited partnership, or similar type entity where members hold a legal ownership interest and shares in the profits or losses of such entity is considered to have an ownership interest in such legal entity. A person or legal entity that is a beneficiary of a trust or heir of an estate who benefits from the profits or losses of such entity is also considered to have a beneficial ownership interest in such legal entity.

Person means an individual, natural person and does not include a legal entity.

PLIP means the Pandemic Livestock Indemnity Program announced in the notice of funds availability published on July 19, 2021 (86 FR 37990–37994).

PMVAP means the Pandemic Market Volatility Assistance Program administered by USDA's Agricultural Marketing Service.

Producer means a person or legal entity who was in the business of farming to produce an agricultural commodity in calendar year 2020, and who was entitled to a share in the agricultural commodity available for marketing or would have shared had the agricultural commodity been produced and marketed. For PARP, ''producer'' also includes cattle feeder operations.

Socially disadvantaged farmer or rancher means a farmer or rancher who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. For entities, at least 50 percent of the ownership interest must be held by individuals who are members of such a group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

(1) American Indians or Alaskan Natives;

(2) Asians or Asian-Americans;

(3) Blacks or African Americans;

(4) Hispanics or Hispanic Americans;

[1] Limited resource farmer or rancher status can be determined using a website available through the Limited Resource Farmer and Rancher Online Self Determination Tool through Natural Resources Conservation Service at *https://lrftool.sc.egov.usda.gov*.

(5) Native Hawaiians or other Pacific Islanders; and

(6) Women.

TAP means the Tree Assistance Program under 7 CFR part 1416, subpart E.

SMHPP means the Spot Market Hog Pandemic Program announced in the notice of funds availability published on December 14, 2021 (86 FR 71003–71007).

STRP means the Seafood Trade Relief Program announced in the notice of funds availability published on September 14, 2020 (85 FR 56572–56575).

Underserved farmer or rancher means a beginning farmer or rancher, limited resource farmer or rancher, socially disadvantaged farmer or rancher, or veteran farmer or rancher.

United States means all 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

Veteran farmer or rancher means a farmer or rancher:

(1) Who has served in the Armed Forces (as defined in 38 U.S.C. 101(10)[2]) and:

(i) Has not operated a farm or ranch for more than 10 years; or

(ii) Has obtained status as a veteran (as defined in 38 U.S.C. 101(2)[3]) during the most recent 10-year period; or

(2) That is an entity and at least 50 percent of the ownership interest is held by members who meet the criteria in paragraph (1) of this definition.

WHIP+ means the Wildfires and Hurricanes Indemnity Program Plus under 7 CFR part 760, subpart O.

§ 9.303 Producer eligibility requirements.

(a) To be eligible for PARP, a producer must:

(1) Have been in the business of farming in the 2020 calendar year;

(2) Have had at least a 15 percent decrease in allowable gross revenue for the 2020 calendar year, as compared to the:

(i) Actual allowable gross revenue for the 2018 or 2019 calendar year, whichever is reflective of a typical year, as elected by the producer, if the producer had allowable gross revenue in the 2018 or 2019 calendar year; or

(ii) Producer's expected allowable gross revenue for the 2020 calendar year, if the producer had no allowable gross revenue for the 2018 and 2019 calendar years; and

(3) Meet all other requirements for eligibility under this subpart.

(b) To be eligible for a PARP payment, a producer must be a:

(1) Citizen of the United States;

(2) Resident alien, which for purposes of this subpart means ''lawful alien'' as defined in part 1400 of this title;

(3) Partnership organized under State Law;

(4) Corporation, limited liability company, or other organizational structure organized under State law;

(5) Indian Tribe or Tribal organization, as defined in section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304); or

(6) Foreign person or foreign entity who meets all requirements as described in 7 CFR part 1400.

§ 9.304 Allowable gross revenue.

(a) For the purposes of this subpart, ''allowable gross revenue'' includes revenue from:

(1) Sales of agricultural commodities produced by the producer, including sales resulting from value added through post-production activities;

(2) Sales of agricultural commodities a producer purchased for resale that had a change in characteristic due to the time held (for example, a plant purchased at a size of 2 inches and sold as an 18-inch plant after 4 months), less the cost or other basis of such commodities;

(3) The taxable amount of cooperative distributions directly related to the sale of the agricultural commodities produced by the producer;

(4) Benefits under the following agricultural programs: ARC and PLC, BCAP, DMC, LDP, MFP, MLG, and MPP-Dairy;

[2]The term ''Armed Forces'' means the United States Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard, including the reserve components.

[3]The term ''veteran'' means a person who served in the active military, naval, air, or space service, and who was discharged or released under conditions other than dishonorable.

(5) CCC loans, if treated as income and reported to IRS;

(6) Crop insurance proceeds;

(7) Federal disaster program payments under the following programs: 2017 WHIP, ELAP, LFP, LIP, NAP, Milk Loss Program, On-Farm Storage Loss Program, STRP, TAP, and WHIP+;

(8) Payments issued through grant agreements with FSA for losses of agricultural commodities;

(9) Grants from the Department of Commerce, National Oceanic and Atmospheric Administration and State program funds providing direct payments for the loss of agricultural commodities or the loss of revenue from agricultural commodities;

(10) Revenue from raised breeding livestock;

(11) Revenue earned as a cattle feeder operation;

(12) Other revenue directly related to the production of agricultural commodities that IRS requires the producer to report as income and

(13) For 2020 allowable gross revenue, payments PMVAP regardless of the calendar year in which the payment was received.

(b) Allowable gross revenue does not include revenue from sources other than those listed in paragraph (a) of this section, including but not limited to, revenue from:

(1) Applicable pandemic assistance;

(2) Sales of commodities that are excluded from ''agricultural commodities,''

(3) Resale items not held for characteristic change;

(4) Income from a pass-through entity such as an S Corp or limited liability company;

(5) Conservation program payments;

(6) Any pandemic assistance payments that were not intended to compensate for the loss of agricultural commodities or the loss of revenue from agricultural commodities due to the pandemic (for example, payments to provide assistance with the cost of purchasing personal protective equipment, retrofitting facilities for worker and consumer safety, shifting to online sales platforms, transportation, worker housing, or medical costs);

(7) Custom hire income;

(8) Net gain from hedging or speculation;

(9) Wages, salaries, tips, and cash rent;

(10) Rental of equipment or supplies; and

(11) Acting as a contract producer of an agricultural commodity.

(c) If a producer did not have a full year of revenue for 2018 or 2019, or increased their production capacity in 2020 compared to 2018 or 2019, the producer may certify to an adjusted 2018 or 2019 allowable gross revenue on form FSA–1122A. Increases in production capacity do not include changes due to crop rotation from year to year, changes in farming practices such as converting from conventional tillage to no-till, or increasing the rate of fertilizers or chemicals. Documentation required to support such an adjustment must be provided within 30 calendar days of submitting their PARP application and demonstrate that the producer:

(1) Had the production capacity to support the expected full year revenue;

(2) Added production capacity to the farming operation;

(3) Increased the use of existing production capacity; or

(4) Made physical alterations to existing production capacity.

(d) If a producer did not have allowable gross revenue in 2018 and 2019, the producer must certify on form FSA–1122A as to what had been their reasonably expected 2020 allowable gross revenue prior to the impact of the COVID–19 pandemic. Documentation required to support the producer's certification must be provided within 30 calendar days of submitting the producer's PARP application. Acceptable documentation must be generated in the ordinary course of business and dated prior to the impact of the COVID–19 pandemic and includes, but is not limited to:

(1) Financial documents such as a business plan or cash flow statement that demonstrate an expected level of revenue;

(2) Sales contracts or purchase agreements; and

(3) Documentation supporting production capacity, use of existing production capacity, or physical alterations that demonstrate production capacity.

(e) A producer who does not provide acceptable documentation described in paragraph (c) or (d) of this section within 30 calendar days of submitting their application is not eligible for an adjustment to their 2019 allowable gross revenue or to have their payment calculated using an expected 2020 allowable gross revenue, as applicable.

(f) Except as provided in paragraph (a)(13) of this section, the allowable gross revenue for a specific calendar year will be based on the calendar year in which that revenue was received by the producer.

(g) Producers who file or would file a joint tax return will certify their allowable gross revenue based on what it would have been had they filed taxes separately for the applicable year.

§ 9.305 Time and method of application.

(a) A completed PARP application under this subpart must be submitted to any FSA county office by the close of business on the date announced by the Deputy Administrator. Applications may be submitted in person or by mail, email, facsimile, or other methods announced by FSA.

(b) Failure of an individual, entity, or a member of an entity to submit the following payment limitation and payment eligibility forms within 60 days from the PARP application deadline, may result in no payment or a reduced payment:

(1) Form AD–2047, Customer Data Worksheet, for new customers or existing customers who need to update their customer profile;

(2) Form FSA–1122A, PARP Application, if applicable;

(3) Form CCC–860, Socially Disadvantaged, Limited Resource, Beginning and Veteran Farmer or Rancher Certification, if applicable;

(4) Form CCC–901, Member Information for Legal Entities, if applicable;

(5) Form CCC–902 Farm Operating Plan for an individual or legal entity as provided in 7 CFR part 1400;

(6) Form CCC–941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information, for the 2020 program year for the person or legal entity, including the legal entity's members, partners, or shareholders, as provided in 7 CFR part 1400;

(7) Form FSA–1123, Certification of 2020 Adjusted Gross Income (AGI), if applicable; and

(8) Form AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification, for the PARP applicant and applicable affiliates as provided in 7 CFR part 12.

(c) If requested by USDA, the producer must provide additional documentation that establishes the producer's eligibility for PARP. If supporting documentation is requested, the documentation must be submitted to USDA within 30 calendar days from the request or the application will be disapproved by USDA. FSA may request supporting documentation to verify information provided by the producer and their eligibility including, but not limited to, the producer's:

(1) Allowable gross revenue reported on the PARP application; and

(2) Ownership share in the agricultural commodities.

§ 9.306 Payment calculation.

(a) If the producer's allowable gross revenue for 2020 decreased by at least 15 percent compared to the producer's allowable gross revenue for 2018 or 2019, as elected by the producer:

(1) FSA will calculate:

(i) The producer's 2018 or 2019 allowable gross revenue, as elected by the producer and as adjusted according to § 9.304(c), if applicable; minus

(ii) The producer's 2020 allowable gross revenue; multiplied by

(iii) A payment factor of:

(A) Ninety (90) percent for a beginning farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher, who has submitted form CCC–860 certifying they meet the definition for at least one of the applicable groups; or

(B) Eighty (80) percent for all other producers; and

(2) The producer's PARP payment will be equal to the result of the calculation in paragraph (a)(1) of this section minus the producer's applicable pandemic assistance, and 2020 program year ERP payments.

(b) If a producer did not have allowable gross revenue in 2018 and 2019 and the producer's allowable gross revenue for 2020 decreased by at least 15 percent compared to the producer's expected 2020 allowable gross revenue:

(1) FSA will calculate:

(i) The producer's expected 2020 allowable gross revenue, as specified in § 9.304(d), minus

(ii) The producer's actual 2020 allowable gross revenue;

(iii) Multiplied by a payment factor of:

(A) 90 percent for a beginning farmer or rancher, limited resource farmer or rancher, or veteran farmer or rancher, who has submitted form CCC–860 certifying they meet the definition for at least one of the applicable groups; or

(B) 80 percent for all other producers; and

(2) The producer's PARP payment will be equal to the result of the calculation in paragraph (b)(1) of this section minus the producer's applicable pandemic assistance, and 2020 program year ERP payments.

(c) If a producer receives assistance through 2020 program year ERP or any program included under applicable pandemic assistance after their PARP payment is calculated, their PARP payment will be recalculated and the producer must refund any resulting overpayment.

(d) Payments calculated according to this section are subject to the availability of funds and may be factored if total calculated payments exceed the available funding.

[88 FR 1877, Jan. 11, 2023, as amended at 90 FR 30558, July 10, 2025]

§ 9.307 Adjusted gross income limitation, payment limitation, and attribution.

(a) To be eligible to receive a PARP payment and facilitate administration of paragraphs (b) through (f) of this section, a person or legal entity must provide their name, address, valid taxpayer identification number, and ownership share to USDA. In addition, a legal entity must provide the name, address, valid taxpayer identification number, and ownership share of each person or legal entity, that holds or acquires a direct or indirect ownership interest in the legal entity. PARP payments to a legal entity will be reduced in proportion to a member's ownership share when a valid taxpayer identification number for a person or legal entity that holds less than a 10 percent direct or indirect ownership interest, at or above the fourth level of ownership in the business structure, is not provided to USDA. Additionally, a legal entity will not be eligible to receive PARP payments when a valid taxpayer identification number for a person or legal entity that holds a direct or indirect ownership interest of 10 percent or greater, at or above the fourth level of ownership in the business structure, is not provided to USDA.

(b) The $900,000 average adjusted gross income limitation provisions in 7 CFR part 1400 relating to limits on income for persons or legal entities, including members of legal entities, joint ventures, and general partnerships applies to PARP. The average adjusted gross income will be calculated for a person or legal entity based on the 2016, 2017, and 2018 tax years. If the person's or legal entity's average adjusted gross income exceeds $900,000, the applicant is ineligible for PARP except as provided in paragraph (c) of this section.

(c) A person or legal entity that does not meet the average adjusted gross income requirements described in paragraph (b) of this section, may otherwise meet the adjusted gross income requirements, provided the person's or legal entity's 2020 adjusted gross income, as defined under 26 U.S.C. 62 or comparable measure, is not more than $900,000. Except for general partnerships and joint ventures, a PARP applicant that is a person or legal entity, including members holding an ownership interest in the legal entity, is required to:

(1) Certify, on a form that is approved for that purpose by the Deputy Administrator, that their 2020 adjusted gross income or comparable measure is not more than $900,000; and

(2) Submit a certification from a licensed CPA or attorney affirming the person's or legal entity's 2020 adjusted gross income is not more than $900,000.

(d) Members of general partnerships and joint ventures not meeting the income requirements described in paragraph (b) of this section may otherwise meet the income requirements, provided the member's 2020 adjusted gross income, as defined under 26 U.S.C. 62 or comparable measure, is not more than $900,000. The member is required to provide the information described in paragraphs (c)(1) and (2) of this section.

(e) A person or legal entity other than a joint venture or general partnership cannot receive, directly or indirectly, more than $125,000 under PARP. USDA may establish a lower maximum payment amount per person, legal entity, or member of a joint venture or general partnership after the application period has ended if calculated payment amounts exceed available funding. Payments made to a PARP applicant who is a joint operation, including a joint venture or a general partnership, may not exceed the amount determined by multiplying $125,000 (or the reduced maximum payment limitation, if applicable) by the number of persons or legal entities that comprise the first-level membership of the joint operation.

(f) A PARP payment made to a legal entity will be considered in combination with other PARP payments attributed to every person or legal entity with a direct or indirect ownership interest in the legal entity. The maximum limitation described in paragraph (e) of this section for a legal entity is determined based on payments to the legal entity and members who are an individual person or a legal entity. If a member's combined PARP payments reach the maximum payment limitation when summed from all businesses in which the person or legal entity has an ownership interest, then subsequent payments to the legal entity will be reduced by the proportionate ownership interest of the member. A payment to a legal entity will be attributed to those members who have a direct or indirect ownership interest in the legal entity, unless the payment of the legal entity has been reduced by the proportionate ownership interest of the member due to that member's ineligibility. Attribution of payments made to legal entities will be tracked through four levels of ownership in legal entities as follows:

(1) *First level of ownership:* Any payment made to a legal entity that is owned in whole or in part by a person will be attributed to the person in an amount that represents the direct ownership interest in the first-level or payment legal entity;

(2) *Second level of ownership:* Any payment made to a first-level legal entity that is owned in whole or in part by another legal entity (referred to as a second-level legal entity) will be attributed to the second-level legal entity in proportion to the ownership of the second-level legal entity in the first-level legal entity; if the second-level legal entity is owned in whole or in part by a person, the amount of the payment made to the first-level legal entity will be attributed to the person in the amount that represents the indirect ownership in the first-level legal entity by the person;

(3) *Third and fourth levels of ownership:* Except as provided in the second-level ownership in paragraph (f)(2) of this section and in the fourth level of ownership in paragraph (f)(4) of this section, any payments made to a legal entity at the third and fourth levels of ownership will be attributed in the same manner as specified in paragraph (f)(2) of this section; and

(4) *Fourth-level of ownership:* If the fourth level of ownership is that of a legal entity and not that of a person, a reduction in payment will be applied to the first-level or payment legal entity in the amount that represents the indirect ownership in the first level or payment legal entity by the fourth-level legal entity.

(g) Payments made to a PARP applicant that is an Indian Tribe or Tribal organization, as defined in the section 4(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304), are not subject to:

(1) AGI requirements described in paragraphs (b) through (d) of this section;

(2) Payment limitation described in paragraph (e) of this section; and

(3) Attribution of payments described in paragraph (f) of this section.

(h) Payments made directly or indirectly to a person who is a minor child will not be combined with the earnings of the minor child's parent or legal guardian.

§ 9.308 Eligibility subject to verification.

(a) Producers who are approved for participation in PARP are required to retain documentation in support of their application for 3 years after the date of approval.

(b) Participants receiving PARP payments must permit authorized representatives of USDA or the Government Accountability Office, during regular business hours, to enter the agricultural operation and to inspect, examine, and to allow representatives to make copies of books, records, or other items for the purpose of confirming the accuracy of the information provided by the participant.

§ 9.309 Miscellaneous provisions.

(a) If a PARP payment resulted from erroneous information provided by a producer, or any person acting on their behalf, the payment will be recalculated and the producer must refund any excess payment with interest calculated from the date of the disbursement of the payment.

(b) If FSA determines that the producer intentionally misrepresented information provided on their application, the application will be disapproved and the producer must refund the full payment to FSA with interest from the date of disbursement.

(c) Any required refunds must be resolved in accordance with part 3 of this title.

(d) The regulations in 7 CFR part 718, subpart D, and 7 CFR parts 11 and 780 apply to determinations made under this subpart.

(e) A producer, whether a person or legal entity that either fails to timely provide all required documentation or fails to satisfy any eligibility requirement for PARP, is not eligible to receive PARP payments, directly or indirectly. A PARP payment to an eligible legal entity applicant whose member(s) either fails to timely provide all required documentation or fails to satisfy any eligibility requirement for PARP will be reduced proportionate to that member's ownership interest in the legal entity.

(f) Any payment under this subpart will be made without regard to questions of title under State law and without regard to any claim or lien against the commodity or proceeds from the sale of the commodity. The regulations governing offsets in part 3 of this title do not apply to payments made under this subpart.

(g) For the purposes of the effect of a lien on eligibility for Federal programs (28 U.S.C. 3201(e)), USDA waives the restriction on receipt of funds under PARP but only as to beneficiaries who, as a condition of the waiver, agree to apply the PARP payments to reduce the amount of the judgment lien.

(h) The provisions in 7 CFR 718.3, 718.4, 718.5, 718.6, 718.8, 718.9, 718.10, and 718.11 are applicable to multiple programs and apply to PARP.

(i) In addition to any other Federal laws that apply to PARP, the following laws apply: 15 U.S.C. 714; 18 U.S.C. 286, 287, 371, and 1001.

§ 9.310 Perjury.

In either applying for or participating in PARP, or both, the producer is subject to laws against perjury and any resulting penalties and prosecution, including, but not limited to, 18 U.S.C. 1621. If the producer willfully makes and represents as true any verbal or written declaration, certification, statement, or verification that the producer knows or believes not to be true, in the course of either applying for or participating in PARP, or both, then the producer may be guilty of perjury and, except as otherwise provided by law, may be fined, imprisoned for not more than 5 years, or both, regardless of whether the producer makes such verbal or written declaration, certification, statement, or verification within or without the United States.

PART 10 [RESERVED]

PART 11—NATIONAL APPEALS DIVISION

Subpart A—National Appeals Division Rules of Procedures

Sec.
11.1 Definitions.
11.2 General statement.
11.3 Applicability.
11.4 Other laws and regulations.
11.5 Informal review of adverse decisions.
11.6 Director review of agency determination of appealability and right of participants to Division hearing.
11.7 *Ex parte* communications.
11.8 Division hearings.
11.9 Director review of determinations of Hearings Officers.
11.10 Basis for determinations.
11.11 Reconsideration of Director determinations.
11.12 Effective date and implementation of final determinations of the Division.
11.13 Judicial review.
11.14 Filing of appeals and computation of time.
11.15 Participation of third parties and interested parties in Division proceedings.

Subpart B—Organization And Functions

11.20 General statement.
11.21 Organization.
11.22 Functions.

Subpart C—Availability of Information to the Public

11.30 General statement.
11.31 Public inspection and copying.
11.32 Initial request for records.
11.33 Appeals.
APPENDIX A TO SUBPART C OF PART 11—LIST OF ADDRESSES

AUTHORITY: 5 U.S.C. 301; Title II, Subtitle H, Pub. L. 103–354, 108 Stat. 3228 (7 U.S.C. 6991 *et seq.*); Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

SOURCE: 64 FR 33373, June 23, 1999, unless otherwise noted.

Subpart A—National Appeals Division Rules of Procedures

§ 11.1 Definitions.

For purposes of this part:

Adverse decision means an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant. The term includes a denial of equitable relief by an agency or the failure of an agency to issue a decision or otherwise act on the request or right of the participant within timeframes specified by agency program statutes or regulations or within a reasonable time if timeframes are not specified in such statutes or regulations. The term does not include a decision over which the Board of Contract Appeals has jurisdiction.

Agency means:

(1) The Commodity Credit Corporation (CCC);

(2) The Farm Service Agency (FSA);

(3) The Federal Crop Insurance Corporation (FCIC);

(4) The Natural Resources Conservation Service (NRCS);

(5) The Risk Management Agency (RMA);

(6) The Rural Business-Cooperative Service (RBS);

(7) Rural Development (RD);

(8) The Rural Housing Service (RHS);

(9) The Rural Utilities Service (RUS) (but not for programs authorized by the Rural Electrification Act of 1936 or the Rural Telephone Bank Act, 7 U.S.C. 901 *et seq.*);

(10) A State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h (b)(5)); and

(11) Any predecessor or successor agency to the above-named agencies, and any other agency or office of the Department which the Secretary may designate.

Agency record means all the materials maintained by an agency related to an adverse decision which are submitted to the Division by an agency for consideration in connection with an appeal under this part, including all materials prepared or reviewed by the agency during its consideration and decision-making process, but shall not include records or information not related to the adverse decision at issue. All materials contained in the agency record submitted to the Division shall be deemed admitted as evidence for purposes of a hearing or a record review under § 11.8.

Agency representative means any person, whether or not an attorney, who is authorized to represent the agency in an administrative appeal under this part.

Appeal means a written request by a participant asking for review by the National Appeals Division of an adverse decision under this part.

Appellant means any participant who appeals an adverse decision in accordance with this part. Unless separately set forth in this part, the term ''appellant'' includes an authorized representative.

Authorized representative means any person, whether or not an attorney, who is authorized in writing by a participant, consistent with §11.6(c), to act for the participant in an administrative appeal under this part. The authorized representative may act on behalf of the participant except when the provisions of this part require action by the participant or appellant personally.

Case record means all the materials maintained by the Secretary related to an adverse decision: The case record includes both the agency record and the hearing record.

Days means calendar days unless otherwise specified.

Department means the United States Department of Agriculture (USDA).

Director means the Director of the Division or a designee of the Director.

Division means the National Appeals Division established by this part.

Equitable relief means relief which is authorized under section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339a) and other laws administered by the agency.

Ex parte communication means an oral or written communication to any officer or employee of the Division with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports, or inquiries on Division procedure, in reference to any matter or proceeding connected with the appeal involved.

Hearing, except with respect to §11.5, means a proceeding before the Division to afford a participant the opportunity to present testimony or documentary evidence or both in order to have a previous determination reversed and to show why an adverse determination was in error.

Hearing Officer means an individual employed by the Division who conducts the hearing and determines appeals of adverse decisions by any agency.

Hearing record means all documents, evidence, and other materials generated in relation to a hearing under §11.8.

Implement means the taking of action by an agency of the Department in order fully and promptly to effectuate a final determination of the Division.

Participant means any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of an agency to which the regulations in this part apply is affected by a decision of such agency. The term does not include persons whose claim(s) arise under:

(1) Programs subject to various proceedings provided for in 7 CFR part 1;

(2) Programs governed by Federal contracting laws and regulations (appealable under other rules and to other forums, including to the Department's Board of Contract Appeals under 7 CFR part 24);

(3) The Freedom of Information Act (appealable under 7 CFR part 1, subpart A);

(4) Suspension and debarment disputes, including, but not limited to, those falling within the scope of 7 CFR part 1407 and 2 CFR part 417;

(5) Export programs administered by the Commodity Credit Corporation;

(6) Disputes between reinsured companies and the Federal Crop Insurance Corporation;

(7) Tenant grievances or appeals prosecutable under the provisions of 7 CFR part 1944, subpart L, under the multifamily housing program carried out by RHS;

(8) Personnel, equal employment opportunity, and other similar disputes with any agency or office of the Department which arise out of the employment relationship;

(9) The Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3721;

(10) Discrimination complaints prosecutable under the nondiscrimination regulations at 7 CFR parts 15, 15a, 15b, 15e, and 15f; or

(11) Section 361, *et seq.*, of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1361, *et seq.*) involving Tobacco Marketing Quota Review Committees.

Record review means an appeal considered by the Hearing Officer in which the Hearing Officer's determination is based on the agency record and other information submitted by the appellant and the agency, including information submitted by affidavit or declaration.

Secretary means the Secretary of Agriculture.

[64 FR 33373, June 23, 1999, as amended at 85 FR 31938, May 28, 2020]

§ 11.2 General statement.

(a) This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department, subject to the general supervision of and policy direction by the Secretary, which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture. The authority of the Hearing Officers and the Director of the Division, and the administrative appeal procedures which must be followed by program participants who desire to appeal an adverse decision and by the agency which issued the adverse decision, are included in this part.

(b) Pursuant to section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103–354 (the Act), 7 U.S.C. 6912(e), program participants shall seek review of an adverse decision before a Hearing Officer of the Division, and may seek further review by the Director, under the provisions of this part prior to seeking judicial review.

§ 11.3 Applicability.

(a) *Subject matter.* The regulations contained in this part are applicable to adverse decisions made by an agency, including, for example, those with respect to:

(1) Denial of participation in, or receipt of benefits under, any program of an agency;

(2) Compliance with program requirements;

(3) The making or amount of payments or other program benefits to a participant in any program of an agency; and

(4) A determination that a parcel of land is a wetland or highly erodible land.

(b) *Limitation.* The procedures contained in this part may not be used to seek review of statutes or USDA regulations issued under Federal Law.

§ 11.4 Other laws and regulations.

(a) The provisions of the Administrative Procedure Act generally applicable to agency adjudications (5 U.S.C. 554–557), and the Equal Access to Justice Act (5 U.S.C. 504) and its implementing regulations at 7 CFR part 1, subpart J, shall apply to proceedings under this part except for proceedings under § 11.5 and § 11.6(a).

(b) The Federal Rules of Evidence, 28 U.S.C. App., shall not apply to proceedings under this part.

[64 FR 33373, June 23, 1999, as amended at 74 FR 57401, Nov. 6, 2009]

§ 11.5 Informal review of adverse decisions.

(a) *Required informal review of FSA adverse decisions.* Except with respect to farm credit programs, a participant must seek an informal review of an adverse decision issued at the field service office level by an officer or employee of FSA, or by any employee of a county or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590h(b)(5), before NAD will accept an appeal of a FSA adverse decision. Such informal review shall be done by the county or area committee with responsibility for the adverse decision at issue. The procedures for requesting such an informal review before FSA are found in 7 CFR part 780. After receiving a decision upon review by a county or area committee, a participant may seek further informal review by the State FSA committee or may appeal directly to NAD under § 11.6(b).

(b) *Optional informal review.* With respect to adverse decisions issued at the State office level of FSA and adverse decisions of all other agencies, a participant may request an agency informal review of an adverse decision of that agency prior to appealing to NAD. Procedures for requesting such an informal review are found at 7 CFR part 780 (FSA), 7 CFR part 614 (NRCS), 7 CFR part 1900, subpart B (RUS), 7 CFR part 1900, subpart B (RBS), and 7 CFR part 1900, subpart B (RHS).

(c) *Mediation.* A participant also shall have the right to utilize any available alternative dispute resolution (ADR) or mediation program, including any mediation program available under title V of the Agricultural Credit Act of 1987, 7 U.S.C. 5101 *et seq.*, in order to attempt to seek resolution of an adverse decision of an agency prior to a NAD hearing. If a participant:

(1) Requests mediation or ADR prior to filing an appeal with NAD, the participant stops the running of the 30-day period during which a participant may appeal to NAD under §11.6(b)(1), and will have the balance of days remaining in that period to appeal to NAD once mediation or ADR has concluded.

(2) Requests mediation or ADR after having filed an appeal to NAD under §11.6(b), but before the hearing, the participant will be deemed to have waived his right to have a hearing within 45 days under §11.8(c)(1) but shall have a right to have a hearing within 45 days after conclusion of mediation or ADR.

§ 11.6 Director review of agency determination of appealability and right of participants to Division hearing.

(a) *Director review of agency determination of appealability.* (1) Not later than 30 days after the date on which a participant receives a determination from an agency that an agency decision is not appealable, the participant must submit a written request personally signed by the participant to the Director to review the determination in order to obtain such review by the Director.

(2) The Director shall determined whether the decision is adverse to the individual participant and thus appealable or is a matter of general applicability and thus not subject to appeal, and will issue a final determination notice that upholds or reverses the determination of the agency. This final determination is not appealable. If the Director reverses the determination of the agency, the Director will notify the participant and the agency of that decision and inform the participant of his or her right to proceed with an appeal.

(3) The Director may delegate his or her authority to conduct a review under this paragraph to any subordinate official of the Division other than a Hearing Officer. In any case in which such review is conducted by such a subordinate official, the subordinate official's determination shall be considered to be the determination of the Director and shall be final and not appealable.

(b) *Appeals of adverse decisions.* (1) To obtain a hearing under §11.8, a participant personally must request such hearing not later than 30 days after the date on which the participant first received notice of the adverse decision or after the date on which the participant receives notice of the Director's determination that a decision is appealable. In the case of the failure of an agency to act on the request or right of a recipient, a participant personally must request such hearing not later than 30 days after the participant knew or reasonably should have known that the agency had not acted within the timeframes specified by agency program regulations, or, where such regulations specify no timeframes, not later than 30 days after the participant reasonably should have known of the agency's failure to act.

(2) A request for a hearing shall be in writing and personally signed by the participant, and shall include a copy of the adverse decision to be reviewed, if available, along with a brief statement of the participant's reasons for believing that the decision, or the agency's failure to act, was wrong. The participant also shall send a copy of the request for a hearing to the agency, and may send a copy of the adverse decision to be reviewed to the agency, but failure to do either will not constitute grounds for dismissal of the appeal. Instead of a hearing, the participant may request a record review.

(c) If a participant is represented by an authorized representative, the authorized representative must file a declaration with NAD, executed in accordance with 28 U.S.C. 1746, stating that the participant has duly authorized the declarant in writing to represent the participant for purposes of a specified adverse decision or decisions, and attach a copy of the written authorization to the declaration.

§ 11.7 *Ex parte* communications.

(a)(1) At no time between the filing of an appeal and the issuance of a final determination under this part shall any officer or employee of the Division engage in *ex parte* communications regarding the merits of the appeal with any person having any interest in the appeal pending before the Division, including any person in an advocacy or investigative capacity. This prohibition does not apply to:

(i) Discussions of procedural matters related to an appeal; or

(ii) Discussions of the merits of the appeal where all parties to the appeal have been given notice and an opportunity to participate.

(2) In the case of a communication described in paragraph (a)(1)(ii) of this section, a memorandum of any such discussion shall be included in the hearing record.

(b) No interested person shall make or knowingly cause to be made to any officer or employee of the Division an *ex parte* communication relevant to the merits of the appeal.

(c) If any officer or employee of the Division receives an *ex parte* communication in violation of this section, the one who receives the communication shall place in the hearing record:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses to such communications, and memoranda stating the substance of any oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section the Hearing Officer or Director may, to the extent consistent with the interests of justice and the policy of the underlying program, require the party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

§ 11.8 Division hearings.

(a) *General rules.* (1) The Director, the Hearing Officer, and the appellant shall have access to the agency record of any adverse decision appealed to the Division for a hearing. Upon request by the appellant, the agency shall provide the appellant a copy of the agency record.

(2) The Director and Hearing Officer shall have the authority to administer oaths and affirmations, and to require, by subpoena, the attendance of witnesses and the production of evidence. A Hearing Officer shall obtain the concurrence of the Director prior to issuing a subpoena.

(i) A subpoena requiring the production of evidence may be requested and issued at any time while the case is pending before the Division.

(ii) An appellant or an agency, acting through any appropriate official, may request the issuance of a subpoena requiring the attendance of a witness by submitting such a request in writing at least 14 days before the scheduled date of a hearing. The Director or Hearing Officer shall issue a subpoena at least 7 days prior to the scheduled date of a hearing.

(iii) A subpoena shall be issued only if the Director or a Hearing Officer determined that:

(A) For a subpoena of documents, the appellant or the agency has established that production of documentary evidence is necessary and is reasonably calculated to lead to information which would affect the final determination or is necessary to fully present the case before the Division; or

(B) For a subpoena of a witness, the appellant or the agency has established that either a representative of the Department or a private individual possesses information that is pertinent and necessary for disclosure of all relevant facts which could impact the final determination, that the information cannot be obtained except through testimony of the person, and that the testimony cannot be obtained absent issuance of a subpoena.

(iv) The party requesting issuance of a subpoena shall arrange for service. Service of a subpoena upon a person named therein may be made by registered or certified mail, or in person. Personal service shall be made by personal delivery of a copy of the subpoena to the person named therein by any person who is not a party and who is not less than 18 years of age. Proof of service shall be made by filing with the Hearing Officer or Director who issued the subpoena a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service in person or by return receipts for certified or registered mail.

(v) A party who requests that a subpoena be issued shall be responsible for the payment of any reasonable travel and subsistence costs incurred by the witness in connection with his or her appearance and any fees of a person who serves the subpoena in person. The Department shall pay the costs associated with the appearance of a Department employee whose role as a witness arises out of his or her performance of official duties, regardless of which party requested the subpoena. The failure to make payment of such charges on demand may be deemed by the Hearing Officer or Director as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(vi) If a person refuses to obey a subpoena, the Director, acting through the Office of the General Counsel of the Department and the Department of Justice, may apply to the United States District Court in the jurisdiction where that person resides to have the subpoena enforced as provided in the Federal Rules of Civil Procedure (28 U.S.C. App.).

(3) Testimony required by subpoena pursuant to paragraph (a)(2) of this section may, at the discretion of the Director or a Hearing Officer, be presented at the hearing either in person or telephonically.

(b) *Hearing procedures applicable to both record review and hearings.* (1) Upon the filing of an appeal under this part of an adverse decision by any agency, the agency promptly shall provide the Division with a copy of the agency record. If requested by the applicant prior to the hearing, a copy of such agency record shall be provided to the appellant by the agency within 10 days of receipt of the request by the agency.

(2) The Director shall assign the appeal to a Hearing Officer and shall notify the appellant and agency of such assignment. The notice also shall advise the appellant and the agency of the documents required to be submitted under paragraph (c)(2) of this section, and notify the appellant of the option of having a hearing by telephone.

(3) The Hearing Officer will receive evidence into the hearing record without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made.

(c) *Procedures applicable only to hearings.* (1) Upon a timely request for a hearing under § 11.6(b), an appellant has the right to have a hearing by the Division on any adverse decision within 45 days after the date of receipt of the request for the hearing by the Division.

(2) The Hearing Officer shall set a reasonable deadline for submission of the following documents:

(i) By the appellant;

(A) A short statement of why the decision is wrong;

(B) A copy of any document not in the agency record that the appellant anticipates introducing at the hearing; and

(C) A list of anticipated witnesses and brief descriptions of the evidence such witnesses will offer.

(ii) By the agency:

(A) A copy of the adverse decision challenged by the appellant;

(B) A written explanation of the agency's position, including the regulatory or statutory basis therefor;

(C) A copy of any document not in the agency record that the agency anticipates introducing at the hearing; and

(D) A list of anticipated witnesses and brief descriptions of the evidence such witnesses will offer.

(3) Not less than 14 days prior to the hearing, the Division must provide the appellant, the authorized representative, and the agency a notice of hearing

specifying the date, time, and place of the hearing. The hearing will be held in the State of residence of the appellant, as determined by the Hearing Officer, or at a location that is otherwise convenient to the appellant, the agency, and the Division. The notice also shall notify all parties of the right to obtain an official record of the hearing.

(4) *Pre-hearing conference.* Whenever appropriate, the Hearing Officer shall hold a pre-hearing conference in order to attempt to resolve the dispute or to narrow the issues involved. Such pre-hearing conference shall be held by telephone unless the Hearing Officer and all parties agree to hold such conference in person.

(5) *Conduct of the hearing.* (i) A hearing before a Hearing Officer will be in person unless the appellant agrees to a hearing by telephone.

(ii) The hearing will be conducted by the Hearing Officer in the manner determined by the Division most likely to obtain the facts relevant to the matter or matters at issue. The Hearing Officer will allow the presentation of evidence at the hearing by any party without regard to whether the evidence was known to the officer, employee, or committee of the agency making the adverse decision at the time the adverse decision was made. The Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. Any party shall have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the party's position; controvert evidence relied on by any other party; and question all witnesses. When appropriate, agency witnesses requested by the appellant will be made available at the hearing. Any evidence may be received by the Hearing Officer without regard to whether that evidence could be admitted in judicial proceedings.

(iii) An official record shall be made of the proceedings of every hearing. This record will be made by an official tape recording by the Division. In addition, either party may request that a verbatim transcript be made of the hearing proceedings and that such transcript shall be made the official record of the hearing. The party requesting a verbatim transcript shall pay for the transcription service, shall provide a certified copy of the transcript to the Hearing Officer free of charge, and shall allow any other party desiring to purchase a copy of the transcript to order it from the transcription service.

(6) *Absence of parties.* (i) If at the time scheduled for the hearing either the appellant or the agency representative is absent, and no appearance is made on behalf of such absent party, or no arrangements have been made for rescheduling the hearing, the Hearing Officer has the option to cancel the hearing unless the absent party has good cause for the failure to appear. If the Hearing Officer elects to cancel the hearing, the Hearing Officer may:

(A) Treat the appeal as a record review and issue a determination based on the agency record as submitted by the agency and the hearing record developed prior to the hearing date;

(B) Accept evidence into the hearing record submitted by any party present at the hearing (subject to paragraph (c)(6)(ii) of this section), and then issue a determination; or

(C) Dismiss the appeal.

(ii) When a hearing is cancelled due to the absence of a party, the Hearing Officer will add to the hearing record any additional evidence submitted by any party present, provide a copy of such evidence to the absent party or parties, and allow the absent party or parties 10 days to provide a response to such additional evidence for inclusion in the hearing record

(iii) Where an absent party has demonstrated good cause for the failure to appear, the Hearing Officer shall reschedule the hearing unless all parties agree to proceed without a hearing.

(7) *Post-hearing procedure.* The Hearing Officer will leave the hearing record open after the hearing for 10 days, or for such other period of time as the Hearing Officer shall establish, to allow the submission of information by the appellant or the agency, to the extent necessary to respond to new facts, information, arguments, or evidence presented or raised at the hearing. Any such new information will be

added by the Hearing Office to the hearing record and sent to the other party or parties by the submitter of the information. The Hearing Officer, in his or her discretion, may permit the other party or parties to respond to this post-hearing submission.

(d) *Interlocutory review.* Interlocutory review by the Director of rulings of a Hearing Officer are not permitted under the procedures of this part.

(e) *Burden of proof.* The appellant has the burden of proving that the adverse decision of the agency was erroneous by a preponderance of the evidence.

(f) *Timing of issuance of determination.* The Hearing Officer will issue a notice of the determination on the appeal to the named appellant, the authorized representative, and the agency not later than 30 days after a hearing or the closing date of the hearing record in cases in which the Hearing Officer receives additional evidence from the agency or appellant after a hearing. In the case of a record review, the Hearing Officer will issue a notice of determination within 45 days of receipt of the appellant's request for a record review. Upon the Hearing Officer's request, the Director may establish an earlier or later deadline. A notice of determination shall be accompanied by a copy of the procedures for filing a request for Director review under § 11.9. If the determination is not appealed to the Director for review under § 11.9, the notice provided by the Hearing Officer shall be considered to be a notice of a final determination under this part.

§ 11.9 Director review of determinations of Hearing Officers.

(a) *Requests for Director review.* (1) Not later than 30 days after the date on which an appellant receives the determination of a Hearing Officer under § 11.8, the appellant must submit a written request, signed personally by the named appellant, to the Director to review the determination in order to be entitled to such review by the Director. Such request shall include specific reasons why the appellant believes the determination is wrong.

(2) Not later than 15 business days after the date on which an agency receives the determination of a Hearing Officer under § 11.8, the head of the agency may make a written request that the Director review the determination. Such request shall include specific reasons why the agency believes the determination is wrong, including citations of statutes or regulations that the agency believes the determination violates. Any such request may be made by the head of an agency only, or by a person acting in such capacity, but not by any subordinate officer of such agency.

(3) A copy of a request for Director review submitted under this paragraph shall be provided simultaneously by the submitter to each party to the appeal.

(b) *Notification of parties.* The Director promptly shall notify all parties of receipt of a request for review.

(c) *Responses to request for Director review.* Other parties to an appeal may submit written responses to a request for Director review within 5 business days from the date of receipt of a copy of the request for review.

(d) *Determination of Director.* (1) The Director will conduct a review of the determination of the Hearing Officer using the agency record, the hearing record, the request for review, any responses submitted under paragraph (c) of this section, and such other arguments or information as may be accepted by the Director, in order to determine whether the decision of the Hearing Officer is supported by substantial evidence. Based on such review, the Director will issue a final determination notice that upholds, reverses, or modifies the determination of the Hearing Officer. The Director's determination upon review of a Hearing Officer's decision shall be considered to be the final determination under this part and shall not be appealable. However, if the Director determines that the hearing record is inadequate or that new evidence has been submitted, the Director may remand all or a portion of the determination to the Hearing Officer for further proceedings to complete the hearing record or, at the option of the Director, to hold a new hearing.

(2) The Director will complete the review and either issue a final determination or remand the determination not later than—

(i) 10 business days after receipt of the request for review, in the case of a request by the head of an agency; or

(ii) 30 business days after receipt of the request for review, in the case of a request by an appellant.

(3) In any case or any category of cases, the Director may delegate his or her authority to conduct a review under this section to any Deputy or Assistant Directors of the Division. In any case in which such review is conducted by a Deputy or Assistant Director under authority delegated by the Director, the Deputy or Assistant Director's determination shall be considered to be the determination of the Director under this part and shall be final and not appealable.

(e) *Equitable relief.* In reaching a decision on an appeal, the Director shall have the authority to grant equitable relief under this part in the same manner and to the same extent as such authority is provided an agency under applicable laws and regulations.

§ 11.10 Basis for determinations.

(a) In making a determination, the Hearing Officers and the Director are not bound by previous findings of facts on which the agency's adverse decision was based.

(b) In making a determination on the appeal, Hearing Officers and the Director shall ensure that the decision is consistent with the laws and regulations of the agency, and with the generally applicable interpretations of such laws and regulations.

(c) All determinations of the Hearing Officers and the Director must be based on information from the case record, laws applicable to the matter at issue, and applicable regulations published in the FEDERAL REGISTER and in effect on the date of the adverse decision or the date on which the acts that gave rise to the adverse decision occurred, whichever date is appropriate under the applicable agency program laws and regulations.

§ 11.11 Reconsideration of Director determinations.

(a) Reconsideration of a determination of the Director may be requested by the appellant or the agency within 10 days of receipt of the determination. The Director will not consider any request for reconsideration that does not contain a detailed statement of a material error of fact made in the determination, or a detailed explanation of how the determination is contrary to statute or regulation, which would justify reversal or modification of the determination.

(b) The Director shall issue a notice to all parties as to whether a request for reconsideration meets the criteria in paragraph (a) of this section. If the request for reconsideration meets such criteria, the Director shall include a copy of the request for reconsideration in the notice to the non-requesting parties to the appeal. The non-requesting parties shall have 5 days from receipt of such notice from the Director to file a response to the request for reconsideration with the Director.

(c) The Director shall issue a decision on the request for reconsideration within 5 days of receipt of responses from the non-requesting parties. If the Director's decision upon reconsideration reverses or modifies the final determination of the Director rendered under §11.9(d), the Director's decision on reconsideration will become the final determination of the Director under §11.9(d) for purposes of this part.

§ 11.12 Effective date and implementation of final determinations of the Division.

(a) On the return of a case to an agency pursuant to the final determination of the Division, the head of the agency shall implement the final determination not later than 30 days after the effective date of the notice of the final determination.

(b) A final determination will be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable under the applicable agency program statutes or regulations.

§ 11.13 Judicial review.

(a) A final determination of the Division shall be reviewable and enforceable by any United States District Court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

(b) An appellant may not seek judicial review of any agency adverse decision appealable under this part without receiving a final determination from the Division pursuant to the procedures of this part.

§ 11.14 Filing of appeals and computation of time.

(a) An appeal, a request for Director Review, or any other document will be considered ''filed'' when delivered in writing to the Division, when postmarked, or when a complete facsimile copy is received by the Division.

(b) Whenever the final date for any requirement of this part falls on a Saturday, Sunday, Federal holiday, or other day on which the Division is not open for the transaction of business during normal working hours, the time for filing will be extended to the close of business on the next working day.

(c) The time for filing an appeal, a request for Director review, or any other document expires at 5:00 p.m. local time at the office of the Division to which the filing is submitted on the last day on which such filing may be made.

§ 11.15 Participation of third parties and interested parties in Division proceedings.

In two situations, parties other than the appellant or the agency may be interested in participating in Division proceedings. In the first situation, a Division proceeding may in fact result in the adjudication of the rights of a third party, e.g., an appeal of a tenant involving a payment shared with a landlord, an appeal by one recipient of a portion of a payment shared by multiple parties, an appeal by one heir of an estate. In the second situation, a party may desire to receive notice of and perhaps participate in an appeal because of the derivative impact the appeal determination will have on that party, e.g., guaranteed lenders and reinsurance companies. The provisions in this section set forth rules for the participation of such third and interested parties.

(a) *Third parties.* When an appeal is filed, the Division shall notify any potential third party whose rights may be adjudicated of its right to participate as an appellant in the appeal. This includes the right to seek Director review of the Hearing Officer determination. Such third parties may be identified by the Division itself, by an agency, or by the original appellant. The Division shall issue one notice to the third party of its right to participate, and if such party declines to participate, the Division determination will be binding as to that third party as if it had participated. For purposes of this part, a third party includes any party for which a determination of the Division could lead to an agency action on implementation that would be adverse to the party thus giving such party a right to a Division appeal.

(b) *Interested parties.* With respect to a participant who is a borrower under a guaranteed loan or an insured under a crop insurance program, the respective guaranteed lender or reinsurance company having an interest in a participant's appeal under this part may participate in the appeal as an interested party, but such participation does not confer the status of an appellant upon the guaranteed lender or reinsurance company such that it may request Director review of a final determination of the Division.

Subpart B—Organization And Functions

AUTHORITY: 5 U.S.C. 301 and 552; 7 CFR part 2.

SOURCE: 63 FR 44773, Aug. 21, 1998, unless otherwise noted.

§ 11.20 General statement.

This subpart provides guidance for the general public as to the organization and functions of NAD.

§ 11.21 Organization.

NAD was established on October 13, 1994. Delegation of authority to the Director, NAD, appears at § 2.34 of this title. The organization is comprised of three regional offices: Eastern Regional Office, Indianapolis, Indiana; Southern Regional Office, Memphis, Tennessee; and Western Regional Office, Lakewood, Colorado; and the

headquarters staff located in Alexandria, Virginia. NAD is headed by a Director. NAD is assigned responsibility for certain administrative appeals as set forth in subpart A of this part.

§ 11.22 Functions.

(a) *Director*. Provides executive direction for NAD. The Director is responsible for developing and implementing nationwide plans, policies, and procedures for the timely and orderly hearing and disposition of appeals filed by individuals or entities in accordance with subpart A of this part. The Director will respond to all FOIA requests concerning appeal decisions and case records maintained by NAD.

(b) *Deputy Director for Hearings and Administration*. Responsible for all administrative functions of NAD, including budget, correspondence, personnel, travel, equipment, and regulation review and development.

(c) *Deputy Director for Planning, Training, and Quality Control*. Responsible for NAD strategic planning, including the organization's compliance with the Government Performance and Results Act, Pub. L. 103–62, employee training, and the establishment and maintenance of a quality assurance program.

(d) *Assistant Directors for Regions*. Responsible for oversight of the adjudication process for cases filed in the NAD regional offices. Assistant Directors ensure statutory and administrative time frames are met, and oversee the administrative functions, training, and supervision of the support staff located in the regional offices and the large dispersed staff of professional hearing officers located throughout the regions. The three regional offices serve as the custodian for all NAD determinations and case records.

Subpart C—Availability of Information to the Public

AUTHORITY: 5 U.S.C. 301 and 552; 7 CFR 1.1–1.16.

SOURCE: 63 FR 44774, Aug. 21, 1998, unless otherwise noted.

§ 11.30 General statement.

This subpart implements the regulations of the Secretary of Agriculture at 7 CFR 1.1 through 1.16 concerning FOIA (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of the records of NAD to the public.

§ 11.31 Public inspection and copying.

Section 1.5 of this title requires that certain materials be made available by each USDA agency for public inspection and copying in accordance with 5 U.S.C. 522(a)(2). Members of the public wishing to gain access to these NAD records should write to the appropriate address shown in appendix A of this subpart.

§ 11.32 Initial requests for records.

(a) Requests for NAD records should be in writing and addressed to the NAD official having custody of the records desired as indicated in §11.22(d). Addresses are found in Appendix A of this subpart. In his or her petition, the requester may ask for a fee waiver if there is likely to be a charge for the requested information. The criteria for waiver of fees are found in section 6 of appendix A, subpart A of part 1 of this title. All requests for records shall be deemed to have been made pursuant to FOIA, regardless of whether FOIA is specifically mentioned. To facilitate processing of a request, the phrase ''FOIA REQUEST'' should be placed in capital letters on the front of the envelope.

(b) A request must reasonably describe records to enable NAD personnel to locate them with reasonable effort. Where possible, a requester should supply specific information, such as dates, titles, appellant name or appeal number, that may help identify the records. If the request relates to a matter in pending litigation, the court and its location should be identified.

(c) If NAD determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable NAD personnel to attempt to identify the records he or she is seeking. The

''date of receipt'' in such instances, for purposes of §1.12(a) of this title, shall be the date of receipt of the amended or clarified request.

(d) Nothing in this subpart shall be interpreted to preclude NAD from honoring an oral request for information, but if the requester is dissatisfied with the response, the NAD official involved shall advise the requester to submit a written request in accordance with paragraph (a) of this section. The ''date of receipt'' of such a request for purposes of §1.12(a) of this title shall be the date of receipt of the written request. For recordkeeping purposes, the NAD official responding to an oral request for information may ask the requester to also submit his or her request in writing.

(e) If a request for records or a fee waiver under this subpart is denied, the person making the request shall have the right to appeal the denial. Requesters also may appeal NAD decisions regarding a requester's status for purposes of fee levels under section 5 of Appendix A, subpart A of part 1 of this title. All appeals must be in writing and addressed to the official designated in §11.33. To facilitate processing of an appeal, the phrase ''FOIA APPEAL'' should be placed in capital letters on the front of the envelope.

(f) NAD shall develop and maintain a record of all written and oral FOIA requests and FOIA appeals received by NAD, which shall include, in addition to any other information, the name of the requester, brief summary of the information requested, an indication of whether the request or appeal was denied or partially denied, the FOIA exemption(s) cited as the basis for any denials, and the amount of fees associated with the request or appeal.

§11.33 Appeals.

Any person whose initial FOIA request is denied in whole or in part may appeal that denial to the Director, National Appeals Division, U.S. Department of Agriculture, 3101 Park Center Drive, Suite 1113, Alexandria, Virginia 22302. The Director will make the final determination on the appeal.

APPENDIX A TO SUBPART C OF PART 11—LIST OF ADDRESSES

This list provides the titles and mailing addresses of officials who have custody of NAD records. This list also identifies the normal working hours, Monday through Friday, excluding holidays, during which public inspection and copying of certain kinds of records is permitted.

Director, National Appeals Division, U.S. Department of Agriculture, 3101 Park Center Drive, Suite 1113, Alexandria, Virginia 22302, Hours: 8 a.m.–5 p.m.

Regional Assistant Director, Eastern Region, National Appeals Division, U.S. Department of Agriculture, 3500 DePauw Boulevard, Suite 2052, Indianapolis, Indiana 46268, Hours: 8 a.m.–5 p.m.

Regional Assistant Director, Southern Region, National Appeals Division, U.S. Department of Agriculture, 7777 Walnut Grove Road, LLB–1, Memphis, Tennessee 38120, Hours: 8 a.m.–5 p.m.

Regional Assistant Director, Western Region, National Appeals Division, U.S. Department of Agriculture, 755 Parfet Street, Suite 494, Lakewood, Colorado 80215–5506, Hours: 8 a.m.–5 p.m.

PART 12—HIGHLY ERODIBLE LAND CONSERVATION AND WETLAND CONSERVATION

Subpart A—General Provisions

Sec.

12.1 General.
12.2 Definitions.
12.3 Applicability.
12.4 Determination of ineligibility.
12.5 Exemption.
12.6 Administration.
12.7 Certification of compliance.
12.8 Affiliated persons.
12.9 Landlords and tenants.
12.10 Scheme or device.
12.11 Action based upon advice or action of USDA.
12.12 Appeals.
12.13 Special Federal crop insurance premium subsidy provisions.

Subpart B—Highly Erodible Land Conservation

12.20 NRCS responsibilities regarding highly erodible land.
12.21 Identification of highly erodible lands criteria.
12.22 Highly erodible field determination criteria.
12.23 Conservation plans and conservation systems.

Subpart C—Wetland Conservation

12.30 NRCS responsibilities regarding wetlands.
12.31 Wetland identification procedures.
12.32 Converted wetland identification criteria.
12.33 Use of wetland and converted wetland.

AUTHORITY: 16 U.S.C. 3801, 3811–12, 3812a, 3813–3814, and 3821–3824.

SOURCE: 61 FR 47025, Sept. 6, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 12.1 General.

(a) *Scope.* This part sets forth the terms and conditions under which a person who produces an agricultural commodity on highly erodible land or designates such land for conservation use, plants an agricultural commodity on a converted wetland, or converts a wetland shall be determined to be ineligible for certain benefits provided by the United States Department of Agriculture (USDA) and agencies and instrumentalities of USDA.

(b) *Purpose.* The purpose of the provisions of this part are to remove certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby—

(1) Reduce soil loss due to wind and water erosion;

(2) Protect the Nation's long-term capability to produce food and fiber;

(3) Reduce sedimentation and improve water quality; and

(4) Assist in preserving the values, acreage, and functions of the Nation's wetlands.

[61 FR 47025, Sept. 6, 1996, as amended at 76 FR 82077, Dec. 30, 2011]

§ 12.2 Definitions.

(a) *General.* The following definitions shall be applicable for the purposes of this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane.

Approved insurance provider means a private insurance company that has been approved and reinsured by FCIC to provide insurance coverage to persons participating in programs authorized by the Federal Crop Insurance Act, as amended (7 U.S.C. 1501–1524).

Best drained condition means the hydrologic conditions with respect to depth, duration, frequency, and timing of soil saturation or inundation resulting from drainage manipulations that occurred prior to December 23, 1985, and that exist during the wet portion of the growing season during normal climatic conditions.

CCC means the Commodity Credit Corporation, a wholly-owned government corporation within USDA organized under the provisions of 15 U.S.C. 714 *et seq.*

Conservation District (CD) means a subdivision of a State or local government organized pursuant to the applicable law to develop and implement soil and water conservation activities or programs.

Conservation plan means the document that—

(1) Applies to highly erodible cropland;

(2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules; and

(3) Is approved by the local soil conservation district in consultation with the local committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) and the Natural Resources Conservation Service (NRCS) for purposes of compliance with this part.

Conservation system means a combination of one or more conservation measures or management practices that are—

(1) Based on local resource conditions, available conservation technology, and the standards and guidelines contained in the NRCS field office technical guides (available from NRCS State offices); and

(2) Designed for purposes of this part to achieve, in a cost-effective and technically practicable manner, a substantial reduction in soil erosion or a substantial improvement in soil conditions on a field or group of fields containing highly erodible cropland when compared to the level of erosion or soil

conditions that existed before the application of the conservation measures and management practices.

Conservation use or set aside means cropland that is designated as conservation-use acreage, set aside, or other similar designation for the purpose of fulfilling provisions under any acreage-limitation or land-diversion program administered by the Secretary of Agriculture requiring that the producer devote a specified acreage to conservation or other non-crop production uses.

Creation of a wetland means the development of the hydrologic, geochemical, and biological components necessary to support and maintain a wetland where a wetland did not previously exist. Any wetland established on a non-hydric soil will be considered a created wetland.

Department means the United States Department of Agriculture (USDA).

Enhancement of a wetland means the alteration of an existing wetland to increase its specific functions and values. Enhancement actions include new capabilities, management options, structures, or other actions to influence one or several functions and values.

Erodibility index means a numerical value that expresses the potential erodibility of a soil in relation to its soil loss tolerance value without consideration of applied conservation practices or management.

FCIC means the Federal Crop Insurance Corporation, a wholly owned corporation within USDA whose programs are administered by RMA.

FSA means the Farm Service Agency, an agency of USDA which is generally responsible for administering commodity production adjustment and certain conservation programs of USDA.

Field means a part of a farm that is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, or other similar features. At the option of the owner or operator of the farm, croplines may also be used to delineate a field if farming practices make it probable that the croplines are not subject to change. Any highly erodible land on which an agricultural commodity is produced after December 23, 1985, and is not exempt under §12.5(a), shall be considered part of the field in which the land was included on December 23, 1985, unless, to carry out this title, the owner and FSA agree to modify the boundaries of the field.

Highly erodible land means land that has an erodibility index of 8 or more.

Hydric soils means soils that, in an undrained condition, are saturated, flooded, or ponded long enough during a growing season to develop an anaerobic condition that supports the growth and regeneration of hydrophytic vegetation.

Hydrophytic vegetation means plants growing in water or in a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

Landlord means a person who rents or leases farmland to another person.

Local FSA office means the county office of the Farm Service Agency serving the county or a combination of counties in the area in which a person's land is located for administrative purposes.

NIFA means the National Institute of Food and Agriculture, an agency of USDA which is generally responsible for coordinating the information and educational programs of USDA.

Normal climatic conditions means the normal range of hydrologic inputs on a site as determined by the bounds provided in the Climate Analysis for Wetlands Tables or methods posted in the Field Office Technical Guide.

NRCS means the Natural Resources Conservation Service, an agency within USDA which is generally responsible for providing technical assistance in matters of natural resources conservation and for administering certain conservation programs of USDA.

Operator means the person who is in general control of the farming operations on the farm during the crop year.

Owner means a person who is determined to have legal ownership of farmland and shall include a person who is purchasing farmland under contract.

Person means an individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise

or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof, and such person's affiliates as provided in § 12.8 of this part.

Playa means a usually dry and nearly level lake plain that occupies the lowest parts of closed depressions (basins). Temporary inundation occurs primarily in response to precipitation-runoff events. Playas may or may not be characterized by high water table and saline conditions. They occur primarily in the Southern Great Plains.

Pocosin means a wet area on nearly level interstream divides in the Atlantic Coastal Plain. Soils are generally organic but may include some areas of high organic mineral soils.

Pothole means a closed depression, generally circular, elliptical, or linear in shape, occurring in glacial outwash plains, moraines, till plains, and glacial lake plains.

Reinsurance year means a 1-year period beginning July 1 and ending on June 30 of the following year, identified by reference to the year containing June.

Restoration of a wetland means the reestablishment of wetland conditions, including hydrologic condition or native hydrophytic vegetation, to an area where a wetland had previously existed.

RMA means the Risk Management Agency, an agency within USDA that administers the programs of the FCIC through which Federally reinsured crop insurance is provided to American farmers and ranchers.

Secretary means the Secretary of USDA.

Sharecropper means a person who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for such labor.

Soil map unit means an area of the landscape shown on a soil map which consists of one or more soils.

State means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Tenant means a person usually called a ''cash tenant'', ''fixed-rent tenant'', or ''standing rent tenant'' who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent; or a person (other than a sharecropper) usually called a ''share tenant'' who rents land from another person and pays as rent a share of the crops or proceeds therefrom. A tenant shall not be considered the farm operator unless the tenant is determined to be the operator pursuant to this part and 7 CFR part 718.

Wetland, except when such term is a part of the term ''converted wetland'', means land that—

(1) Has predominance of hydric soils;

(2) Is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(3) Under normal circumstances does support a prevalence of such vegetation, except that this term does not include lands in Alaska identified as having a high potential for agricultural development and a predominance of permafrost soils.

Wetland delineation means outlining the boundaries of a wetland determination on aerial photography, digital imagery, other graphic representation of the area, or on the land.

Wetland determination means a decision regarding whether or not an area is a wetland, including identification of wetland type and size. A wetland determination may include identification of an area as one of the following types of wetland—

(1) *Artificial wetland* is an area that was formerly non-wetland, but now meets wetland criteria due to human activities, such as:

(i) An artificial lake or pond created by excavating or diking land that is not a wetland to collect and retain water that is used primarily for livestock, fish production, irrigation, wildlife, fire control, flood control, cranberry growing, or rice production, or as a settling pond; or

(ii) A wetland that is temporarily or incidentally created as a result of adjacent development activity;

(2) *Commenced-conversion wetland* is a wetland, farmed wetland, farmed-wetland pasture, or a converted wetland on which conversion began, but was not completed, prior to December 23, 1985.

(3) *Converted wetland* is a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow and circulation of water) for the purpose of or to have the effect of making possible the production of an agricultural commodity without further application of the manipulations described herein if:

(i) Such production would not have been possible but for such action, and

(ii) Before such action such land was wetland, farmed wetland, or farmed-wetland pasture and was neither highly erodible land nor highly erodible cropland;

(4) *Farmed wetland* is a wetland that prior to December 23, 1985, was manipulated and used to produce an agricultural commodity at least once before December 23, 1985, and on December 23, 1985, did not support woody vegetation, and met the following hydrologic criteria:

(i) If not a playa, pocosin, or pothole, experienced inundation for 15 consecutive days or more during the growing season or 10 percent of the growing season, whichever is less, in most years (50 percent chance or more), which requisite inundation is determined through:

(A) Observation of wetland hydrology indicators as identified in the local NRCS Field Office Technical Guide;

(B) Procedures identified in State Off-Site Methods for wetland identification set forth in the local NRCS Field Office Technical Guide; or

(C) The use of analytic techniques, such as the use of drainage equations or the evaluation of monitoring data.

(ii) If a playa, pocosin, or pothole experienced ponding for 7 or more consecutive days during the growing season in most years (50-percent chance of more) or saturation for 14 or more consecutive days during the growing season in most years (50-percent chance or more). Wetlands which are found to support wetland hydrology through Step 1 of the wetland determination process in §12.30(c)(7) and application of the procedures described in §12.31(c) will be determined to meet the requisite criteria.

(5) *Farmed-wetland pasture* is a wetland that prior to December 23, 1985, was manipulated and managed for pasture or hayland, was not used to produce an agricultural commodity at least once before December 23, 1985, and on December 23, 1985, experienced inundation or ponding for 7 or more consecutive days during the growing season in most years (50-percent chance or more) or saturation for 14 or more consecutive days during the growing season in most years (50-percent chance or more). Wetlands which are found to support wetland hydrology through step 1 of the wetland determination process in §12.30(c)(7) and application of the procedures described in §12.31(c) will be determined to meet the requisite criteria.

(6) *Not-inventoried land,* is an area for which no evaluation of soils, vegetation, or hydrology has been conducted to determine if wetland criteria are met;

(7) *Non-wetland* is;

(i) Land that under natural conditions does not meet wetland criteria, or

(ii) Is converted wetland the conversion of which occurred prior to December 23, 1985, and on that date, the land did not meet wetland criteria but an agricultural commodity was not produced and the area was not managed for pasture or hay;

(8) *Prior-converted cropland* is a converted wetland where the conversion occurred prior to December 23, 1985, an agricultural commodity had been produced at least once before December 23, 1985, and as of December 23, 1985, the converted wetland did not support woody vegetation and did not meet the hydrologic criteria for farmed wetland.

(9) *Wetland,* as defined above in this section.

Wetland hydrology means inundation or saturation by surface or groundwater during a growing season at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation.

(b) *Terms for FSA operations.* In the regulations in this part, and in all instructions, forms, and documents in connection therewith, all other words and phrases specifically relating to FSA operations shall, unless required by the subject matter or the specific provisions of this part, have the meanings assigned to them in the regulations at part 718 of this title that govern reconstitutions of farms, allotments, and bases and any subsequent amendment thereto.

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996; 76 FR 4803, Jan. 27, 2011; 80 FR 22879, Apr. 24, 2015; 83 FR 63050, Dec. 7, 2018; 85 FR 35151, Aug. 28, 2020]

§ 12.3 Applicability.

(a) The provisions of this part apply to all land, including Indian tribal land, in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(b) The rules in this part are applicable to all current and future determinations on matters within the scope of this part. Nothing in these rules relieves any person of any liability under previous versions of these rules.

(c) Notwithstanding paragraph (b) of this section, for the purpose of eligibility for Federal crop insurance premium subsidy for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524), the provisions of this part apply to final HEL and wetland conservation determinations, including all administrative appeals, after February 7, 2014, on matters within the scope of this part.

(1) For acts or situations of non-compliance or failure to certify compliance according to this part, ineligibility for Federal crop insurance premium subsidies will be applied beginning with the 2016 reinsurance year for any Federally reinsured policy or plan of insurance with a sales closing date on or after July 1, 2015.

(2) [Reserved]

[80 FR 22879, Apr. 24, 2015]

§ 12.4 Determination of ineligibility.

(a) *Actions.* Except as provided in §§ 12.5 or 12.13, a person shall be ineligible for all or a portion of USDA program benefits listed in this section if:

(1) The person produces an agricultural commodity on a field in which highly erodible land is predominant, or designates such a field for conservation use;

(2) The person produces an agricultural commodity on a wetland that was converted after December 23, 1985; or

(3) After November 28, 1990, the person converts a wetland by draining, dredging, filling, leveling, removing woody vegetation, or other means for the purpose, or to have the effect, of making the production of an agricultural commodity possible.

(b) *Highly erodible land.* A person determined to be ineligible under paragraph (a)(1) of this section may be ineligible for all program benefits listed in (d) and (e) of this section.

(c) *Wetland conservation.* Except as provided in § 12.13, a person determined to be ineligible under paragraph (a)(2) of this section is ineligible for all or a portion of the USDA program benefits listed in paragraph (d) of this section for which the person otherwise would have been eligible during the crop year of the commodity that was planted on the converted wetland. Except as provided in § 12.13, a person determined to be ineligible under paragraph (a)(3) of this section for the conversion of a wetland is ineligible for all or a portion of the USDA program benefits listed in paragraph (d) of this section for which the person otherwise would have been eligible during the crop year which is equal to the calendar year during which the violation occurred and each subsequent crop year until the converted wetland is restored or the loss of wetland values, acreage, and functions have been mitigated prior to the beginning of such calendar year in accordance with § 12.5(b)(4)(i) (A) and (C) through (F) of this part. Ineligibility under paragraph (a)(2) of this section may be reduced, in lieu of the loss of all benefits specified under paragraph (d) of this section for such crop year, based on the seriousness of the violation, as determined by the FSA Deputy Administrator for Farm Programs or

designee upon recommendation by the FSA County Committee. Factors such as the information that was available to the affected person prior to the violation, previous land use patterns, the existence of previous wetland violations under this part or under other Federal, State, or local wetland provisions, the wetland values, acreage, and functions affected, the recovery time for full mitigation of the wetland values, acreage, and functions, and the impact that a reduction in payments would have on the person's ability to repay a USDA farm loan will be considered in making this determination.

(d) *Programs subject to either highly erodible land or wetland conservation.* USDA program benefits covered by a determination of ineligibility under this rule are:

(1) Contract payments, marketing assistance loans, and any type of price support or payment made available under the Agricultural Act of 2014, the Commodity Credit Corporation Charter Act (15 U.S.C. 714b and 714c), or successor Acts.

(2) A farm credit program loan made or guaranteed under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) or any other provision of law administered by FSA if the Secretary determines that the proceeds of such loan will be used for a purpose that contributes to the conversion of wetlands that would make production of an agricultural commodity possible or for a purpose that contributes to excessive erosion of highly erodible land (*i.e.*, production of an agricultural commodity on highly erodible land without a conservation plan or conservation system as required by this part);

(3) A payment made pursuant to a contract entered into under the Environmental Quality Incentives Program under chapter 4 of subtitle D of the Food Security Act of 1985, as amended; or a payment under any other provision of Subtitle D of that Act;

(4) A payment made under section 401 or 402 of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 or 2202);

(5) A payment, loan, or other assistance under section 3 or 8 of the Watershed Protection and Flood Prevention Act (16 U.S.C. 1003 or 1006a) and;

(6) Federal crop insurance premium subsidies for a policy or plan of insurance offered under the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

(e) *Programs subject to highly erodible land only.* In addition to programs listed in paragraph (d) of this section, a person determined to be ineligible under paragraph (a)(1) of this section shall be ineligible as determined by FSA for the following USDA program benefits for which the person otherwise would have been eligible during the crop year for which the determination applies:

(1) A farm storage facility loan made under section 4(h) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(h));

(2) A disaster payment made under the Federal Agricultural Improvement and Reform Act, Pub. L. 104–127, or any other act; and

(3) A payment made under section 4 or 5 of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b or 714c) for the storage of an agricultural commodity acquired by the Commodity Credit Corporation.

(f) *Determination of ineligibility.* For the purpose of paragraph (a) of this section, a person shall be determined to have produced an agricultural commodity on a field in which highly erodible land is predominant or to have designated such a field for conservation use, to have produced an agricultural commodity on converted wetland, or to have converted a wetland if:

(1) NRCS has determined that—

(i) Highly erodible land is predominant in such field, or

(ii) All or a portion of the field is converted wetland; and

(2) FSA has determined that the person is or was the owner or operator of the land, or entitled to share in the crops available from the land, or in the proceeds thereof; and

(3) With regard to the provisions of paragraph (a)(1) and (a)(2) of this section, FSA has determined that the land is or was planted to an agricultural commodity or was designated as conservation use during the year for which the person is requesting benefits.

(g) *Intent to participate in USDA programs.* Persons who wish to participate in any of the USDA programs described

in paragraph (d) or (e) of this section are responsible for contacting the appropriate agency of USDA well in advance of the intended participated date so that Form AD–1026 can be completed. This contact will help assure that the appropriate determinations regarding highly erodible land or wetland, and conservation plans or conservation systems are scheduled in a timely manner. A late contact may not allow sufficient time for USDA to service the request and could result in a substantial delay in receiving a USDA determination of eligibility or ineligibility.

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996; 76 FR 82077, Dec. 30, 2011; 80 FR 22880, Apr. 24, 2015]

§ 12.5 Exemption.

(a) *Exemptions regarding highly erodible land*—(1) *Highly erodible cropland in production or in USDA programs during 1981 through 1985 crop years.* During the period beginning on December 23, 1985, and ending on the later of January 1, 1990, or the date that is two years after the date the cropland on which an agricultural commodity is produced was surveyed by NRCS to determine if such land is highly erodible, no person shall be determined to be ineligible for benefits as provided in §12.4 as the result of the production of an agricultural commodity on any highly erodible land:

(i) That was planted to an agricultural commodity in any year 1981 through 1985; or

(ii) That was set aside, diverted, or otherwise not cultivated in any such crop years under a program administered by the Secretary for any such crops to reduce production of an agricultural commodity.

(2) *Compliance with a conservation plan or conservation system.* As further specified in this part, no person shall be ineligible for the program benefits described in §12.4 as the result of production of an agricultural commodity on highly erodible land or the designation of such land for conservation use if such production or designation is in compliance with a conservation plan or conservation system approved under paragraph (a)(2)(i) or (a)(2)(ii) of this section. A person shall not be ineligible for program benefits under §12.4 as the result of the production of an agricultural commodity on highly erodible land or as the result of designation of such land as conservation use if the production or designation is:

(i) In an area within a CD, under a conservation system that has been approved by the CD after the CD determines that the conservation system is in conformity with technical standards set forth in the NRCS field office technical guide for such district; or

(ii) In an area not within a CD, under a conservation system that has been approved by NRCS to be adequate for the production of such agricultural commodity on highly erodible land or for the designation of such land as conservation use.

(3) *Reliance upon NRCS determination for highly erodible land.* A person may be relieved from ineligibility for program benefits as the result of the production of an agricultural commodity which was produced on highly erodible land or for the designation of such land as conservation use in reliance on a determination by NRCS that such land was not highly erodible land, except that this paragraph shall not apply to any agricultural commodity that was planted on highly erodible land, or for the designation of highly erodible land as conservation use after NRCS determines that such land is highly erodible land, and the person is notified of such determinations.

(4) *Areas of 2 acres or less.* No person shall be determined to be ineligible under §12.4 for noncommercial production of agricultural commodities on highly erodible land on an area of 2 acres or less if it is determined by FSA that such production is not intended to circumvent the conservation requirements otherwise applicable under this part.

(5) *Good faith.* (i) No person will become ineligible under §12.4 as a result of the failure of such person to apply a conservation system on highly erodible land if all of the following apply:

(A) FSA determines such person has acted in good faith and without the intent to violate the provisions of this part;

(B) NRCS determines that the person complies with paragraph (a)(5)(ii) of this section; and

(C) The good faith determination of the FSA county or State committee has been reviewed and approved by the applicable State Executive Director, with the technical concurrence of the State Conservationist; or district director, with the technical concurrence of the area conservationist.

(ii) A person who otherwise meets the requirements of paragraphs (a)(5)(i)(A) and (a)(5)(i)(C) of this section will be allowed a reasonable period of time, as determined by NRCS, but not to exceed one year, during which to implement the measures and practices necessary to be considered actively applying the person's conservation plan, as determined by USDA. If a person does not take the required corrective actions, the person may be determined to be ineligible for the crop year during which such actions were to be taken, as well as any subsequent crop year.

(iii) Notwithstanding the good-faith requirements of paragraph (a)(5)(i) of this section, if NRCS observes a possible compliance deficiency while providing on-site technical assistance, NRCS will provide to the responsible person, not later than 45 days after observing the possible violation, information regarding actions needed to comply with the plan and this subtitle. NRCS will provide this information in lieu of reporting the observation as a violation, if the responsible person attempts to correct the deficiencies as soon as practicable, as determined by NRCS, after receiving the information, but not later than one year after receiving the information. If a person does not take the required corrective actions, the person may be determined to be ineligible for the crop year during which the compliance deficiencies occurred, as well as any subsequent crop year.

(iv) A person who meets the requirements of paragraphs (a)(5)(i) and (a)(5)(ii) of this section will, in lieu of the loss of all benefits specified under §12.4(d) and (e) for such crop year, be subject to a reduction in benefits by an amount commensurate with the seriousness of the violation, as determined by FSA. The dollar amount of the reduction will be determined by FSA and may be based on the number of acres and the degree of erosion hazard for the area in violation, as determined by NRCS, or upon such other factors as FSA determines appropriate.

(v) Any person whose benefits are reduced in a crop year under paragraph (a)(5) of this section may be eligible for all of the benefits specified under §12.4(d) and (e) for any subsequent crop year if, prior to the beginning of the subsequent crop year, NRCS determines that such person is actively applying a conservation plan according to the schedule specified in the plan on all highly erodible land planted to an agricultural commodity or designated as conservation use.

(6) *Allowable variances.* (i) Notwithstanding any other provisions of this part, no person shall be determined to be ineligible for benefits as a result of the failure of such person to apply a conservation system if NRCS determines that—

(A) The failure is technical and minor in nature and that such violation has little effect on the erosion control purposes of the conservation plan applicable to the land on which the violation has occurred; or

(B) The failure is due to circumstances beyond the control of the person; or

(C) NRCS grants a temporary variance from the practices specified in the plan for the purpose of handling a specific problem, including weather, pest, and disease problems, which NRCS determines cannot reasonably be addressed except through such variance.

(ii) If the person's request for a temporary variance involves the use of practices or measures to address weather, pest, or disease problems, NRCS shall make a decision on whether to grant the variance during the 30-day period beginning on the date of receipt of the request. If NRCS fails to render a decision during the period, the temporary variance shall be considered granted unless the person seeking the variance had reason to know that the variance would not be granted. In determining whether to grant a variance for natural disasters such as weather, pest, or disease problems, NRCS will consider such factors as:

(A) The percent of a stand damaged or destroyed by the event;

(B) The percent of expected crop production compared to normal production for that crop;

(C) The documented invasion of nonnative insects, weeds, or diseases for which no recognized treatment exists;

(D) Whether an event is severe or unusual based on historical weather records; and

(E) Other specific circumstances caused by a natural event that prevented the implementation of conservation practices or systems, installation of structures, or planting of cover crops.

(7) *Technical and minor violations.* Notwithstanding any other provisions of this part, a reduction in benefits in an amount commensurate with the seriousness of the violation, as determined by FSA, and consistent with paragraph (a)(5)(iv) of this section, will be applied if NRCS determines that a violation involving highly erodible land that would otherwise lead to a loss of benefits is both of the following:

(i) Technical and minor in nature; and

(ii) Has a minimal effect on the erosion control purposes of the conservation plan applicable to the land on which the violation occurred.

(b) *Exemptions for wetlands and converted wetlands*—(1) *General exemptions.* A person shall not be determined to be ineligible for program benefits under §12.4 as the result of the production of an agricultural commodity on converted wetland or the conversion of wetland if:

(i) The land is a prior-converted cropland and meets the definition of a prior-converted cropland as of the date of a wetland determination by NRCS;

(ii) The land has been determined by NRCS to be a prior-converted cropland and such determination has been certified, and NRCS determines that the wetland characteristics returned after the date of the wetland certification as a result of—

(A) The lack of maintenance of drainage, dikes, levees, or similar structures,

(B) The lack of management of the lands containing the wetland, or

(C) Circumstances beyond the control of the person;

(iii) The land was determined by NRCS to be a farmed wetland or a farmed-wetland pasture and—

(A) Such land meets wetland criteria through a voluntary restoration, enhancement, or creation action after that determination,

(B) The technical determinations regarding the baseline site conditions and the restoration, enhancement, or creation action have been adequately documented by NRCS,

(C) The proposed conversion action is documented by the NRCS prior to implementation, and

(D) The extent of the proposed conversion is limited so that the conditions will be at least equivalent to the wetland values, acreage, and functions that existed at the time of implementation of the voluntary wetland restoration, enhancement, or creation action;

(iv) NRCS has determined that the conversion if for a purpose that does not make the production of an agricultural commodity possible, such as conversions for fish production, trees, vineyards, shrubs, cranberries, agricultural waste management structures, livestock ponds, fire control, or building and road construction and no agricultural commodity is produced on such land;

(v) NRCS has determined that the actions of the person with respect to the conversion of the wetland or the combined effect of the production of an agricultural commodity on a wetland converted by the person or by someone else, individually and in connection with all other similar actions authorized by NRCS in the area, would have only a minimal effect on the wetland functions and values of wetlands in the area;

(vi)(A) After December 23, 1985, the Army Corps of Engineers issued an individual permit pursuant to section 404 of the Clean Water Act, 33 U.S.C. 1344, authorizing such action and the permit required mitigation that adequately replaced the values, acreage, and functions of the wetlands converted, as determined by NRCS, or

(B) After December 23, 1985, the action is encompassed under section 404 of the Clean Water Act, 33 U.S.C. 1344,

by an Army Corps of Engineers nationwide or regional general permit and the wetland values, acreage, and functions were adequately mitigated, as determined by NRCS; or

(vii) The land is determined by NRCS to be—

(A) An artificial wetland,

(B) A wet area created by a water delivery system, irrigation, irrigation system, or application of water for irrigation,

(C) A nontidal drainage or irrigation ditch excavated in non-wetland, or

(D) A wetland converted by actions of persons other than the person applying for USDA program benefits or any of the person's predecessors in interest after December 23, 1985, if such conversion was not the result of a scheme or device to avoid compliance with this part. Further drainage improvement on such land is not permitted without loss of eligibility for USDA program benefits, unless NRCS determines under paragraph (b)(1)(v) of this section that further drainage activities applied to such land would have minimal effect on the wetland functions and values in the area. In applying this paragraph, a converted wetland shall be presumed to have been converted by the person applying for USDA program benefits unless the person can show that the conversion was caused by a third party with whom the person was not associated through a scheme or device as described under §12.10 of this part. In this regard, activities of a water resource district, drainage district, or similar entity will be attributed to all persons within the jurisdiction of the district or other entity who are assessed for the activities of the district or entity. Accordingly, where a person's wetland is converted due to the actions of the district or entity, the person shall be considered to have caused or permitted the drainage. Notwithstanding the provisions of the preceding sentences and as determined by FSA to be consistent with the purposes of this part, the activities of a drainage district or other similar entity will not be attributed to a person to the extent that the activities of the district or entity were beyond the control of the person and the wetland converted is not used by the person for the production of an agricultural commodity or a forage crop for harvest by mechanical means or mitigation for the converted wetland occurs in accordance with this part.

(2) *Commenced conversion wetlands.* (i) The purpose of a determination of a commenced conversion made under this paragraph is to implement the legislative intent that those persons who had actually started conversion of a wetland or obligated funds for conversion prior to December 23, 1985, would be allowed to complete the conversion so as to avoid unnecessary economic hardship.

(ii) All persons who believed they had a wetland or converted wetland for which conversion began but was not completed prior to December 23, 1985, must have requested by September 19, 1988, FSA to make a determination of commencement in order to be considered exempt under this section.

(iii) Any conversion activity considered by FSA to be commenced under this section lost its exempt status if such activity as not completed on or before January 1, 1995. For purposes of this part, land on which such conversion activities were completed by January 1, 1995, shall be evaluated by the same standards and qualify for the same exemptions as prior-converted croplands. For purposes of this part, land on which such conversion activities were not completed by January 1, 1995, shall be evaluated by the same standards and qualify for the same exemptions as wetlands or farmed wetlands, as applicable.

(iv) Only those wetlands for which the construction had begun, or to which the contract or purchased supplies and materials related, qualified for a determination of commencement. However, in those circumstances where the conversion of wetland did not meet the specific requirements of this paragraph, the person could have requested a commencement of conversion determination from the FSA Deputy Administrator for Farm Programs, upon a showing that undue economic hardship would have resulted because of substantial financial obligations incurred prior to December 23, 1985, for the primary and direct purpose of converting the wetland.

(3) *Wetlands farmed under natural conditions.* A person shall not be determined to be ineligible for program benefits under §12.4 of this part as a result of the production of an agricultural commodity on a wetland on which the owner or operator of a farm or ranch uses normal cropping or ranching practices to produce agricultural commodities in a manner that is consistent for the area, where such production is possible as a result of natural conditions, such as drought, and is without action by the producer that alters the hydrology or removes woody vegetation.

(4) *Mitigation.* (i) No person shall be determined to be ineligible under §12.4 for any action associated with the conversion of a wetland if the wetland values, acreage, and functions are adequately mitigated, as determined by NRCS, through the restoration of a converted wetland, the enhancement of an existing wetland, or the creation of a new wetland, if the mitigation—

(A) Is in accordance with a mitigation plan approved by NRCS;

(B) Is in advance of, or concurrent with, the wetland conversion or the production of an agricultural commodity, as applicable;

(C) Is not at the expense of the federal government in either supporting the direct or indirect costs of the restoration activity or costs associated with acquiring or securing mitigation sites, except if conducted under a mitigation banking program established by USDA;

(D) Occurs on lands in the same general area of the local watershed as the converted wetlands, provided that for purposes of this paragraph, lands in the same general area of the local watershed may include regional mitigation banks;

(E) Is on lands for which the owner has granted an easement to USDA or in the case of a mitigation bank operated under a USDA program, an entity approved by USDA, recorded the easement on public land records, and has agreed to the maintenance of the restored, created, or enhanced wetland for as long as the converted wetland for which the mitigation occurred remains in agricultural use or is not returned to its original wetland classification with equivalent values, acreage, and functions; and

(F) Provides the equivalent values, acreage, and functions that will be lost as a result of the wetland conversion.

(ii) A mitigation plan is a record of decisions that document the actions necessary to compensate for the loss of wetland values, acreage, and functions that result from converting a wetland. The mitigation plan may be a component of a larger natural resources conservation plan.

(iii) The State Conservationist, in consultation with the State Technical Committee, may name certain types or classes of wetland not eligible for exemption under paragraph (b)(4)(i) of this section where the State Conservationist determines that mitigation will not achieve equivalent replacement of wetland values, acreage, and functions within a reasonable time frame or for other reasons identified by the State Conservationist. Any type or class of wetland that a State Conservationist identifies as not eligible for exemption under paragraph (b)(4)(i) of this section will be published in the FEDERAL REGISTER for inclusion in this part.

(5) *Good faith violations.* (i) A person who is determined under §12.4 of this part to be ineligible for benefits as the result of the production of an agricultural commodity on a wetland converted after December 23, 1985, or as the result of the conversion of a wetland after November 28, 1990, may regain eligibility for benefits if all of the following apply:

(A) FSA determines that such person acted in good faith and without the intent to violate the wetland provisions of this part; and

(B) NRCS determines that the person is implementing all practices in a mitigation plan within an agreed-to period, not to exceed one year; and

(C) The good faith determination of the FSA county or State committee has been reviewed and approved by the applicable State Executive Director, with the technical concurrence of the State Conservationist; or district director, with the technical concurrence of the area conservationist.

(ii) In determining whether a person acted in good faith under paragraph (b)(5)(i)(A) of this section, the FSA

shall consider such factors as whether—

(A) The characteristics of the site were such that the person should have been aware that a wetland existed on the subject land,

(B) NRCS had informed the person about the existence of a wetland on the subject land,

(C) The person did not convert the wetland, but planted an agricultural commodity on converted wetland when the person should have known that a wetland previously existed on the subject land,

(D) The person has a record of violating the wetland provisions of this part or other Federal, State, or local wetland provisions, or

(E) There exists other information that demonstrates that the person acted with the intent to violate the wetland provisions of this part.

(iii) After the requirements of paragraph (b)(5)(i) of this section are met, USDA may waive applying the ineligibility provisions of §12.4.

(6) *Reliance upon NRCS wetland determination.* (i) A person shall not be ineligible for program benefits as a result of taking an action in reliance on a previous certified wetland determination by NRCS.

(ii) A person who may be ineligible for program benefits as the result of the production of an agricultural commodity on converted wetland or for the conversion of a wetland may seek relief under §12.11 of this part if such action was taken in reliance on an incorrect technical determination by NRCS as to the status of such land. If the error caused the person to make a substantial financial investment, as determined by the NRCS, for the conversion of a wetland, the person may be relieved of ineligibility for actions related to that portion of the converted wetland for which the substantial financial investment was expended in conversion activities. The relief available under this paragraph shall not apply to situations in which the person knew or reasonably should have known that the determination was in error because the characteristics of the site were such that the person should have been aware that a wetland existed on the subject land, or for other reasons.

(7) *Responsibility to provide evidence.* It is the responsibility of the person seeking an exemption related to converted wetlands under this section to provide evidence, such as receipts, crop-history data, drawings, plans or similar information, for purposes of determining whether the conversion or other action is exempt in accordance with this section.

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996; 76 FR 82077, Dec. 30, 2011; 80 FR 22880, Apr. 24, 2015]

§ 12.6 Administration.

(a) *General.* In general determinations will be made as follows:

(1) Except as provided in paragraph (a)(2) of this section, a determination of ineligibility for benefits in accordance with the provisions of this part will be made by the agency of USDA to which the person has applied for benefits. All determinations required to be made under the provisions of this part will be made by the agency responsible for making such determinations, as provided in this section.

(2) Eligibility for Federal crop insurance premium subsidies will be based on final determinations, including all administrative appeals, made by NRCS and FSA. Neither RMA, FCIC, approved insurance providers, or any employee, agent, or contractors thereof, will make any determination regarding compliance with the highly erodible land or wetland provisions of this part, unless specifically provided for in §12.13.

(b) *Administration by FSA.* (1) The provisions of this part which are applicable to FSA will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field in part by State FSA committees and county FSA committees (COC).

(2) The FSA Deputy Administrator for Farm Programs may determine any question arising under the provisions of this part which are applicable to FSA and may reverse or modify any determination of eligibility with respect to programs administered by FSA made by a State FSA committee or COC or any other FSA office or FSA official (except the Administrator) in

connection with the provisions of this part.

(3) FSA shall make the following determinations which are required to be made in accordance with this part:

(i) Whether a person produced an agricultural commodity on a particular field as determined under §12.5(a)(1);

(ii) The establishment of field boundaries;

(iii) Whether land was planted to an agricultural commodity in any of the years, 1981 through 1985, for the purposes of §12.5(a)(1);

(iv) Whether land was set aside, diverted, or otherwise not cultivated under a program administered by the Secretary for any crop to reduce production of an agricultural commodity under §§12.4(g) and 12.5(a)(1);

(v) Whether for the purposes of §12.9, the production of an agricultural commodity on highly erodible land or converted wetland by a landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper;

(vi) Whether the conversion of a particular wetland was commenced before December 23, 1985, for the purposes of §12.5(b)(3);

(vii) Whether the conversion of a wetland was caused by a third party under §12.5(b)(1)(vii)(D);

(viii) Whether certain violations were made in good faith under §§12.5(a)(5) or 12.5(b)(5);

(ix) The determination of the amount of reduction in benefits based on the seriousness of the violation, based on technical information provided by NRCS;

(x) The determination of whether the application of the producer's conservation plan or system would impose an undue economic hardship on the producer; and

(xi) Whether the proceeds of a farm loan made, insured, or guaranteed by FSA will be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland.

(4) A representative number of farms selected in accordance with instructions issued by the Deputy Administrator shall be inspected by an authorized representative of FSA to determine compliance with any requirement specified in this part as a prerequisite for obtaining program benefits.

(5) FSA may consult with U.S. Fish and Wildlife Service on third-party determinations.

(c) *Administration by NRCS.* (1) The provisions of this part that are applicable to NRCS shall be administered under the general supervision of the Associate Chief for Conservation, and shall be carried out in the field by the regional conservationist, state conservationist, area conservationist, and district conservationist or other NRCS representative.

(2) An NRCS representative shall make the following determinations which are required to be made in accordance with this part:

(i) Whether land is highly erodible or has a wetland type or a converted wetland identified in accordance with the provisions of this part;

(ii) Whether highly erodible land is predominant on a particular field under §12.22;

(iii) Whether the conservation plan that a person is applying is based on the local NRCS field office technical guide and is approved by—

(A) The CD and NRCS, or

(B) NRCS;

(iv) Whether the conservation system that a person is using has been approved by the CD under §12.5(a)(2) or, in an area not within a CD, a conservation system approved by NRCS to be adequate for the production of an agricultural commodity on highly erodible land;

(v) Whether the actions of a person(s) with respect to the conversion of a wetland or production of an agricultural commodity on converted wetland would have only a minimal effect on the functions and values of wetlands in the area;

(vi) Whether an approved conservation plan is being applied on highly erodible fields in accordance with the schedule specified therein or whether a failure to apply the plan is technical and minor in nature, due to circumstances beyond the control of the person, or whether a temporary variance form the requirements of the plan should be granted;

(vii) Whether an approved conservation system is being used on a highly erodible field;

(viii) Whether the conversion of a wetland is for the purpose or has the effect of making the production of an agricultural commodity possible;

(ix) Whether a farmed wetland or farmed-wetland pasture is abandoned;

(x) Whether the planting of an agricultural commodity on a wetland is possible under natural conditions;

(xi) Whether maintenance of existing drainage of a wetland described in §12.33 exceeds the scope and effect of the original drainage;

(xii) Whether a plan for the mitigation of a converted wetland will be approved and whether the mitigation of a converted wetland is accomplished according to the approved mitigation plan;

(xiii) Whether all technical information relating to the determination of a violation and severity of a violation has been provided to FSA for making payment-reduction determinations; and

(xiv) Whether or not a commenced-conversion activity was completed by January 1, 1995.

(3) NRCS may provide such other technical assistance for implementation of the provisions of this part as is determined to be necessary.

(4) A person may obtain a highly erodible land or a wetland scope-and-effect determination by making a written request on Form AD–1026. The determination will be made in writing, and a copy will be provided to the person.

(5) A determination of whether or not an area meets the highly erodible land criteria or whether wetland criteria, identified in accordance with the current Federal wetland delineation methodology in use at the time of the determination and that are consistent with current mapping conventions, may be made by the NRCS representative based upon existing records or other information and without the need for an on-site determination. This determination will be made by the NRCS representative as soon as possible following a request for such a determination.

(6) An on-site determination as to whether an area meets the applicable criteria shall be made by an NRCS representative if the person has disagreed with the determination made under paragraph (c)(5) of this section, or if adequate information is not otherwise available to an NRCS representative on which to make an off-site determination.

(7) An on-site determination, where applicable, will be made by the NRCS representative as soon as possible following a request for such a determination, but only when site conditions are favorable for the evaluation of soils, hydrology, or vegetation.

(8) With regard to wetland determinations, if an area is continuously inundated or saturated for long periods of time during the growing season to such an extent that access by foot to make a determination of predominance of hydric soils or prevalence of hydrophytic vegetation is not feasible, the area will be determined to be a wetland.

(9) Persons who are adversely affected by a determination made under this section and believe that the requirements of this part were improperly applied may appeal, under §12.12 of this part, any determination by NRCS.

(10) NRCS will operate a program or work with third parties to establish mitigation banks to assist persons in complying with §§12.4(c) and 12.5(b)(4). Persons will be able to access mitigation banks established or approved through this program without requiring the Secretary to hold an easement in a mitigation bank.

(d) *Administration by NIFA.* The NIFA shall coordinate the related information and education program for USDA concerning implementation of this rule.

(e) *Assistance of other Federal agencies.* If NRCS determines, through agreement or otherwise, that the purposes of this part would be furthered by the assistance of other Federal agencies with wetland responsibilities, NRCS may accept such assistance and adopt any or all such actions by these agencies as an action by an NRCS representative under this part.

(f) *Administration by RMA.* The provisions of this part that are applicable to

RMA will be administered under the general supervision of the Administrator, RMA.

(1) Eligibility for Federal crop insurance premium subsidies will be based on the person's:

(i) Accurate and timely filing of a certification of compliance (Form AD–1026 or successor form) with the conservation compliance provisions; and

(ii) Compliance with the conservation compliance provisions.

(2) Ineligibility for Federal crop insurance premium subsidies due to violations of the conservation compliance provisions will be based on final determinations, including all administrative appeals, made by NRCS and FSA as provided in this part.

(3) Neither RMA nor FCIC will make any determination of eligibility regarding compliance with the highly erodible land or wetland provisions in this part, unless specifically provided for in § 12.13.

(4) RMA will provide the applicable information regarding determinations made by NRCS and FSA to the appropriate approved insurance providers to ensure those determinations affecting Federal crop insurance premium subsidy eligibility are implemented according to this part.

(g) *Approved insurance providers.* No approved insurance provider or any employee, agent, or contractor of an approved insurance provider will:

(1) Make any determination of eligibility regarding compliance with the highly erodible land or wetland provisions of this part; or

(2) Be responsible or liable for a person's eligibility for Federal crop insurance premium subsidy under this part, except in cases of fraud, misrepresentation, or scheme and device by the approved insurance provider or any employee, agent, or contractor thereof.

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996; 76 FR 4804, Jan. 27, 2011; 80 FR 22880, Apr. 24, 2015]

§ 12.7 Certification of compliance.

(a) *Self-certification.* In order for a person to be determined to be eligible for any of the benefits specified in § 12.4:

(1) It must be determined by USDA whether any field in which the person applying for the benefits has an interest and intends to produce an agricultural commodity contains highly erodible land;

(2) The person applying for or receiving the benefits must certify in writing on Form AD–1026 that such person will not produce an agricultural commodity on highly erodible land, or designate such land for conservation use; or plant an agricultural commodity on a converted wetland; or convert a wetland to make possible the production of an agricultural commodity during the crop year in which the person is seeking such benefits, unless such actions are exempt, under §§ 12.5 or 12.13 from the provisions of § 12.4 of this part;

(3) A person may certify application of practices required by the person's conservation plan. NRCS shall permit a person who makes such a certification with respect to a conservation plan to revise the conservation plan in any manner, if the same level of conservation treatment provided for by the conservation system under the person's conservation plan is maintained. NRCS may not revise the person's conservation plan without the concurrence of the person;

(4) The person applying for a FSA direct or guaranteed farm credit program loan must certify that such person shall not use the proceeds of the loan for a purpose that will contribute to excessive erosion on highly erodible land or to conversion of wetlands for the purpose, or to have the effect, of making the production of an agricultural commodity possible; and

(5) The person applying for the benefits must authorize and provide representatives of USDA access to all land in which such person has an interest for the purpose of verifying any such certification.

(b) *Availability to other agencies.* Each agency of USDA shall make all certifications of compliance received by such agency and the results of investigations concerning such certifications of compliance available to other agencies.

(c) *Compliance.* A certification made in accordance with this section does not relieve any person from compliance with provisions of this part.

(d) *Timely filing.* In order for a person to be determined eligible for Federal

crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524), the person must have Form AD–1026 or successor form on file with FSA, as specified in § 12.13.

[61 FR 47025, Sept. 6, 1996, as amended at 80 FR 22880, Apr. 24, 2015]

§ 12.8 Affiliated persons.

(a) *Ineligibility of affiliated persons.* Ineligibility of an individual or entity under this part for benefits shall also be an ineligibility for benefits for ''affiliated persons'' as defined in this section.

(b) *Affiliated persons of an individual.* If the person requesting benefits is an individual, the affiliated persons are:

(1) The spouse and minor child of such person or guardian of such child; except that spouses who establish to the satisfaction of the COC that operations of the husband and wife are maintained separately and independently shall not be considered affiliates;

(2) Any partnership, joint venture, or other enterprise in which the person or any person listed in paragraphs (b)(1) has an ownership interest or financial interest; unless such interest is held indirectly through another business enterprise; or

(3) Any trust in which the individual, business enterprise, or any person listed in paragraph (b)(1) is a beneficiary or has a financial interest, unless such interest is held indirectly through another business enterprise.

(c) *Affiliated persons of an entity.* If the person who has requested benefits from USDA is a corporation, partnership, or other joint venture, the affiliated persons are any participant or stockholder therein of the corporation, partnership, or other joint venture, except for persons who have an indirect interest through another business enterprise in such corporation, partnership, or other joint venture or persons with a 20 percent or less share in a corporation.

(d) *Limitation.* Any reduction in payments which results only from the application of the affiliation provisions of this section to a partnership, joint venture, trust, or other enterprise shall be limited to the extent of interest held in such partnership, joint venture, trust, or other enterprise by the person or business enterprise that committed the violation. However, for violations for which the business enterprise is considered directly responsible under the provisions of this part, the business enterprise shall be subject to a full loss of benefits, including those instances in which the business enterprise has an interest in the land where the violation occurred or where the business enterprise had an interest in the crops produced on the land.

(e) *Avoidance of this part.* Limitations on affiliation shall not apply as needed to correct for any action that would otherwise tend to defeat the purposes of this part.

§ 12.9 Landlords and tenants.

(a) *Landlord eligibility.* Landlord eligibility will include the following:

(1) Except as provided in paragraph (a)(2) of this section, the ineligibility of a tenant or sharecropper for:

(i) Program benefits (as specified in § 12.4) except as provided in paragraph (a)(1)(ii) of this section will not cause a landlord to be ineligible for USDA program benefits accruing with respect to land other than those in which the tenant or sharecropper has an interest; and

(ii) Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) will, in lieu of ineligibility for premium subsidy, result in a reduction in the amount of premium subsidy paid by FCIC on all policies and plans of insurance for the landlord.

(A) The percentage reduction will be determined by comparing the total number of cropland acres on the farm on which the violation occurred to the total number of cropland acres on all farms in which landlord has an interest, as determined by FSA.

(B) The farms and cropland acres used to determine the premium subsidy reduction percentage will be the farms and cropland acres of the landlord for the reinsurance year in which the tenant or sharecropper is determined ineligible.

(C) The percentage reduction will be applied to all policies and plans of insurance of the landlord in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.

(D) If the landlord and tenant or sharecropper are insured under the same policy, the landlord will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.

(2) If the production of an agricultural commodity on highly erodible land or converted wetland by the landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper and such agreement was entered into after December 23, 1985, or if the landlord has acquiesced in such activities by the tenant or sharecropper:

(i) The provisions of paragraph (a)(1)(i) of this section will not be applicable to a landlord; and

(ii) A landlord will be ineligible for premium subsidy on all policies and plans of insurance in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.

(b) *Tenant or sharecropper eligibility.* Tenant or sharecropper eligibility will include the following:

(1) If all of the requirements in paragraph (b)(2) of this section are met:

(i) The ineligibility of a tenant or sharecropper, except as provided in paragraph (b)(1)(ii) of this section, may be limited to the program benefits listed in §12.4(b) accruing with respect to only the farm on which the violation occurred; and

(ii) In lieu of ineligibility for Federal crop insurance premium subsidies for all policies or plans of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524), the premium subsidy on all policies and plans of insurance of the ineligible tenant or sharecropper will be reduced.

(A) The percentage reduction will be determined by comparing the total number of cropland acres on the farm on which the violation occurred to the total number of cropland acres on all farms in which tenant or sharecropper has an interest, as determined by FSA.

(B) The farms and cropland acres used to determine the premium subsidy reduction percentage will be the farms and cropland acres of the tenant or sharecropper for the reinsurance year in which the tenant or sharecropper is determined ineligible.

(C) The percentage reduction will be applied to all policies and plans of insurance of the tenant or sharecropper in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.

(D) If the landlord and tenant or sharecropper are insured under the same policy, the tenant or sharecropper will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.

(2) The provisions of paragraph (b)(1) of this section will not apply unless all the following are met:

(i) The tenant or sharecropper shows that a good-faith effort was made to comply by developing an approved conservation plan for the highly erodible land in a timely manner and prior to any violation of the provisions of this part;

(ii) The owner of such farm refuses to apply such a plan and prevents the tenant or sharecropper from implementing certain practices that are a part of the approved conservation plan; and

(iii) FSA determines that the lack of compliance is not a part of a scheme or device as described in §12.10.

(3) If relief is granted under paragraph (b)(1) of this section, the tenant or sharecropper must actively apply those conservation treatment measures that are determined to be within the control of the tenant or sharecropper.

[61 FR 47025, Sept. 6, 1996, as amended at 80 FR 22881, Apr. 24, 2015]

§ 12.10 Scheme or device.

All or any part of the benefits listed in §12.4 otherwise due a person from USDA may be withheld or required to be refunded if the person adopts or participates in adopting any scheme or device designed to evade, or which has the effect of evading, the provisions of this part. Such acts shall include, but are not limited to, concealing from USDA any information having a bearing on the application of the provisions

of this part or submitting false information to USDA or creating entities for the purpose of concealing the interest of a person in a farming operation or to otherwise avoid compliance with the provisions of this part. Such acts shall also include acquiescence in, approval of, or assistance to acts which have the effect of, or the purpose of, circumventing these regulations.

§ 12.11 Action based upon advice or action of USDA.

The provisions of part 718 of this Title, as amended, relating to performance based upon the action or advice of a County Committee (COC) or State FSA Committee shall be applicable to the provisions of this part. In addition, if it is determined by the appropriate USDA agency that the action of a person which would form the basis of any ineligibility under this part was taken by such person in good-faith reliance on erroneous advice, information, or action of any other authorized representative of USDA, the appropriate agency may make such benefits available to the extent that similar relief would be allowed under 7 CFR part 718.

§ 12.12 Appeals.

Any person who has been or who would be denied program benefits in accordance with §12.4 as the result of any determination made in accordance with the provisions of this part may obtain a review of such determination in accordance with the administrative appeals procedures of the agency which rendered such determination. Agency appeal procedures are contained in the Code of Federal Regulations as follows: FSA, part 780 of this title; NRCS, part 614 of this title; Rural Utilities Service, part 1900, subpart B of this title.

§ 12.13 Special Federal crop insurance premium subsidy provisions.

(a) *General.* The provisions and exemptions in this section are only applicable to Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524). The exemptions in this section are in addition to any that apply under §12.5. Any conflict between this section and another will be resolved by applying this section, but only for Federal crop insurance premium subsidies. Any exemptions or relief under this section apply to Federal crop insurance premium subsidies and do not apply to other benefits even for the same person for the same crop year or reinsurance year. Unless otherwise specified in this section, the provisions in this section apply to both highly erodible land and wetlands.

(b) *Ineligibility for failing to certify compliance.* Subject to paragraph (b)(2) of this section, failing to certify compliance as specified in §12.7 will result in ineligibility as follows:

(1) A Form AD–1026, or successor form, for the person must be filed with FSA for the reinsurance year in order for the person to be eligible for any Federal crop insurance premium subsidies for the reinsurance year. Persons will be ineligible for Federal crop insurance premium subsidy on their crop insurance policy if form AD–1026, or successor form, has not been filed with FSA for the reinsurance year by the premium billing date for their Federally-reinsured crop insurance policy.

(2) A person that has not filed an AD–1026 for the reinsurance year by the premium billing date may be eligible for premium subsidy for the reinsurance year if they provide information necessary for the person's filing of a Form AD–1026 if the person:

(i) Is unable to file a Form AD–1026 due to circumstances beyond the person's control, as determined by FSA; or

(ii) Files a Form AD–1026 in good faith and FSA subsequently determines that additional information is needed, but the person is unable to comply due to circumstances beyond the control of the person.

(3) A person who does not have Form AD–1026, or successor form, on file with FSA for the reinsurance year may be eligible for Federal crop insurance premium subsidy for the initial reinsurance year if the person can demonstrate they meet RMA's conditions for new to farming, new to crop insurance, a new entity, or have not previously been required to file form AD–1026.

(c) *Ineligibility for violations.* If a person is ineligible due to a violation of

the provisions of this part, the timing and results will be as follows:

(1) Unless an exemption in this section or §12.5 applies, ineligibility for Federal crop insurance premium subsidy for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) due to a violation of the provisions of this part will:

(i) Not apply to the reinsurance year in which the violation occurred or any reinsurance year prior to the date of the final determination of a violation, including all administrative appeals of the determination, as determined by NRCS or FSA as applicable; and

(ii) Only apply to reinsurance years subsequent to the date of a final determination of a violation, including all administrative appeals of the determination, as determined by NRCS or FSA as applicable. A person who is in violation of the provisions of this part, as determined by FSA or NRCS, in a reinsurance year, will, unless otherwise exempted, be ineligible for any Federal crop insurance premium subsidy beginning with the subsequent reinsurance year. For example, a person who is determined to be in violation of the provisions of this part and has exhausted all administrative appeals on June 1, 2015, (2015 reinsurance year) will, unless otherwise exempted, be ineligible for Federal crop insurance premium subsidy effective July 1, 2015, the start of the 2016 reinsurance year, and will not be eligible for any Federal crop insurance premium subsidy for any policy or plan of insurance during the 2016 reinsurance year. Even if the person becomes compliant during the 2016 reinsurance year, the person will not be eligible for Federal crop insurance premium subsidy until the 2017 reinsurance year starting on July 1, 2016.

(2) Eligibility for Federal crop insurance premium subsidy for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) due to a violation of the provisions of this part will be based on FSA and NRCS final determinations, including all administrative appeals, regarding compliance with the provisions of this part.

(3) The amount of premium subsidy for an insured person will be reduced when any person with a substantial beneficial interest in the insured person is ineligible for premium subsidy under this part. The amount of reduction will be commensurate with the ineligible person's substantial beneficial interest in the insured person. The ineligible person's substantial beneficial interest in the insured person will be determined according to the policy provisions of the insured person.

(4) Administrative appeals include appeals made in accordance with §12.12 and part 11 of this title, but do not include any judicial review or appeal, or any other legal action.

(d) *Exemption to develop and comply with an approved HEL conservation plan.* The following exemptions provide a delay in the requirement to develop and comply with an NRCS approved HEL conservation plan for certain persons.

(1) Persons subject to the provisions of this part regarding highly erodible land, specifically those related to section 1211(a) of the Food Security Act of 1985, as amended, for the first time solely due to amendments to that section by section 2611(a) of the Agricultural Act of 2014 (16 U.S.C. 3811(a)(1)), will have 5 reinsurance years after the date the person is determined to have HEL and has exhausted all administrative appeals, if applicable, to develop and comply with a conservation plan approved by NRCS before being ineligible for Federal crop insurance premium subsidies. The additional time to develop and comply with a conservation plan approved by NRCS applies only to persons who have not previously been subject to the highly erodible land conservation provisions of this part. The additional time provided in this paragraph does not apply to any person who had any interest in any land or crop, including an affiliated person, that was subject to the provisions of this part before February 7, 2014. The 5 reinsurance years to develop and comply with a conservation plan approved by NRCS starts:

(i) For persons who have no land with an NRCS HEL determination, the 5 reinsurance years begins the start of the reinsurance year (July 1) following the date NRCS makes a HEL determination and the person exhausts all their administrative appeals; or

(ii) For persons who have any land for which an NRCS HEL determination has been made and all administrative appeals have been exhausted, the 5 reinsurance years begins the start of the reinsurance year (July 1) following the date the person certifies compliance with FSA to be eligible for USDA benefits subject to the conservation compliance provisions.

(2) Persons who meet all the following criteria will have 2 reinsurance years from the start of the reinsurance year (July 1) following the date the person certifies compliance with FSA to be eligible for USDA benefits subject to the conservation compliance provisions to develop and comply with a conservation plan approved by NRCS before being ineligible for Federal crop insurance premium subsidies:

(i) Were subject to the provisions of this part regarding highly erodible land, specifically those related to section 1211(a) of the Food Security Act of 1985 (16 U.S.C. 3811(a)(1)), as amended, any time before February 7, 2014;

(ii) Before February 7, 2014, stopped participating in all USDA programs subject to the provisions of this part regarding highly erodible land;

(iii) Would have been in violation of the provisions of this part regarding highly erodible land had they continued to participate in those programs after February 7, 2014; and

(iv) Are currently in violation of the provisions of this part regarding highly erodible land.

(e) *Exemption for prior wetland conversions completed prior to February 7, 2014.* No person will be ineligible for Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) for:

(1) Converting a wetland if the wetland conversion was completed, as determined by NRCS, before February 7, 2014; or

(2) Planting or producing an agricultural commodity on a converted wetland if the wetland conversion was completed, as determined by NRCS, before February 7, 2014.

(f) *Exemption for wetland conversion that impacts less than 5 acres.* The following exemption is for wetland conversion that impacts less than 5 acres of an entire farm:

(1) In lieu of ineligibility for Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) due to a wetland conversion violation or concurrent with a planned wetland conversion occurring after February 7, 2014, a person may, if approved by NRCS, pay a contribution to NRCS in an amount equal to 150 percent of the cost of mitigating the converted wetland, as determined by NRCS.

(2) A person is limited to only one exemption, as determined by NRCS, described in paragraph (f)(1) of this section per farm.

(3) NRCS will not refund this payment even if the person later conducts actions which will mitigate the earlier conversion.

(g) *Exemption for wetland conversion when a policy or plan of insurance is available to a person for the first time.* The following exemption is for wetland conversion when a policy or plan of insurance is available to the person for the first time.

(1) When a policy or plan of insurance that provides coverage for an agricultural commodity is available to the person, including as a person who is a substantial beneficial interest holder, for the first time after February 7, 2014, as determined by RMA, ineligibility for Federal crop insurance premium subsidies for such policy or plan of insurance due to a wetland conversion violation will only apply to wetland conversions that are completed, as determined by NRCS, after the date the policy or plan of insurance first becomes available to the person.

(2) The exemption described in paragraph (g)(1) of this section:

(i) Applies only to the policy or plan of insurance that becomes available to the person for the first time after February 7, 2014, as determined by RMA;

(ii) Does not exempt or otherwise negate the person's ineligibility for Federal crop insurance premium subsidies on any other policy or plan of insurance; and

(iii) Applies only if the person takes steps necessary, as determined by

NRCS, to mitigate all wetlands converted after February 7, 2014, in a timely manner, as determined by NRCS, but not to exceed 2 reinsurance years.

(3) For the purposes of the paragraph (g)(1) of this section:

(i) A policy or plan of insurance is considered to have been available to the person after February 7, 2014, if, after February 7, 2014, in any county in which the person had any interest in any acreage, including as a person who is a substantial beneficial interest holder:

(A) There was a policy or plan of insurance available on the county actuarial documents that provided coverage for the agricultural commodity; or

(B) The person obtained a written agreement to insure the agricultural commodity in any county; and

(ii) Changing, adding, or removing options, endorsements, or coverage to an existing policy or plan of insurance will not be considered as a policy or plan of insurance being available for the first time to a person.

(h) *Wetland conversion mitigation exemption.* Unless another exemption applies, the following exemption provides additional time to mitigate wetland conversions.

(1) A person determined to be in violation of the provisions of this part due to a wetland conversion occurring after February 7, 2014, will have 1 reinsurance year after the final determination of violation, including all administrative appeals, as determined by NRCS, to initiate a mitigation plan to remedy the violation, as determined by NRCS, before becoming ineligible for Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524.). For example, if in May 2017, after NRCS has determined that a person is in violation for converting a wetland and the person has exhausted all administrative appeals, the person will have until June 30, 2018, to initiate a mitigation plan to remedy the violation before becoming ineligible for Federal crop insurance premium subsidies starting with the 2019 reinsurance year.

(2) Notwithstanding paragraph (h)(1) of this section, if a person determined to be in violation of the provisions of this part due to a wetland conversion occurring after February 7, 2014, as determined by NRCS, and is subject to the provisions of this part for the first time solely due to section 2611(b) of the Agricultural Act of 2014, such person will have 2 reinsurance years after the final determination of violation, including all administrative appeals, as determined by NRCS, to be implementing all practices in a mitigation plan to remedy the violation, as determined by NRCS, before becoming ineligible for Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524).

(3) Administrative appeals include appeals made in accordance with §12.12 and part 11 of this title, but do not include any judicial review or appeal, or any other legal action.

(i) *Good faith exemption.* The following is a good faith exemption for wetland conservation:

(1) A person determined by FSA or NRCS to be in violation, including all administrative appeals, of the provisions of this part due to converting a wetland after February 7, 2014, or producing an agricultural commodity on a wetland that was converted after February 7, 2014, may regain eligibility for Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) if all of the following criteria are met:

(i) FSA determines that such person acted in good faith and without the intent to violate the wetland conservation provisions of this part;

(ii) NRCS determines that the person is implementing all practices in a mitigation plan to remedy or mitigate the violation within an agreed-to period, not to exceed 2 reinsurance years; and

(iii) The good faith determination of the FSA county or State committee has been reviewed and approved by the applicable State Executive Director, with the technical concurrence of the State Conservationist; or District Director, with the technical concurrence of the area conservationist.

(2) In determining whether a person acted in good faith under paragraph (i)(1)(i) of this section, FSA will consider such factors as whether:

(i) The characteristics of the site were such that the person should have been aware that a wetland existed on the subject land;

(ii) NRCS had informed the person about the existence of a wetland on the subject land;

(iii) The person has a record of violating the wetland provisions of this part or other Federal, State, or local wetland provisions; or

(iv) There exists other information that demonstrates the person acted with the intent to violate the wetland conservation provisions of this part.

(3) After the requirements of paragraph (i)(1) of this section are met, FSA may waive applying the ineligibility provisions of this section to allow the person to implement the mitigation plan approved by NRCS. The waiver will apply for up to two reinsurance years.

(j) *Landlord and Tenant wetland violations relief.* The following provides landlord and tenant relief for wetland violations:

(1) Except as provided in (j)(2) of this section, the ineligibility of a tenant or sharecropper for Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) will, in lieu of ineligibility for premium subsidy, result in a reduction in the amount of premium subsidy paid by FCIC on all policies and plans of insurance for the landlord.

(i) The percentage reduction will be determined by comparing the total number of cropland acres on the farm on which the violation occurred to the total number of cropland acres on all farms in which landlord has an interest, as determined by FSA.

(ii) The farms and cropland acres used to determine the premium subsidy reduction percentage will be the farms and cropland acres of the landlord for the reinsurance year in which the tenant or sharecropper is determined ineligible.

(iii) The percentage reduction will be applied to all policies and plans of insurance of the landlord in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.

(iv) If the landlord and tenant or sharecropper are insured under the same policy, the landlord will be ineligible for premium subsidy on that policy in lieu of a percentage reduction on that policy.

(2) A landlord will be ineligible for the premium subsidy on all policies and plans of insurance in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible if the production of an agricultural commodity on a converted wetland by the landlord's tenant or sharecropper is required under the terms and conditions of the agreement between the landlord and such tenant or sharecropper and such agreement was entered into after February 7, 2014, or if the landlord has acquiesced in such activities by the tenant or sharecropper.

(3) If all the requirements in paragraph (j)(4) of this section are met, in lieu of ineligibility for Federal crop insurance premium subsidies for all policies or plans of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) for producing or planting an agricultural commodity on a wetland converted after February 7, 2014, the premium subsidy on all policies and plans of insurance of the ineligible tenant or sharecropper will be reduced.

(i) The percentage reduction will be determined by comparing the total number of cropland acres on the farm on which the violation occurred to the total number of cropland acres on all farms in which tenant or sharecropper has an interest, as determined by FSA.

(ii) The farms and cropland acres used to determine the premium subsidy reduction percentage will be the farms and cropland acres of the tenant or sharecropper for the reinsurance year in which the tenant or sharecropper is determined ineligible.

(iii) The percentage reduction will be applied to all policies and plans of insurance of the tenant or sharecropper in the reinsurance year subsequent to the reinsurance year in which the tenant or sharecropper is determined ineligible.

(iv) If the landlord and tenant or sharecropper are insured under the same policy, the tenant or sharecropper will be ineligible for premium

subsidy on that policy in lieu of a percentage reduction on that policy.

(4) The provisions of paragraph (j)(3) of this section will not apply unless all the following are met:

(i) The tenant or sharecropper shows that a good-faith effort was made to comply by developing a plan, approved by NRCS, for the restoration or mitigation of the converted wetland in a timely manner and prior to any violation;

(ii) The owner of such farm refuses to apply such a plan and prevents the tenant or sharecropper from implementing the approved plan;

(iii) FSA determines the lack of compliance is not a part of a scheme or device as described in §12.10; and

(iv) The tenant or sharecropper actively applies the practices and measures of the approved plan that are within their control.

(k) *Evaluation of certification.* NRCS will evaluate the certification in a timely manner.

(1) A person who properly completes, signs, and files Form AD–1026, or successor form, with FSA certifying compliance with the provisions of this part will be eligible for Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) during the period of time such certification is being evaluated by NRCS, if an evaluation is required.

(2) A person will not be ineligible for Federal crop insurance premium subsidies for a policy or plan of insurance under the Federal Crop Insurance Act (7 U.S.C. 1501–1524) if:

(i) NRCS fails to complete a required evaluation of the person's Form AD–1026, or successor form in a timely manner after all documentation has been provided to NRCS; and

(ii) The person is subsequently determined to have been in violation of the provisions of this part during the time NRCS was completing the evaluation.

(3) The relief from ineligibility provided in paragraph (k)(2) of this section:

(i) Applies only to violations that occurred prior to or during the time NRCS is completing the required evaluation;

(ii) Does not apply to any violations that occur subsequent to NRCS completing the evaluation;

(iii) Does not apply if FSA or NRCS determines the person employed, adopted, or participated in employing or adopting a scheme or device, as provided in §12.10, to evade the provisions of this part or to become eligible for the relief provided in paragraph (k)(2) of this section; and

(iv) Does not apply if the required evaluation is delayed due to unfavorable site conditions for the evaluation of soils, hydrology, or vegetation.

(l) *Failing to notify FSA of a change.* Requirements to pay equitable contribution for failing to notify FSA of a change are as follows.

(1) A person who fails to notify FSA of any change that could alter their status as compliant with the provisions of this part and is subsequently determined, by FSA or NRCS, to have committed a violation of the wetland conservation provisions of this part after February 7, 2014, will be required to pay to NRCS an equitable contribution.

(2) The amount of equitable contribution will be determined by NRCS, but will not exceed the total amount of Federal crop insurance premium subsidy paid by FCIC on behalf of the person for all policies and plans of insurance for all years in which the person is determined to have been in violation.

(3) A person who fails to pay the full equitable contribution amount by the due date determined by NRCS will be ineligible for Federal crop insurance premium subsidy on any policy or plan of insurance beginning with the subsequent reinsurance year. The person will be ineligible for Federal crop insurance premium subsidy for the entire reinsurance year even if full payment of the equitable contribution amount is received by NRCS during the reinsurance year.

[80 FR 22881, Apr. 24, 2015, as amended at 82 FR 58334, Dec. 12, 2017]

Subpart B—Highly Erodible Land Conservation

§ 12.20 NRCS responsibilities regarding highly erodible land.

In implementing the provisions of this part, NRCS shall, to the extent practicable:

(a) Develop and maintain criteria for identifying highly erodible lands;

(b) Prepare and make available to the public lists of highly erodible soil map units;

(c) Make soil surveys for purposes of identifying highly erodible land; and

(d) Provide technical guidance to conservation districts which approve conservation plans and systems, in consultation with local county FSA committees, for the purposes of this part.

§ 12.21 Identification of highly erodible lands criteria.

(a) *Basis for identification as highly erodible.* Soil map units and an erodibility index will be used as the basis for identifying highly erodible land. The erodibility index for a soil is determined by dividing the potential average annual rate of erosion for each soil by its predetermined soil loss tolerance (T) value. The T value represents the maximum annual rate of soil erosion that could occur without causing a decline in long-term productivity. The equation for measuring erosion is described below.

(1) The potential average annual rate of sheet and rill erosion is estimated by multiplying the following factors of the Universal Soil Loss Equation (USLE):

(i) Rainfall and runoff (R);

(ii) The degree to which the soil resists water erosion (K); and

(iii) The function (LS), which includes the effects of slope length (L) and steepness (S).

(2) The potential average annual rate of wind erosion is estimated by multiplying the following factors of the Wind Erosion Equation (WEQ): Climatic characterization of windspeed and surface soil moisture (C) and the degree to which soil resists wind erosion (I).

(3) The USLE is explained in the U.S. Department of Agriculture Handbook 537, ''Predicting Rainfall Erosion Losses.'' The WEQ is explained in the paper by Woodruff, N.P., and F. H. Siddaway, 1965, ''A Wind Erosion Equation,'' Soil Science Society of America Proceedings, Vol. 29. No. 5, pages 602–608. Values for all the factors used in these equations are contained in the NRCS field office technical guide and the references which are a part of the guide. The Universal Soil Loss Equation, the Revised Universal Soil Loss Equation, and the Wind Erosion Equation and the rules under which NRCS uses the equations are published at §§ 610.11 through 610.15 of this title.

(b) *Highly erodible.* A soil map unit shall be determined to be highly erodible if either the RKLS/T or the CI/T value for the map unit equals or exceeds 8.

(c) *Potentially highly erodible.* Whenever a soil map unit description contains a range of a slope length and steepness characteristics that produce a range of LS values that result in RKLS/T quotients both above and below 8, the soil map unit will be entered on the list of highly erodible soil map units as ''potentially highly erodible.'' The final determination of erodibility for an individual field containing these soil map unit delineations will be made by an on-site investigation, or by use of Light Detection and Ranging or other elevation data of an adequate resolution to make slope length and steepness measurements. In any case where a person disagrees with an off-site determination on potentially highly erodible soils, a determination will be made on-site.

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996; 83 FR 63051, Dec. 7, 2018]

§ 12.22 Highly erodible field determination criteria.

(a) *Predominance.* Highly erodible land shall be considered to be predominant on a field if either:

(1) 33.33 percent or more of the total field acreage is identified as soil map units which are highly erodible; or

(2) 50 or more acres in such field are identified as soil map units which are highly erodible.

(b) *Modification of field boundaries.* A person may request the modification of

field boundaries for the purpose of excluding highly erodible land from a field. Such a request must be submitted to, and is subject to the approval of, FSA. FSA shall use the technical determination of NRCS in approving this request.

(c) *Impact of changing field boundaries.* When field boundaries are changed to include areas of land that were included in a field that was previously determined to be predominately highly erodible according to paragraph (a) of this section, such areas shall continue to be subject to the requirements for predominately highly erodible fields, except as provided in paragraph (b) of this section.

(d) *Small area of noncropland.* Small areas of noncropland within or adjacent to the boundaries of existing highly erodible crop fields such as abandoned farmsteads, areas around filled or capped wells, rock piles, trees, or brush which are converted to cropland are considered to meet the requirement of §12.5(a)(2) if they are included in an approved conservation plan for the entire highly erodible field.

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996]

§12.23 Conservation plans and conservation systems.

(a) *Use of field office technical guide.* A conservation plan or conservation system developed for the purposes of §12.5(a) must be based on, and to the extent practicable conform with, the NRCS field office technical guide in use at the time the plan is developed or revised. For highly erodible croplands which were used to produce agricultural commodities prior to December 23, 1985, the applicable conservation systems in the field office technical guide are designed to achieve substantial reductions in soil erosion. Conservation systems shall be technically and economically feasible; based on local resource conditions and available conservation technology; cost-effective; and shall not cause undue economic hardship on the person applying the conservation system. Any conservation plans or systems that were approved prior to July 3, 1996, are deemed to be in compliance with this paragraph.

(b) *Substantial reduction in soil erosion.* For the purpose of determining whether there is a substantial reduction in soil erosion on a field containing highly erodible cropland which was used to produce an agricultural commodity prior to December 23, 1985, the measurement of erosion reduction achieved by applying a conservation plan or system shall be based on a comparison of the estimated annual level of erosion that is expected to occur on that portion of the field for which a conservation plan or system was developed and is being applied, to the estimated annual level of erosion that existed on that same portion of the field before the application of a conservation plan or system. On a field that is converted from native vegetation after July 3, 1996, and where any crop production will result in increased erosion, in no case will the required conservation plan or system permit a substantial increase in erosion.

(c) *Field trials.* NRCS may allow a person to include in the person's conservation plan or a conservation system under the plan, on a field-trial basis, practices that are not currently approved but that NRCS considers have a reasonable likelihood of success. These trials must have prior approval by NRCS, and must be documented in the person's conservation plan specifying the limited time period during which the field trial is in effect. If, at the end of the conservation field trial period, NRCS finds that the practice does not meet conservation compliance requirements, the person will not be ineligible for USDA program benefits during the period of the field trial.

(d) *Highly erodible land previously under a Conservation Reserve Program contract.* Any person who owns or operates highly erodible land that was under a Conservation Reserve Program contract as authorized by section 1231 of the Food Security Act of 1985, as amended, shall have 2 years after the expiration of termination of the contract to fully apply a conservation system if the conservation plan for such land requires the installation of structural measures for the production of an agricultural commodity. NRCS officials may extend this period one additional year for circumstances beyond

the control of the person. The person shall not be required to meet a higher conservation standard than the standard applied to other highly erodible cropland located within the area served by the field office technical guide for the area in which the field is located.

(e) *Information regarding conservation options.* NRCS, in providing assistance to a person for the preparation or revision of a conservation plan under this part, will provide such person with information concerning cost-effective and applicable erosion control alternatives, crop flexibility, or other conservation assistance options that may be available.

(f) *Timely request for assistance.* Persons who require NRCS assistance for the development of a conservation plan or the installation of a conservation system are encouraged to request this assistance well in advance of deadline dates for compliance; otherwise the person may not be able to comply with these provisions and maintain eligibility for USDA program benefits.

(g) *Action by conservation districts.* Conservation districts approve or disapprove conservation plans or conservation systems after NRCS determines that the plans or systems conform to the NRCS field office technical guide. If a conservation district fails, without due cause, to act on a request for conservation plan or conservation system approval within 45 days, or if no conservation district exists, NRCS will approve or disapprove, as appropriate, the conservation plan or system in question.

(h) *Application of a conservation plan or system.* A person is considered to be applying a conservation plan for purposes of §12.5(a) if the conservation system or plan being applied achieves or exceeds the substantial reduction in soil erosion as described in paragraph (b) which the conservation system or plan was designed to achieve. It is the responsibility of the person to:

(1) Certify that the conservation plan or system is being applied; and

(2) Arrange for a revision of the conservation plan with NRCS, if changes are made in land use, crop rotation or management, conservation practices, or in the original schedule of practice installation that would affect the achievement of substantial reduction in soil erosion in a given crop year.

(i) *Appeal to FSA.* Persons who are adversely affected by the determinations made under this subpart and believe that the requirements of this subpart were improperly applied may appeal the decision to FSA under §12.12.

(j) *Undue economic hardship.* After a technical determination has been made, the FSA county committee shall, if a person asserts that the application of the person's conservation system would impose an undue economic hardship on the person, make a recommendation to the State FSA Committee as to whether or not the application of the conservation system would impose an undue economic hardship. The State FSA Committee may provide the person with a variance on the basis of the hardship. Under this variance, and any conditions that may be required in the variance, the person will be considered to be in compliance with the applicable provisions of this part. The State FSA Committee will consider relevant factors, such as the cost of installation of required conservation practices and benefits earned through programs subject to compliance with this part, and the person's general economic situation.

Subpart C—Wetland Conservation

§ 12.30 NRCS responsibilities regarding wetlands.

(a) *Technical and coordination responsibilities.* In carrying out the provisions of this part, NRCS shall:

(1) Oversee the development and application of criteria to identify hydric soils in consultation with the National Technical Committee for Hydric Soils and make available to the public an approved county list of hydric soil map units, which is based upon the National List of Hydric Soils;

(2) Coordinate with the U.S. Fish and Wildlife Service and others in updating the National List of Plant Species that Occur in Wetlands;

(3) Make or approve wetland determinations, delineations and certifications, functional assessments, mitigation plans, categorical minimal effects, and other technical determinations relative to the implementation of

the wetland conservation provisions of this part. Wetland determinations, delineations and certifications will be done on a tract, field, or sub-field basis;

(4) Develop and utilize off-site and on-site wetland identification procedures;

(5) Assure quality of service and determinations through procedures developed by NRCS in consultation with other Federal agencies that have wetland responsibilities;

(6) Investigate complaints and make technical determinations regarding potential violations;

(7) Develop a process at the state level, in coordination with the U.S. Fish and Wildlife Service, to ensure that these provisions are carried out in a technically defensible and timely manner, seek assistance as appropriate, and annually review the progress being made on implementation; and

(b) *Technical assistance from others* In carrying out the provisions of this part, NRCS may request technical assistance from the U.S. Fish and Wildlife Service, State or local agencies, conservation districts, or qualified private entities when NRCS determines that additional staff resources or technical expertise are needed to address adequately the requirements of this part or to enhance the quality of implementation of this part.

(c) *Certification of wetland determinations and wetland delineations.* (1) Certification of a wetland determination means that the wetland determination is of sufficient quality to make a determination of ineligibility for program benefits under §12.4. In order for a map to be of sufficient quality to determine ineligibility for program benefits, the map document must be legible to the extent that areas that are determined wetland can be discerned in relation to other ground features. NRCS may certify a wetland determination without making a field investigation. NRCS will notify the person affected by the certification and provide an opportunity to appeal the certification prior to the certification becoming final. All wetland determinations made after July 3, 1996, will be considered certified wetland determinations. Determinations made after November 28, 1990, and before July 3, 1996, are considered certified if the determination was issued on the June 1991 version of form NRCS–CPA–026 or SCS–CPA–026, the person was notified that the determination had been certified, and the map document was of sufficient quality to determine ineligibility for program benefits. If issued on a different version of the form, a determination will be considered certified if there is other documentation that the person was notified of the certification, provided appeal rights, and the map document was of sufficient quality to make the determination.

(2) The wetland determination and wetland delineation shall be certified as final by the NRCS official 30 days after providing the person notice of certification or, if an appeal is filed with USDA, after the administrative appeal procedures are exhausted.

(3) In the case of an appeal, NRCS will review and certify the accuracy of the determination of all lands subject to the appeal to ensure that the subject lands have been accurately delineated. Prior to a decision being rendered on the appeal, NRCS will conduct an on-site investigation of the subject land.

(4) Before any benefits are withheld, an on-site investigation of a potential wetland violation will be made by NRCS. NRCS will make a reasonable effort to include the affected person in the on-site investigation. The affected person will be provided an opportunity to appeal the on-site determination to USDA if the on-site determination differs from the original determination. Such action by NRCS shall be considered a review of the prior determination and certification of the delineation. If the prior determination was a certified wetland determination, an appeal of the NRCS on-site determination shall be limited to the determination that the wetland was converted in violation of this part.

(5) A copy of the information from the final certified wetland determination and the wetland delineation shall be recorded on official USDA aerial photography, digital imagery, or other graphic representation of the area.

(6) As long as the affected person is in compliance with the wetland conservation provision of this part, and as

long as the area is devoted to the use and management of the land for production of food, fiber, or horticultural crops, a certification made under this section will remain valid and in effect until such time as the person affected by the certification requests review of the certification by NRCS. A person may request review of a certification only if a natural event alters the topography or hydrology of the subject land to the extent that the final certification is no longer a reliable indication of site conditions, or if NRCS concurs with an affected person that an error exists in the current wetland determination.

(7) The wetland determination process for wetland conservation compliance includes three distinct steps. In Step 1, wetland identification, it is determined if the area of interest supports a prevalence of hydrophytic vegetation, a predominance of hydric soils, and wetland hydrology under normal circumstances. In Step 2, determination of wetland type, it is determined if any exemptions apply from §12.5(b). The findings are reflected in the assignment of an appropriate wetland conservation compliance label. In Step 3, sizing of the wetland, the boundary of each wetland type determined in Step 2 is delineated on the certified wetland determination map.

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996; 76 FR 22785, Apr. 25, 2011; 83 FR 63051, Dec. 7, 2018; 85 FR 53152, Aug. 28, 2020]

§ 12.31 Wetland identification procedures.

(a) *Hydric soils.* (1) NRCS shall identify hydric soils through the use of published soil maps which reflect soil surveys completed by NRCS or through the use of on-site reviews. If a published soil map is unavailable for a given area, NRCS may use unpublished soil maps which were made according to the specifications of the National Cooperative Soil Survey or may conduct an on-site evaluation of the land.

(2) NRCS shall determine whether an area of a field or other parcel of land has a predominance of hydric soils that are inundated or saturated as follows:

(i) If a soil map unit has hydric soil as all or part of its name, that soil map unit or portion of the map unit related to the hydric soil shall be determined to have a predominance of hydric soils;

(ii) If a soil map unit is named for a miscellaneous area that meets the criteria for hydric soils (i.e., riverwash, playas, beaches, or water) the soil map unit shall be determined to have a predominance of hydric soils; or

(iii) If a soil map unit contains inclusions of hydric soils, that portion of the soil map unit identified as hydric soil shall be determined to have a predominance of hydric soils.

(3) *List of hydric soils.* (i) Hydric soils are those soils which meet criteria set forth in the publication ''Hydric Soils of the United States 1985'' which was developed by the National Technical Committee for Hydric Soils and which is incorporated by reference. This publication may be obtained upon request by writing NRCS at U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, and is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Incorporation of this publication by reference was approved by the Director of the Federal Register on June 24, 1986. The materials are incorporated as they exist on the date of the approval and a notice of any change in these materials will be published in the FEDERAL REGISTER.

(ii) An official list of hydric soil map units shall be maintained at the local NRCS office and shall include—

(A) All soils from the National List of Hydric Soils that can be found in that field office area, and

(B) Any soil map units or areas which the state conservationist determines to meet such hydric soil criteria.

(iii) Any deletions of a hydric soil unit from the hydric soil map unit list must be made according to the established procedure contained in the publication ''Hydric Soils of the United States 1985'' for adding or deleting soils from the National List of Hydric Soils.

(b) *Hydrophytic vegetation.* Hydrophytic vegetation consists of

plants growing in water or in a substrate that is at least periodically deficient in oxygen during a growing season as a result of excessive water content.

(1) A plant shall be considered to be a plant species that occurs in wetland if such plant is listed in the National Wetland Plant List, or (as determined by NRCS) successor publication. The publication may be accessed at: *http://rsgisias.crrel.usace.army.mil/NWPL/*.

(2) For the purposes of the definition of ''wetland'' in §12.2 of this part, land shall be determined to have a prevalence of hydrophytic vegetation if:

(i) NRCS determines through the criteria specified in paragraph (b)(3) of this section that under normal circumstances such land supports a prevalence of hydrophytic vegetation. The term ''normal circumstances'' refers to the soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed; or

(ii) In the event the vegetation on such land has been altered or removed, NRCS will determine if a prevalence of hydrophytic vegetation typically exists in the local area on the same hydric soil map unit under non-altered hydrologic conditions.

(3) The determination of prevalence of hydrophytic vegetation will be made in accordance with the current Federal wetland delineation methodology in use by NRCS at the time of the determination.

(c) *Wetland Hydrology*. (1) Wetland Hydrology consists of inundation or saturation by surface or groundwater during a growing season at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation.

(2) When a wetland is affected by drainage manipulations that occurred prior to December 23, 1985, and did not support woody vegetation on December 23, 1985, such that production of an agricultural commodity on that date was possible, wetland hydrology shall be identified on the basis of the best-drained condition resulting from such drainage manipulations.

(3) The determination of wetland hydrology will be made in accordance with the current Federal wetland delineation methodology in use by NRCS at the time of the determination.

(4) When making a decision on wetland hydrology, NRCS will utilize a fixed precipitation date range of 1971–2000 for determining normal climatic conditions.

(d) *Mitigation wetlands*. Notwithstanding the provisions of this section, wetlands which are created in order to mitigate the loss of other wetlands as a result of irrigation, recreation, municipal water, flood control, or other similar projects shall not be considered to be artificial wetland for the purposes of §12.5(b)(1)(vii)(A) of this part.

(e)(1) *Minimal effect determination*. For the purposes of §12.5(b)(1)(v), NRCS shall determine whether the effect of any action of a person associated with the conversion of a wetland, the conversion of wetland and the production of an agricultural commodity on converted wetland, or the combined effect of the production of an agricultural commodity on a wetland converted by someone else has a minimal effect on the functions and values of wetlands in the area. Such determination shall be based upon a functional assessment of functions and values of the subject wetland and other related wetlands in the area. The assessment of functions and values of the subject wetland will be made through an on-site evaluation. Such an assessment of related wetlands in the area may be made based on a general knowledge of wetland conditions in the area. A request for such determination will be made prior to the beginning of activities that would convert the wetland. If a person has converted a wetland and then seeks a determination that the effect of such conversion on wetland was minimal, the burden will be upon the person to demonstrate to the satisfaction of NRCS that the effect was minimal.

(2) *Scope of minimal-effect determination*. The production of an agricultural commodity on any portion of a converted wetland in conformance with a minimal-effect determination by NRCS is exempt under §12.5(b)(1)(v). However, any additional action of a person that will change the functions and values of a wetland for which a minimal-effect determination has been made shall be reported to NRCS for a determination

of whether the effect continues to be minimal. The loss of a minimal-effect determination will cause a person who produces an agricultural commodity on the converted wetland after such change in status to be ineligible, under §12.4, for certain program benefits. In situations where the wetland values, acreage, and functions are replaced by the restoration, enhancement, or creation of a wetland in accordance with a mitigation plan approved by NRCS, the exemption provided by the determination will be effective after NRCS determines that all practices in a mitigation plan are being implemented.

(f) *Categorical Minimal Effect Exemptions.* (1) The state conservationist, in consultation with the state technical committee established under 16 U.S.C. 3861, shall identify any categories of conversion activities and conditions which are routinely determined by NRCS to have minimal effect on wetland functions and values, as described in paragraph (d) of this section, and recommend to the Chief, NRCS, or a designee, inclusion on a list of categorical minimal effect exemptions.

(2) The Chief, or designee, shall evaluate the conversion practices recommended by the state conservationists in the region to ensure consistency across State and regional lines, and to determine whether any categories of conversion activities identified pursuant to paragraph (e)(1) of this section, if such activities were exempt from the ineligibility provisions of §12.4, would only have a minimal effect on wetland functions and values in a wetland system within the region.

(3) Any categories of conversion activities which meet the criteria of paragraph (e)(2) of this section will be published in the FEDERAL REGISTER for inclusion in this part and shall be exempt under §12.5(b)(1)(v) of this part.

(4) The NRCS local field office shall maintain a list of any activities and conditions which are determined by the Chief, or designee, exempt pursuant to this section and will provide the list to a person upon request.

[61 FR 47025, Sept. 6, 1996, as amended at 69 FR 18803, Apr. 9, 2004; 76 FR 82077, Dec. 30, 2011; 80 FR 22885, Apr. 24, 2015; 83 FR 63052, Dec. 7, 2018; 85 FR 53152, Aug. 28, 2020]

§12.32 Converted wetland identification criteria.

(a) Converted wetland shall be identified by determining whether the wetland was altered so as to meet the definition of converted wetland. In making this determination, the following factors are to be considered:

(1) Where hydric soils have been used for production of an agricultural commodity and the effect of the drainage or other altering activity is not clearly discernible, NRCS will compare the site with other sites containing the same hydric soils in a natural condition to determine if the hydric soils can or cannot be used to produce an agricultural commodity under natural conditions. If the soil on the comparison site could not produce an agricultural commodity under natural conditions, the subject wetland will be considered to be converted wetland.

(2) Where woody hydrophytic vegetation has been removed from hydric soils for the purpose of or permitting the production of an agricultural commodity, the area will be considered to be converted wetland.

(b) A wetland shall not be considered to be converted if:

(1) Production of an agricultural commodity on such land is possible as a result of a natural condition, such as drought, and it is determined that the actions of the person producing such agricultural commodity does not permanently alter or destroy natural wetland characteristics. Destruction of herbaceous hydrophytic vegetation (i.e., plants other than woody shrubs or trees) as a result of the production of an agricultural commodity shall not be considered as altering or destroying natural wetland characteristic if such vegetation could return following cessation of the natural condition which made production of the agricultural commodity possible; or

(2) Such land is correctly identified as farmed wetland or farmed-wetland pasture.

§12.33 Use of wetland and converted wetland.

(a) The provisions of §12.32(b)(2) are intended to protect remaining values, acreage, and functions of the wetlands

described therein. Persons may continue to farm such wetlands under natural conditions or as they did prior to December 23, 1985. However, no action can be taken to increase effects on the water regime beyond that which existed on such lands on or before December 23, 1985, unless NRCS determines the effect on losing remaining wetland values would be minimal under §12.5(b)(1)(v). If, after December 23, 1985, changes due to human activity occurred in the watershed and resulted in an increase in the water regime on a person's land, the person may be allowed to adjust the existing drainage system to accommodate the increased water regime on the condition that the person affected by this additional water provides NRCS with appropriate documentation of the increased water regime, the causes thereof, and the planned changes in the existing drainage system. In order to maintain program eligibility, a person must provide sufficient documentation and receive approval from NRCS prior to making any changes that will have the effect of increasing the capacity of the existing drainage systems.

(b) Unless otherwise provided in this part, the production of an agricultural commodity on land determined by NRCS to be prior-converted cropland is exempted by law from these regulations for the area which was converted. Maintenance or improvement of drainage systems on prior-converted croplands are not subject to this rule so long as the prior-converted croplands are used for the production of food, forage, or fiber and as long as such actions do not alter the hydrology of nearby wetlands or do not make possible the production of an agricultural commodity on these other wetlands. Other wetlands under this section means any natural wetland, farmed wetland, farmed-wetland pasture, or any converted wetland that is not exempt under §12.5 of this part.

(c) Abandonment is the cessation for five consecutive years of management or maintenance operations related to the use of a farmed wetland or a farmed-wetland pasture. Unless the criteria for receiving an exemption under §12.5(b)(1)(iii) are met, such land is considered to be abandoned when the land meets the wetland criteria of §12.31. In order for documentation of site conditions to be considered adequate under §12.5(b)(1)(iii), the affected person must provide to NRCS available information concerning the extent of hydrological manipulation, the extent of woody vegetation, and the history of use. In accordance with §12.5(b)(1)(iii), participation in a USDA approved wetland restoration, set-aside, diverted acres, or similar programs shall not be deemed to constitute abandonment.

(d) The maintenance of the drainage capacity or any alteration or manipulation, including the maintenance of a natural waterway operated and maintained as a drainage outlet, that affects the circulation and flow of water made to a farmed wetland or farmed-wetland pasture would not cause a person to be determined to be ineligible under this part, provided that the maintenance does not exceed the scope and effect of the original alteration or manipulation, as determined by NRCS, and provided that the area is not abandoned. Any resultant conversion of wetlands is to be at the minimum extent practicable, as determined by NRCS.

[61 FR 47025, Sept. 6, 1996, as amended at 76 FR 82077, Dec. 30, 2011]

PART 13 [RESERVED]

PART 14—DETERMINING THE PRIMARY PURPOSE OF CERTAIN PAYMENTS FOR FEDERAL TAX PURPOSES

Sec.

14.1 Purpose.
14.2 Applicability.
14.3 Objective.
14.4 Policy.
14.5 Procedure.
14.6 Criteria for determining the primary purpose of payments with respect to potential exclusion from gross income.
14.7 Non-Federal programs and payments.

AUTHORITY: Sec. 543, Pub. L. 95–600; as amended by sec. 105, Pub. L. 96–222; 26 U.S.C. 126, 1255 and 5 U.S.C. 301.

SOURCE: 45 FR 58507, Sept. 4, 1980, unless otherwise noted.

§ 14.1 Purpose.

(a) Part 14 sets forth criteria to be used by the Secretary of Agriculture in determining the primary purpose of certain payments received by persons under applicable programs. Determining the primary purpose for which applicable payments are made is one step toward the exclusion of all or part of the payments from gross income for Federal income tax purposes.

(b) The criteria set forth in part 14 apply only to the determinations to be made by the Secretary of Agriculture.

§ 14.2 Applicability.

(a) Part 14 applies only to payments received under the programs listed in paragraphs (a)(1) through (10) of this section. Payments received under programs not listed in paragraphs (a)(1) through (10) of this section, are not considered eligible for exclusion from gross income under this part.

(1) The rural clean water program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288(j)).

(2) The rural abandoned mine program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236).

(3) The water bank program authorized by the Water Bank Act (16 U.S.C. 1301 *et seq.*).

(4) The emergency conservation measures program authorized by title IV of the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*).

(5) The agricultural conservation program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a).

(6) The Great Plains conservation program authorized by section 16 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590p(b)).

(7) The resource conservation and development program authorized by the Bankhead-Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. 1010; 16 U.S.C. 590a *et seq.)*.

(8) The forestry incentives program authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(9) Any small watershed program administered by the Secretary of Agriculture that is determined by the Secretary of the Treasury or his delegate to be substantially similar to the type of programs described in paragraphs (a)(1) through (8) of this section.

(10) Any program of a State, a possession of the United States, a political subdivision of a State or a possession of the United States, the District of Columbia, or a combination of any of the foregoing under which payments are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

(b) The criteria set forth in § 14.5 for determining the primary purpose of payments with respect to their eligibility for exclusion from gross income shall also be used to determine the applicability of this part to payments received under non-Federal programs as provided in § 14.2(a)(10).

§ 14.3 Objective.

The objective of the determinations made under part 14 is to provide maximum conservation, environmental, forestry improvement, and wildlife benefits to the general public from the operation of applicable programs.

§ 14.4 Policy.

Federal tax, conservation, natural resource, and environmental policies should complement rather than conflict with one another. Therefore, the Federal income tax liability on applicable payments should be reduced or eliminated to the extent that the payments yield conservation, environmental, forestry improvement, or wildlife benefits to the general public beyond the benefits that accrue to those who receive the payments.

§ 14.5 Procedure.

(a) The portion of an applicable payment that may be excluded from gross income under part 14 shall be that portion or all, as appropriate, that—

(1) Is determined to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing wildlife habitat; and

(2) Is determined by the Secretary of the Treasury as not increasing substantially the annual income derived from the property associated with the payment.

(b) *Primary purpose* means the principal, fundamental, predominant, or independent objective for which a payment is made. The following shall be considered in determining the primary purpose of a payment:

(1) *Single-purpose* payments shall be considered as having that purpose as their primary purpose.

(2) *Multiple-purpose payments.* If a payment is made for several purposes, it may be considered as having soil and water conservation, environmental protection or restoration, forestry improvement, or providing wildlife habitat as its primary purpose to the extent of the portion of the payment that is made for one or more of such purposes.

(3) Where a purpose of a payment, or portion thereof, is in doubt, the following sources should be considered—

(i) Authorizing legislation, legislative history, administrative regulation, administrative history, interpretive case law, and the administrative policies and procedures under which the applicable program operates and the payment is made; and

(ii) Agreements or other documentation accompanying the transfer of the payment;

(iii) Use made of the payment by the recipient.

§ 14.6 Criteria for determining the primary purpose of payments with respect to potential exclusion from gross income.

(a) *Soil conservation.* (1) Payments shall be considered to be made primarily for the purpose of soil conservation if they are intended to finance activities, measures, or practices to reduce soil deterioration.

(2) Soil deterioration refers to impairments of the physical or chemical properties of soil that are largely irreversible and that can be expected to result in a long-term or permanent reduction in the productive capacity of the resource regardless of the level of technology available or applied. Erosion by water and wind and the associated changes that result in permanent or long-term reductions in the productive capacity of the soil are forms of soil deterioration.

(b) *Water conservation.* (1) Water conservation includes actions that, for a given level of water supply, reduce the demand for or use of water by—

(i) Improving efficiency in use;

(ii) Reducing loss and waste;

(iii) Increasing the recycling or reuse of water, thereby making existing supplies available for other current or future uses; or

(iv) Improving land management practices for the purpose of reducing water use, loss, waste, increasing the efficiency of water use, or increasing the recycling or reuse of water.

(2) Payments shall be considered to be made primarily for the purpose of water conservation if they are intended to finance actions, measures, or practices that can be expected to result in water conservation as defined in paragraph b(1) of this section.

(c) *Protecting the environment.* (1) Payments shall be considered to be made primarily for the purpose of protecting the environment if they are intended to finance actions, measures, or practices undertaken to prevent man-caused or man-induced reductions or degradations in the quantity or quality of the natural external or extrinsic conditions directly or indirectly affecting people.

(2) External or extrinsic conditions refer to the complex of natural conditions or circumstances, including but not limited to those affecting public health and safety, in which people reside or otherwise carry out their lives.

(d) *Restoring the environment.* (1) Payments shall be considered to be made primarily for the purpose of restoring the environment if they are intended to finance actions, measures, or practices undertaken to reestablish, return, or enhance the quantity or quality of the natural external or extrinsic conditions directly or indirectly affecting people that existed before the man-caused or man-induced degradation.

(2) External or extrinsic conditions have the same meaning with respect to restoring the environment as they do for protecting the environment.

(e) *Improving forests.* (1) Payments shall be considered to be made primarily for the purpose of improving forests if they are intended to finance actions, measures, or practices undertaken for the direct or indirect conservation or enhancement of the quantity or quality of timber resources.

(2) Improving forests includes the generation and regeneration of timber stands as well as the silvicultural improvement of such timber stands but excludes harvest cuttings not undertaken primarily for silvicultural improvement.

(f) *Providing habitat for wildlife.* (1) Payments shall be considered to be made primarily for the purpose of providing habitat for wildlife if they are intended to finance actions, measures, or practices leading directly to the establishment of those physical and biological conditions or resources that can be expected to support primarily noncultivated and nondomesticated animal and plant life. The animal and plant life must be of value to the public in their natural state apart from any value that may be realized from them as private economic gain.

(2) Wildlife includes but is not limited to species of terrestrial or aquatic animals and plants.

(3) Habitat includes, but is not limited to, the food supply, water supply, and nesting and escape cover necessary to support populations of wildlife species. Included in the definition of wildlife habitat are domestic crops raised for the primary purpose of providing food supply or cover for specific wildlife species.

§ 14.7 Non-Federal programs and payments.

(a) *Definition of non-Federal programs.* Non-Federal program means any program of a State, a possession of the United States, a political subdivision of any State or possession of the United States, the District of Columbia, or a combination of any of the foregoing.

(b) *Applicability.* Payments received through non-Federal programs under which payments are made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife may be considered for exclusion from gross income under part 14.

(c) *Determining the primary purpose of non-Federal payments.* The determination of the primary purpose for which non-Federal payments are made with respect to their potential for exclusion from gross income shall be made by using the criteria set forth in part 14 for determining the primary purpose of Federal payments.

(d) *Procedure for determining the primary purpose of payments made under non-Federal programs.* (1) To initiate the process of determining the applicability of this part to payments received through non-Federal programs and the primary purpose of the payments for potential exclusion from gross income, the non-Federal official responsible for the program through which the payments are made should provide six copies of the following materials relating to the program to the Secretary of Agriculture—

(i) Authorizing legislation;

(ii) Rules or regulations;

(iii) Current policies and procedures under which payments are made and used;

(iv) A description of all practices or measures for which payments are made and used; and

(v) Any other information that may be helpful in determining the purpose for which payments, or portions thereof, are made and used.

(2) Any changes in the supporting documentation listed in paragraphs (d)(1)(i) through (d)(1)(iv) of this section, should be reported to the Secretary within 30 days of the date they become final.

PART 15—NONDISCRIMINATION

Subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964

Sec.

15.1 Purpose and application of part.
15.2 Definitions.
15.3 Discrimination prohibited.
15.4 Assurances required.
15.5 Compliance.
15.6 Complaints.

15.7 Intimidatory or retaliatory acts prohibited.
15.8 Procedure for effecting compliance.
15.9 Hearings.
15.10 Decisions and notices.
15.11 Judicial review.
15.12 Effect on other regulations; forms and instructions.

APPENDIX TO SUBPART A OF PART 15—LIST OF FEDERAL FINANCIAL ASSISTANCE FROM USDA

Subpart B [Reserved]

Subpart C—Rules of Practice and Procedure for Hearings, Decisions and Administrative Review Under the Civil Rights Act of 1964

GENERAL INFORMATION

15.60 Scope of rules.
15.61 Records to be public.
15.62 Definitions.
15.63 Computation of time.
15.64 Parties.
15.65 Appearance.
15.66 Complainants not parties.
15.67 Intervener.
15.68 *Ex parte* communications.

FORM, EXECUTION, FILING AND SERVICE OF DOCUMENTS

15.71 Form of documents to be filed.
15.72 Filing.
15.73 Service.
15.74 Date of service.

INITIAL NOTICE AND RESPONSE

15.81 How proceedings are commenced.
15.82 Notice of hearing and response thereto.
15.83 Notice of opportunity to request a hearing and response thereto.
15.84 Answer.
15.85 Amendment of notice or answer.
15.86 Consolidated or joint hearings.

HEARING OFFICER

15.91 Who presides.
15.92 Designation of hearing officer.
15.93 Time and place of hearing.
15.94 Disability of hearing officer.
15.95 Responsibilities and duties of hearing officer.

MOTIONS

15.101 Form and content.
15.102 Responses to motions.
15.103 Disposition of motions.

HEARING PROCEDURES

15.110 Prehearing conferences.
15.111 Purpose of hearing.
15.112 Statement of position and brief.
15.113 Testimony.
15.115 Affidavits.
15.116 Depositions.
15.117 Evidence.
15.118 Cross-examination.
15.119 Objections.
15.120 Exceptions to rulings of hearing officer unnecessary.
15.121 Official notice.
15.122 Offer of proof.
15.123 Appeals from ruling of hearing officer.
15.124 Admissions as to facts and documents.

THE RECORD

15.131 Official transcript.
15.132 Record for decision.

POSTHEARING PROCEDURES

15.135 Posthearing briefs.
15.136 Decisions and notices.
15.137 Exceptions to initial or proposed decision.
15.138 Review of initial decision.
15.139 Oral argument.
15.140 Service of decisions.
15.141 Contents of decision.
15.142 Content of orders.
15.143 Decision where financial assistance affected.

AUTHORITY: 5 U.S.C. 301; 29 U.S.C. 794.

Subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964

SOURCE: 29 FR 16274, Dec. 4, 1964; 29 FR 16966, Dec. 11, 1964, unless otherwise noted.

§ 15.1 Purpose and application of part.

(a) The purpose of the regulations in this part is to effectuate the provisions of title VI of the Civil Rights Act of 1964 (hereinafter referred to as the ''Act'') to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of an applicant or recipient receiving Federal financial assistance from the Department of Agriculture or any Agency thereof.

(b) The regulations in this part apply to any program or activity of an applicant or recipient for which Federal financial assistance is authorized under

a law administered by the Department including, but not limited to, the Federal financial assistance listed in the appendix to this part. They apply to money paid, property transferred, or other Federal financial assistance extended to an applicant or recipient for its program or activity after the effective date of these regulations pursuant to an application approved or statutory or other provision made therefor prior to such effective date. The regulations in this part do not apply to (1) any Federal financial assistance by way of insurance or guaranty contract, (2) money paid, property transferred, or other assistance extended prior to the effective date of the regulations in this part, (3) any assistance to an applicant or recipient who is an ultimate beneficiary, or (4) except as provided in §15.3(c), any employment practice of any employer, employment agency or labor organization. The fact that a specific kind of Federal financial assistance is not listed in the appendix, shall not mean, if title VI of the Act is otherwise applicable, that such Federal financial assistance is not covered. Other Federal financial assistance under statutes now in force or hereinafter enacted may be added to this list by notice approved and issued by the Secretary and published in the FEDERAL REGISTER.

[29 FR 16274, Dec. 4, 1964, as amended at 38 FR 17925, July 5, 1973; 68 FR 51341, Aug. 26, 2003]

§ 15.2 Definitions.

(a) *Department* means the Department of Agriculture, and includes each of its operating agencies and other organizational units.

(b) *Agency* means any service, bureau, agency, office, administration, instrumentality of or corporation within the U.S. Department of Agriculture extending Federal financial assistance to any program or activity, or any officer or employee of the Department to whom the Secretary delegates authority to carry out any of the functions or responsibilities of an agency under this part.

(c) *Secretary* means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act in his stead under the regulations in this part.

(d) *Hearing Officer* means a hearing examiner appointed pursuant to 5 U.S.C. 3105, and designated to hold hearings under the regulations in this part or any person authorized to hold a hearing and make a final decision under the regulations in this part.

(e) *Recipient* means any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, or organization, or other entity or any individual in any State, to whom Federal financial assistance is extended, directly or through another recipient, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary.

(f) *Primary recipient* includes any recipient which is authorized or required to extend Federal financial assistance to another recipient.

(g) *Federal financial assistance* or *financial assistance* includes (1) grants and loans of Federal funds, (2) the grant or donation of Federal property and interests in property, (3) the detail of Federal personnel, (4) the sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property or any interest in such property or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease or furnishing of services to the recipient, and (5) any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(h) *Grant, loan or contract* includes any grant, loan agreement or commitment to loan, contract or agreement to provide financial assistance or any other arrangement between the Department or any Agency and a recipient of financial assistance.

(i) *United States* means the States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and the territories and possessions of the United

States, and the term *State* means any one of the foregoing.

(j) *Applicant* means one who submits an application, request, or plan required to be approved by an Agency, or by a primary recipient, as a condition to eligibility for Federal financial assistance, and *application* means such an application, request, or plan.

(k) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

(l) *Facility* includes all or any portion of structures, equipment, or other real or personal property or interests therein, and the provision of facilities includes the construction, expansion, renovation, remodeling, alteration or acquisition of facilities.

[29 FR 16274, Dec. 4, 1964, as amended at 36 FR 3411, Feb. 24, 1971; 38 FR 17925, July 5, 1973; 68 FR 51340, 51341, Aug. 26, 2003]

§ 15.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity of the applicant or recipient to which these regulations apply. These regulations apply, but are not restricted, to unequal treatment in priority, quality, quantity, methods or charges for service, use, occupancy or benefit, participation in the service or benefit available, or in the use, occupancy or benefit of any structure, facility, or improvement.

(b) *Specific discriminatory actions prohibited.* (1) A recipient under any program to which the regulations in this part apply may not, directly or through contractual or other arrangements on the ground of race, color, or national origin:

(i) Deny an individual any service, financial aid, or other benefit provided under the program;

(ii) Provide any service, financial aid, or other benefit, to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject an individual to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict an individual in any way in the enjoyment of any advantage or privilege, enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership or other requirement or condition which individuals must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny an individual an opportunity to participate in the program through the provisions of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section).

(vii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

(2) A recipient, in determining the types of services, financial aid, or other benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such services, financial aid, other benefits, or facilities will be provided under any such program or the class of individuals to be afforded an opportunity to participate in any such program, may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.

(3) In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any of its programs or activities to which the regulations in this part apply, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and the regulations in this part.

(4) As used in this section, the services, financial aid, or other benefit provided under a program or activity of an applicant or recipient receiving Federal financial assistance shall be deemed to include any and all services, financial aid, or other benefit provided in or through a facility provided or improved in whole or part with the aid of Federal financial assistance.

(5) The enumeration of specific forms of prohibited discrimination in these regulations does not limit the applicability of the provisions of paragraph (a) of this section.

(6)(i) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination.

(ii) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color or national origin.

(c) *Employment practices.* Where a primary objective of the Federal financial assistance to a program to which the regulations in this part apply is to provide employment, a recipient may not, directly or through contractual or other arrangements, subject an individual to discrimination on the ground of race, color, or national origin in its employment practices under the program including recruitment or recruitment advertising, employment, layoff or termination, upgrading, demotion, or transfer, rates of pay or other forms of compensation, and use of facilities. This paragraph applies to programs where a primary objective of the Federal financial assistance is (1) to reduce unemployment, (2) to assist individuals in meeting expenses incident to the commencement or continuation of their education or training, or (3) to provide work experience which contributes to education or training. Where a primary objective of the Federal financial assistance is not to provide employment, but discrimination on the grounds of race, color, or national origin in the employment practices of the recipient or other persons subject to the regulations in this part, tends, on the grounds of race, color, or national origin, to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity of the applicant or recipient to which these regulations apply, the foregoing

provisions of this §15.3(c) shall apply to the employment practices of the recipient or other persons subject to these regulations, to the extent necessary to assure equality of opportunity to, and nondiscriminatory treatment of, beneficiaries. The requirements applicable to construction employment under any program or activity of the applicant or recipient shall be those specified in or pursuant to part III of Executive Order 11246 or any Executive order which supersedes it.

(d) *Examples.* In order that all parties may have a clear understanding of the applicability of the regulations in this part to their activities, there are listed in this section types of Federal financial assistance together with illustrations, by way of example only, of types of activity covered by the regulations in this part. These illustrations and examples, however, are not intended to be all inclusive. The fact that a particular type of Federal financial assistance is not listed does not, of course, indicate that a program is not covered by the regulations in this part. Moreover, the examples set forth with respect to any particular listed type of Federal financial assistance are not limited to that program alone and the prohibited actions described may also be prohibited in other programs or activities whether or not listed below.

(1) *Cooperative Agricultural Extension Program.* (i) Discrimination in making available or in the manner of making available instructions, demonstrations, information, and publications offered by or through the Cooperative Extension Service;

(ii) Discrimination in the use in any program or activity funded by the Cooperative Extension Service of any facility, including offices, training facilities, lecture halls, or other structures or improvements; or

(iii) Discrimination in training activities, admission to or participation in fairs, competitions, field days, and encampments, conducted or sponsored by, or in which the Cooperative Extension Service participates.

(2) *Rural Electrification and Rural Telephone Programs.* (i) Refusal or failure by a borrower to accept applications for membership or applications to purchase shares of stock, or discrimination by a borrower in the terms and conditions of membership or stock ownership, where such membership or stock ownership is a condition prerequisite to the furnishing of electric or telephone service by the borrower, or to the receipt of any benefits or advantages related to such service;

(ii) Refusal or failure by a borrower to extend, or discrimination by a borrower in the extension of, electric or telephone service to unserved persons;

(iii) Denial by a borrower to any person of the benefits of improvement, expansion or upgrading, or discrimination by a borrower among consumers or subscribers in improving, expanding or upgrading, of electric or telephone service;

(iv) Discrimination by a borrower in respect of rates, or terms or conditions of, service among consumers or subscribers;

(v) Exclusion by a borrower of any member or stockholder, if the borrower is a cooperative or mutual type of corporation, from participation in any meeting of members or stockholders of the borrower, discrimination among its members or stockholders in respect of the exercise of any of their rights as members or stockholders, or in the manner of the exercise of such rights; or

(vi) Exclusion by a borrower of any consumer or subscriber from, denial by a borrower to any consumer or subscriber of the use of, or discrimination by a borrower against any consumer or subscriber in his use of, any of the borrower's facilities.

(3) *Direct Distribution Program.* (i) Exclusion of an otherwise eligible recipient agency (school, summer camp for children, institution, welfare agency or disaster organization) or person from participation in the Direct Distribution Program.

(ii) Discrimination in the allocation of food to eligible persons.

(iii) Discrimination in the manner in which or the place or times at which foods donated under the Program are distributed by recipient agencies to eligible persons.

(iv) Segregation of persons served in different meal periods or by different seating or serving or different food or different size portions by recipient

agencies serving prepared meals containing donated foods.

(4) *National School Lunch Program.* (i) Discrimination by a State agency in the selection of schools to participate in the Program or in the assignment to schools of rates of reimbursement.

(ii) Exclusion of any child from participation in the Program.

(iii) Discrimination by school officials in the selection of children to receive free or reduced-price lunches.

(iv) Segregation of participating children in different lunch periods or different seating, and discrimination by serving different food or different size portions.

(v) Failure to offer free and reduced-price lunches, on an equitable basis in schools of a school district in which children are assigned to schools on the basis of race, color, or national origin.

(5) *Food Stamp Program.* (i) Discrimination by a State agency in certifying households as eligible for the Program.

(ii) Segregation or other discrimination in the manner in which or the times at which eligible households are issued food coupons.

(6) *Special Milk Program for Children.* (i) Discrimination by a State agency in the selection of schools and child-care institutions to participate in the Program.

(ii) Discrimination by a State agency in the selection of needy schools to receive reimbursement for milk served free.

(iii) Discrimination by a State agency in the assignment of reimbursement rates to schools and child-care institutions or in the adjustment of such rates, or in fixing allowable distribution costs.

(iv) Exclusion of any child from participation in the Program and segregation of participating children in different serving periods or different places of service.

(v) Discrimination by school officials or child-care institutions in the selection of children to receive free milk.

(7) *Price Support Programs carried out through producer associations or cooperatives or through persons who are required to provide specified benefits to producers.* (i) Denial of the benefits of price support for a producers commodity.

(ii) Denial of membership or stock ownership to any producer by any association or cooperative.

(iii) Discrimination among producers in the manner of making or paying any price support advances, loans, or payments.

(iv) Discrimination in the fees or charges collected from or in the net gains distributed to producers.

(v) Discrimination in the use of facilities and services generally made available to members or patrons under the Price Support Program.

(8) *Forest Service Programs.* (i) Refusal or failure by a recipient of a permit or lease to provide to any person the benefits from the use of land administered by the Forest Service, the resources therefrom, or improvements thereon.

(ii) Refusal or failure by any recipient to provide to any person the benefits from Federal payments based on a share of the receipts from lands administered by the Forest Service.

(iii) Refusal or failure by any recipient to provide to any person the benefits from Federal assistance in cooperative programs for the protection, development, management, and use of forest resources.

(iv) Refusal or failure by any cooperator or other recipient to provide to any person the benefits from Federal assistance through grants or advances of funds for research.

(9) *Farmers Home Administration Programs*—(i) *Direct soil and water loans to association.* (*a*) A borrower's denial of, or discrimination in furnishing, services under a program or activity financed wholly or partially with the aid of the loan, as in the case of a water supply system.

(*b*) A borrower's denial of, or discrimination or segregation in permitting, the use of facilities which are part of a project financed wholly or partially with the aid of the loan, as in the case of a golf course, swimming pool, tennis courts, parking areas, lounges, dining rooms, and rest rooms of a recreation association.

(*c*) Discrimination by a borrower in the terms and conditions of membership or stock ownership, or refusal or failure of a borrower to accept applications for membership or for purchase of shares of stock, or discrimination by a

borrower in acting or failing to act upon such applications, where such membership or stock ownership is a prerequisite to the participation in services furnished by, or the use of facilities of, the borrower which are financed wholly or partially with the aid of the loan or to the receipt of any benefits or advantages related to such services or the use of such facilities.

(*d*) Denial or impairment by a borrower of any person's rights as a member or stockholder of the borrower, or borrower's discrimination against or segregation of persons in the exercise of their rights as members or stockholders of the borrower.

(ii) *Direct senior citizens rental housing loans to private nonprofit corporations and consumer cooperatives.* (*a*) A borrower's exclusion of any person from, discrimination in the terms and conditions of eligibility for, or discrimination against or segregation of any person in, the use and occupancy of the housing and related facilities financed wholly or partially with the aid of the loan.

(*b*) Discrimination by a borrower in the terms and conditions of membership or stock ownership, or refusal or failure of a borrower to accept applications for membership or for purchase of shares of stock, or discrimination by a borrower in acting or failing to act upon such applicattions, where such membership or stock ownership is a condition of eligibility for use and occupancy of the housing and related facilities financed wholly or partially with the aid of the loan or to the receipt of any benefits or advantages related to such housing or facilities.

(*c*) Denial or impairment by a borrower of any person's rights as a member or stockholder of the borrower, or a borrower's discrimination against or segregation of persons in the exercise of their rights as members or stockholders of the borrower.

(10) *Cooperative State Research Programs.* (i) Discrimination in making available information whether published or provided through public or private statement, correspondence, demonstration or field day.

(ii) Discrimination in participation in any Cooperative Research Program or project.

(iii) Discrimination in the use of any facility, including offices, laboratories, or other structures, or research plots or fields.

(iv) Discrimination in employment of graduate students to conduct research when such students receive substantial research training benefits as a result of such employment.

[29 FR 16274, Dec. 4, 1964, as amended at 35 FR 18383, Dec. 3, 1970; 38 FR 17925, July 5, 1973; 68 FR 51341, Aug. 26, 2003]

§ 15.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to which these regulations apply, except an application to which paragraph (b) of this section applies, and every application for Federal financial assistance to provide a facility, shall as a condition to its approval and the extension of any Federal financial assistance pursuant to the application, contain or be accompanied by an assurance that the applicant's program or activity will be conducted or the facility operated in compliance with all requirements imposed by or pursuant to the Act and the regulations in this part. In the case where the Federal financial assistance is to provide or is in the form of personal property, or real property or interest therein, or structures thereon, the assurance shall obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for the purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services and benefits or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases, the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the application. The Agency shall specify the form of the foregoing assurances and the extent to which like assurances will be required of subgrantees, contractors, and subcontractors, successors in interest and other participants. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures, or improvements thereon, or interests therein, which was acquired through Federal financial assistance, or in the case where Federal financial assistance is provided in the form of a transfer of real property or interest therein from the Federal Government, the instrument effecting or recording the transfer shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. Where no transfer of property is involved, but property is improved through Federal financial assistance, the recipient shall agree to include such a covenant in any subsequent transfer of such property. Where the property is obtained from the Federal Government, such covenant may also include a condition coupled with a right to be reserved by the Agency to revert title to the property in the event of a breach of the covenant where, in the discretion of the Agency concerned, such a condition and right of reverter is appropriate to the purposes of the Federal financial assistance under which the real property is obtained and to the nature of the grant and the grantee. In such event, if a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on such property for the purposes for which the property was transferred, the Agency may agree, upon request of the transferee and if necessary to accomplish such financing, and upon such conditions as it deems appropriate to forbear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

(3) Transfers of surplus property are subject to regulations issued by the Administrator of General Services (41 CFR 101–6.2).

(b) Every application by a State or a State Agency, including a State Extension Service, but not including an application for aid to an institution of higher education, continuing Federal financial assistance to which the regulations in this part apply shall as a condition to its approval and the exension of any Federal financial assistance pursuant to the application (1) contain or be accompanied by a statement that the program is (or, in the case of a new program, will be) conducted in compliance with all requirements imposed by or pursuant to this part, and (2) provide or be accompanied by provision for such methods of administration for the program as are found by the Agency to give reasonable assurance that the applicant and all recipients of Federal financial assistance under such program will comply with all requirements imposed by or pursuant to the regulations in this part: *Provided,* That where no application is required prior to payment, the State or State Agency, including a State Extension Service, shall, as a condition to the extension of any Federal financial assistance, submit an assurance complying with the requirements of paragraphs (b)(1) and (2) of this section.

(c) *Assurances from institutions.* The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

(d) *Recipients other than applicants.* Each recipient not required to submit an application for Federal financial assistance, shall furnish, as a condition to the extension of any such assistance, an assurance or statement as is required of applicants under paragraphs (a), (b)(1) and (2) of this section.

(e) *Elementary and secondary schools.* The requirements of paragraphs (a), (b), or (d) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that

it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health, Education, and Welfare determines is adequate to accomplish the purposes of the Act and this part, and provides reasonable assurance that it will carry out such plan; in any case of continuing Federal financial assistance the said responsible official of the Department of Health, Education, and Welfare may reserve the right to redetermine, after such period as may be specified by him, the adequacy of the plan to accomplish the purposes of the Act and this part within the earliest practical time. In any case in which a final order of a court of the United States for the desegregation of such school or school system is entered after submission of such a plan, such plan shall be revised to conform to such final order, including any future modification of such order.

[29 FR 16274, Dec. 4, 1964, as amended at 32 FR 3967, Mar. 11, 1967; 35 FR 18383, Dec. 3, 1970; 38 FR 17926, July 5, 1973; 68 FR 53141, Aug. 26, 2003]

§ 15.5 Compliance.

(a) *Cooperation and assistance.* Each Agency shall to the fullest extent practicable seek the cooperation of recipients in obtaining compliance with the regulations and this part and shall provide assistance and guidance to recipients to help them comply voluntarily with the regulations in this part. As a normal part of the administration of Federal financial assistance covered by the regulations in this part, designated personnel will in their reviews and other activities or as specifically directed by the Agency, review the activities of recipients to determine whether they are complying with the regulations in this part. Reports by such personnel shall include statements regarding compliance and instances, if any, of noncompliance. In the event of noncompliance, the Agency shall seek to secure voluntary compliance by all appropriate means.

(b) *Compliance reports.* Each recipient shall keep such records and submit to the Agency timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the Agency may determine to be necessary to ascertain whether the recipient has complied or is complying with the regulations in this part. In the case in which a primary recipient extends Federal financial assistance to any other recipient, such other recipient shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to carry out its obligations under the regulations in this part. In general, recipients should have available for the Agency racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs.

(c) *Access to sources of information.* Each recipient shall permit access by authorized employees of this Department during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with the regulations in this part. Where any information required of a recipient is in the exclusive possession of any other agency, institution or person and this agency, institution or person shall fail or refuse to furnish this information, the recipient shall so certify in its report and shall set forth what efforts it has made to obtain the information.

(d) *Information to beneficiaries and participants.* Each recipient shall make available to participants, beneficiaries, and other interested persons such information regarding the provisions of the regulations in this part and their applicability to the program for Federal statutes, authorities, or other means by which Federal financial assistance is extended and which the recipient receives Federal financial assistance, and make such information available to them in such manner, as the Department or its Agencies finds necessary to apprise such persons of the protections against discrimination assured them by the Act and the regulations in this part.

[29 FR 16274, Dec. 4, 1964, as amended at 29 FR 16966, Dec. 11, 1964; 38 FR 17926, July 5, 1973; 68 FR 51341, Aug. 26, 2003]

§ 15.6 Complaints.

Any person who believes himself/herself or any specific class of individuals to be subjected to discrimination prohibited by the regulations in this part may by himself/herself or by an authorized representative file with the Secretary or any Agency a written complaint. A complaint must be filed not later than 180 days from the date of the alleged discrimination, unless the time for filing is extended by the Agency or by the Secretary. Such complaint shall be promptly referred to the Assistant Secretary for Civil Rights. The complaint shall be investigated in the manner determined by the Assistant Secretary for Civil Rights and such further action taken by the Agency or the Secretary as may be warranted.

[50 FR 25687, June 21, 1985, as amended at 68 FR 27449, May 20, 2003]

§ 15.7 Intimidatory or retaliatory acts prohibited.

No recipient or other person shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by section 601 of the Act or the regulations in this part, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the regulations in this part. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of the regulations in this part, including the conduct of any hearing or judicial proceeding arising thereunder.

§ 15.8 Procedure for effecting compliance.

(a) *General.* If there appears to be a failure or threatened failure to comply with the regulations in this part, and if the noncompliance or threatened noncompliance cannot be corrected by informal means, compliance with the regulations in this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance, upon a finding, in accordance with the procedure hereinafter prescribed, or by any other means authorized by law. Such other means may include, but are not limited to, (1) a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to enforce any rights of the United States under any law of the United States (including other titles of the Act), or any assurance or other contractual undertaking, and (2) any applicable proceeding under State or local law.

(b) *Noncompliance with § 15.4.* If an applicant fails or refuses to furnish an assurance required under § 15.4 or otherwise fails or refuses to comply with the requirements imposed by or pursuant to that section, Federal financial assistance may be refused in accordance with the procedures of paragraph (c) of this section. The Department shall not be required to provide assistance in such a case during the pendency of the administrative proceedings under such paragraph, except that the Department shall continue assistance during the pendency of such proceedings where such assistance is due and payable pursuant to an application therefor approved prior to the effective date of the regulations in this part.

(c) *Termination of or refusal to grant or to continue Federal financial assistance.* No order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall become effective until (1) the Agency has advised the applicant or recipient of his failure to comply and has determined that compliance cannot be secured by voluntary means, (2) there has been an express finding on the record, after opportunity for hearing, of a failure by the applicant or recipient to comply with the requirement imposed by or pursuant to the regulations in this part, (3) the action has been approved by the Secretary pursuant to § 15.10(e), and (4) the expiration of 30 days after the Secretary has filed with the committee of the House and the committee of the Senate, having legislative jurisdiction over the program involved, a full written report of the circumstances and the grounds for such action. Any action to suspend or terminate or to refuse to grant or to continue Federal financial assistance shall be limited to the particular political entity, or part thereof, or other applicant or recipient as to whom such a

finding has been made and shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found.

(d) *Other means authorized by law.* No action to effect compliance by any other means authorized by law shall be taken until (1) the Secretary has determined that compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least ten days from the mailing of such notice to the recipient or other person. During this period of at least ten days, additional efforts shall be made to persuade the recipient or other person to comply with the regulations in this part and to take such corrective action as may be appropriate.

§ 15.9 Hearings.

(a) *Opportunity for hearing.* Whenever an opportunity for a hearing is required under the regulations in this part, reasonable notice shall be given by registered or certified mail, return receipt requested, to the affected applicant or recipient. This notice shall advise the applicant or recipient of the action proposed to be taken, the specific provision under which the proposed action against it is to be taken, and the matters of fact or law asserted as the basis for this action, and either (1) fix a date not less than 20 days after the date of such notice within which the applicant or recipient may request of the Secretary or the Agency that the matter be scheduled for hearing or (2) advise the applicant or recipient that the matter in question has been set down for hearing at a stated place and time. The time and place so fixed shall be reasonable and shall be subject to change for cause. The complainant, if any, shall be advised of the time and place of the hearing. An applicant or recipient may waive a hearing and submit written information and argument for the record. The failure of an applicant or recipient to request a hearing under this subsection or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to a hearing under section 602 of the Act and the regulations in this part and consent to the making of a decision on the basis of such information as is available.

(b) *Time and place of hearing.* Hearings shall be held at the offices of the Department in Washington, DC, at a time fixed by the hearing officer or by the Secretary unless it is determined that the convenience of the applicant or recipient or of the Department requires that another place be selected. Hearings shall be held before a hearing officer.

(c) *Right to counsel.* In all proceedings under this section, the applicant or recipient and the Department shall have the right to be represented by counsel.

(d) *Procedures, evidence, and record.* (1) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557, and in accordance with such rules of procedure promulgated by the Secretary as not inconsistent with this section, relating to the conduct of the hearing, giving of notices subsequent to those provided for in paragraph (a) of this section, taking of testimony, exhibits, arguments and briefs, requests for findings, and other related matters. Both the Department, and the applicant or recipient shall be entitled to introduce all relevant evidence on the issues as stated in the notice for hearing or as determined by the hearing officer conducting the hearing at the outset of or during the hearing.

(2) Technical rules of evidence shall not apply to hearings conducted pursuant to these regulations in this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the hearing officer. The hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based

upon the hearing record and written findings shall be made.

(e) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute noncompliance with these regulations with respect to two or more to which the regulations in this part apply, or noncompliance with the regulations in this part and the regulations of one or more other Federal Departments or Agencies issued under title VI of the Act, the Secretary may, by agreement with such other Departments or Agencies, where applicable provide for the conduct of consolidated or joint hearings, and for the application to such hearings of rules of procedure not inconsistent with the regulations in this part. Final decisions in such cases, insofar as the regulations in this part are concerned, shall be made in accordance with § 15.10.

[29 FR 16274, Dec. 4, 1964, as amended at 35 FR 18384, Dec. 3, 1970; 38 FR 17926, July 5, 1973; 68 FR 51341, Aug. 26, 2003]

§ 15.10 Decisions and notices.

(a) *Decision by hearing officer or Secretary.* (1) The hearing officer shall either make an initial decision, if so authorized, or certify the entire record including his recommended findings, and proposed decision to the Secretary for a final decision, and a copy of such initial decision or certification shall be mailed to the applicant or recipient. The applicant or recipient may within 30 days of the mailing of such notice of initial decision file with the Secretary his exceptions to the initial decision, with his reasons therefor.

(2) In the absence of exceptions, the Secretary may on his own motion within 45 days after the initial decision serve on the applicant or recipient a notice that he will review the decision. Upon the filing of such exceptions or of such notice of review the Secretary shall review the initial decision and issue his own decision thereon including the reasons therefor. In the absence of either exceptions or a notice of review the initial decision shall constitute the final decision of the Secretary.

(b) *Decisions on record or review.* Whenever a record is certified to the Secretary for decision or he reviews the decision of a hearing officer pursuant to paragraph (a), the applicant or recipient shall be given reasonable opportunity to file with him briefs or other written statements of its contentions, and a copy of the final decision of the Secretary shall be given in writing to the applicant or recipient, and to the complainant, if any.

(c) *Decisions on record where a hearing is waived.* Whenever a hearing is waived pursuant to § 15.9(a), a decision shall be made by the Secretary on the record and a copy of such decision shall be given in writing to the applicant or recipient, and to the complainant, if any.

(d) *Rulings required.* Each decision of a hearing officer shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to the regulations in this part with which it is found that the applicant or recipient has failed to comply.

(e) *Decision by Secretary.* The Secretary shall make any final decision which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under the regulations in this part or the Act.

(f) *Content of orders.* The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, to which this regulation applies, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and the regulations in this part, including provisions designed to assure that no Federal financial assistance to which this regulation applies will thereafter be extended to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to the regulations in this part, or to have otherwise failed to comply with the regulations in this part, unless and until it corrects its noncompliance and satisfies the Agency that it will fully comply with the regulations in this part.

(g) *Post termination proceedings.* (1) An applicant or recipient adversely affected by an order issued under paragraph (f) of this section shall be restored to full eligibilty to receive Federal financial assistance if it satisfies the terms and conditions of that order for such eligibility or if it brings itself into compliance with the Act and the regulations in this part and provides reasonable assurance that it will fully comply therewith. An elementary or secondary school or school system which is unable to file an assurance of compliance with §15.4 (a), (b), or (d) shall be restored to full eligibility to receive Federal financial assistance if it complies with the requirements of a §15.4(e) and is otherwise in compliance with the Act and the regulations in this part.

(2) Any applicant or recipient adversely affected by an order entered pursuant to paragraph (f) of this section may at any time request the Secretary to restore fully its eligibility to receive Federal financial assistance. Any such request shall be supported by information showing that the applicant or recipient has met the requirements of paragraph (g)(1) of this section. If the Secretary determines that those requirements have been satisfied, he shall restore such eligibility.

(3) If the Secretary denies any such request, the applicant or recipient may submit a request for a hearing in writing, specifying why it believes the denial to have been in error. It shall thereupon be given an expeditious hearing, with a decision on the record, in accordance with rules of procedure set forth in subpart C of this part. The applicant or recipient will be restored to such eligibility if it proves at such a hearing, that it has satisfied the requirements of paragraph (g)(1) of this section. While proceedings under this paragraph are pending, the sanctions imposed by the order issued under paragraph (f) of this section shall remain in effect.

[29 FR 16274, Dec. 4, 1964, as amended at 35 FR 18384, Dec. 3, 1970; 38 FR 17926, July 5, 1973; 68 FR 51341, Aug. 26, 2003]

§15.11 Judicial review.

Action taken pursuant to section 602 of the Act is subject to judicial review as provided in section 603 of the Act.

§15.12 Effect on other regulations; forms and instructions.

(a) *Effect on other regulations.* All regulations, orders, or like directions heretofore issued by any officer of the Department which impose requirements designed to prohibit any discrimination against individuals on the ground of race, color, or national origin under any program to which the regulations in this part apply, and which authorize the suspension or termination of or refusal to grant or to continue Federal financial assistance to any applicant for or recipient of such assistance for failure to comply with such requirements, are hereby superseded to the extent that such discrimination is prohibited by the regulations in this part, except that nothing in the regulations in this part shall be deemed to relieve any person of any obligation assumed or imposed under any such superseded regulation, order, instruction, or like direction prior to the effective date of the regulations in this part. Nothing in these regulations, however, shall be deemed to supersede any of the following including future amendments thereof:

(1) Executive Order 11246 and regulations issued thereunder; or

(2) Executive Order 11063 and regulations issued thereunder or any other regulations or instructions insofar as they prohibit discrimination on the ground of race, color, or national origin in any program or situation to which the regulations in this part are inapplicable, or prohibit discrimination on any other ground.

(b) *Forms and instructions.* Each Agency shall issue and promptly make available forms and such implementing instructions and procedures consistent with the regulations in this part as may be necessary. Each Agency in making available Federal financial assistance to any program or activity may utilize contractual commitments in obtaining compliance with the regulations in this part, including obtaining compliance by recipients other than the contracting recipient.

(c) *Supervision and coordination.* The Secretary may from time to time assign to officials of other Departments or Agencies of the Government with the consent of such Department or Agency, responsibilities in connection with the effectuation of the purposes of title VI of the Act and the regulations in this part (other than responsibility for final decision as provided in §15.10) including the achievement of effective coordination and maximum uniformity within the Department and within the Executive Branch of the Government in the application of title VI and these regulations to similar programs and in similar situations. Any action taken, determination made, or requirement imposed by an official of another Department or Agency acting under this paragraph shall have the same effect as though such action had been taken by the Secretary or any Agency of this Department.

[29 FR 16274, Dec. 4, 1964, as amended at 38 FR 17927, July 5, 1973; 68 FR 51341, Aug. 26, 2003]

APPENDIX TO SUBPART A OF PART 15—LIST OF FEDERAL FINANCIAL ASSISTANCE FROM USDA

The types of Federal assistance administered by the U.S. Department of Agriculture include but are not limited to the following:

Type of Federal Financial Assistance	Authority
Administered by the Agricultural Cooperative Service	
1. Cooperative Development	Cooperative Marketing Act of 1926, 7 U.S.C. 451 *et seq.* Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621 *et seq.*
Administered by the Agricultural Marketing Service	
2. Federal-State marketing improvement program	Agricultural Marketing Act of 1946, Section 204b, 7 U.S.C. 1623(b).
Administered by the Agricultural Research Service	
3. Soil and Water Conservation	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 *et seq.*).
4. Animal Productivity	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862; (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 *et seq.*).
5. Plant Productivity	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862, (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 *et seq.*).
6. Commodity Conversion and Delivery	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 *et seq.*).
7. Human Nutrition	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 *et seq.*).
8. Integration of Agricultural Systems	7 CFR 3015.205(b); Department of Agriculture Organic Act of 1862 (7 U.S.C. 2201); the Agricultural Marketing Act of 1946, as amended, (7 U.S.C. 427, 1621) and the Food Security Act of 1985 (7 U.S.C. 1281 *et seq.*).

Type of Federal Financial Assistance	Authority
Administered by the Agricultural Stabilization and Conservation Service	
9. Price support programs operating through producer associations, cooperatives and other recipients in which the recipient is required to furnish specified benefits to producers (e.g. tobacco, peanuts, cotton, rice, honey, dry edible beans, tung oil, naval stores and soybeans price support programs).	Agricultural Adjustment Act of 1938, 7 U.S.C. 1301–1393; Pub. L. 73–430; Commodity Credit Corporation Charter Act, 15 U.S.C. 714 *et seq.*; Agricultural Act of 1949, as amended; 7 U.S.C. 1421 *et seq.*; Pub. L. 81–439, as amended; Agriculture and Food Act of 1961; Pub. L. 97–98; Dairy and Tobacco Adjustment Act of 1983; Pub. L. 98–180; Agricultural Programs Adjustment Act of 1984; Pub. L. 98–258; Food Security Act of 1985; Pub. L. 99–198.
Administered by Cooperative State Research Service	
10. 1890 Research Facilities	Sec. 1433 of the National Agricultural Research, Extension and Teaching Policy Act of 1977, Pub. L. 95–113, as amended; 7 U.S.C. 3195.
11. Payments to 1890 Land-Grant Colleges and Tuskegee Institute.	Sec. 1445 of the National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 85–113, as amended; 7 U.S.C. 3222.
12. Cooperative Forestry Research (McIntire-Stennis Act)	Cooperative Forestry Research Act of October 10, 1962; Pub. L. 87–788; 16 U.S.C. 582a–582q–7.
13. Payments to Agricultural Experiment Stations under Hatch Act.	Hatch Act of 1887, as amended; 7 U.S.C. 361a–361i.
14. Grants for Agricultural Research Competitive Research Grants.	Sec. 2(b) of Pub. L. 89–106; 7 U.S.C. 450i(b), as amended.
15. Grants for Agricultural Research, Special Research Grants.	Sec. 2(c) of Pub. L. 89–106; 7 U.S.C. 450i(c), as amended.
16. Animal Health and Disease Research	National Agricultural Research, Extension and Teaching Policy Act of 1977, Sec. 1433, Pub. L. 95–113, as amended; 7 U.S.C. 3195.
Administered by Extension Service	
17. Home Economics	Smith-Lever Act, as amended; 7 U.S.C. 341–349; District of Columbia Post-secondary Education Reorganization Act, D.C. Code, Sec. 31–1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661 *et seq.* Sec. 14, Title 14, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95–113, as amended.
18. 4-H Youth Development	Smith-Lever Act, as amended; 7 U.S.C. 341–349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code, Sec. 31–1518; Title VI, Rural Development Act of 1972, as amended; 7 U.S.C. 2661 *et seq.*; Sections 1425 and 1444, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95–113, as amended; 7 U.S.C. 3221, 3175; Pub. L. 96–374, Sec. 1361(c); 7 U.S.C. 301 note; Pub. L. 97–98, Agriculture and Food Act of 1981, sec. 1401.
19. Agricultural and Natural Resources	Smith-Lever Act, as amended; 7 U.S.C. 341–349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code, Sec. 31–1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661 *et seq.*; Sec. 14, National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95–113, as amended; 7 U.S.C. 3101 *et seq.*
20. Community Resource Development	Smith-Lever Act, as amended; 7 U.S.C. 341–349; District of Columbia Public Postsecondary Reorganization Act, D.C. Code 31–1518; Title V, Rural Development Act of 1972, as amended; 7 U.S.C. 2661 *et seq.;* National Agricultural Research, Extension and Teaching Policy Act of 1977; Pub. L. 95–113, as amended; 7 U.S.C. 3101 *et seq.;* Renewable Resources Extension Act of 1978; 16 U.S.C. 1671–1676.
Administered by Federal Crop Insurance Corporation	
21. Crop Insurance	Federal Crop Insurance Act, as amended; 7 U.S.C. 1501–1520; Title V of the Agricultural Adjustment Act of 1938; 52 Stat. 31 and Federal Crop Insurance Act of 1980; Pub. L. 96–385 (Sept. 26, 1980); 94 Stat. 1312–1319.

Type of Federal Financial Assistance	Authority
Administered by Farmers Home Administration	
22. Farm Ownership Loans to install or improve recreational facilities or other nonfarm enterprises.	Section 302 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1923.
23. Farm Operating Loans to install or improve recreational facilities or other nonfarm enterprises.	Sec. 312 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1942.
24. Community Facility Loans	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
25. Rural Rental Housing and related facilities for elderly persons and families of low income.	Sec. 515, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1485.
26. Rural Cooperative Housing	Sec. 515, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1485.
27. Rural Housing Site Loans	Sec. 524, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490d.
28. Farm and Labor Housing Loans	Sec. 514, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1484.
29. Farm Labor Housing Grants	Sec. 516, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1486.
30. Mutual self-help housing grants. (Technical assistance grants).	Sec. 523, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490c.
31. Technical and supervisory assistance grants	Sec. 525, Title V, Housing Act of 1949, as amended; 42 U.S.C. 1490e.
32. Individual Recreation Loans	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1924.
33. Recreation Association Loans	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
34. Private enterprise grants	Sec. 310(B)(c) of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1932(c).
35. Indian Tribal Land Acquisition Loans	Pub. L. 91–229, approved April 11, 1970; 25 U.S.C. 488.
36. Grazing Association Loans	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
37. Irrigation and Drainage Associations	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
38. Area development assistance planning grant program	Sec. 306(a)(11) of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926(a)(11).
39. Resource conservation and development loans	Sec. 32(e) of Title III, the Bankhead-Jones Farm Tenant Act; 7 U.S.C. 1011(e).
40. Rural Industrial Loan Program	Sec. 310B of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1932.
41. Rural renewal and resource conservation development, land conservation and land utilization.	Sec. 31–35, Title III, Bankhead-Jones Farm Tenant Act; 7 U.S.C. 1010–1013a.
42. Soil and water conservation, recreational facilities, uses; pollution abatement facilities loans.	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1924.
43. Watershed protection and flood prevention program	Sec. 1–12 of the Watershed Protection and Flood Prevention Act, as amended; 16 U.S.C. 1001–1008.
44. Water and Waste Facility Loans and Grants	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended; 7 U.S.C. 1926.
Administered by Food and Nutrition Service	
45. Food Stamp Program	The Food Stamp Act of 1977, as amended; 7 U.S.C. 2011–2029.
46. Nutrition Assistance Program for Puerto Rico. This is the Block Grant signoff of the Food Stamp Program for Puerto Rico.	The Food Stamp Act of 1977, as amended; Sec. 19, 7 U.S.C. 2028.
47. Food Distribution (Food Donation Program). (Direct Distribution Program).	Sec. 32, Pub. L. 74–320, 49 Stat. 744 (7 U.S.C. 612c); Pub. L. 75–165. 50 Stat. 323 (15 U.S.C. 713c); secs. 6, 9, 60 Stat. 231, 233, Pub. L. 79–396 (42 U.S.C. 1755, 1758); sec. 416, Pub. L. 81–439, 63 Stat. 1058 (7 U.S.C. 1431); sec. 402, Pub. L. 91–665, 68 Stat. 843 (22 U.S.C. 1922); sec. 210, Pub. L. 84–540, 70 Stat. 202 (7 U.S.C. 1859); sec. 9, Pub. L. 85–931, 72 Stat. 1792 (7 U.S.C. 1431b); Pub. L. 86–756, 74 Stat. 899 (7 U.S.C. 1431 note); sec. 709, Pub. L. 89–321, 79 Stat. 1212 (7 U.S.C. 1446a–1); sec. 3, Pub. L. 90–302, 82 Stat. 117 (42 U.S.C. 1761); secs. 409, 410, Pub. L. 93–288, 88 Stat. 157 (42 U.S.C. 5179, 5189); sec. 2, Pub. L. 93–326, 88 Stat. 286 (42 U.S.C. 1762a); sec. 16, Pub. L. 94–105, 89 Stat. 522 (42 U.S.C. 1766); sec. 1304(a), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612 note); sec. 311, Pub. L. 95–478, 92 Stat. 1533 (42 U.S.C. 3030a); sec. 10, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760); Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); (5 U.S.C. 301).

Type of Federal Financial Assistance	Authority
48. Food Distribution Program Commodities on Indian Reservations.	The Food Stamp Act of 1977, as amended, Section 4(b), 7 U.S.C. 2013(b).
49. National School Lunch Program	National School Lunch Act, as amended; 42 U.S.C. 1751–1760.
50. Special Milk Program for Children (School Milk Program)	Child Nutrition Act of 1966, Sec. 3, as amended, 42 U.S.C. 1772.
51. School Breakfast Program	Child Nutrition Act of 1966, Sec. 4, as amended; 42 U.S.C. 1773.
52. Summer Food Service Program for Children	National School Lunch Act, Sec. 13, as amended; 42 U.S.C. 1761.
53. Child Care Food Program	National School Lunch Act, Sec. 17, as amended; 42 U.S.C. 1766.
54. Nutrition Education and Training Program	Child Nutrition Act of 1966, Sec. 19, 42 U.S.C. 1788.
55. Special Supplemental Food Program for Women, Infants and Children.	Child Nutrition Act of 1966, Sec. 17, 42 U.S.C. 1786.
56. Commodity Supplemental Food Program.	Agriculture and Consumer Protection Act of 1973, as amended; 7 U.S.C. 612c note.
57. Temporary Emergency Food Assistance Program	Temporary Emergency Food Assistance Act of 1983, as amended; 7 U.S.C. 612c note.
58. State Administrative Expenses for Child Nutrition	Child Nutrition Act of 1966, Sec. 7, as amended; 42 U.S.C. 1776.
59. Nutrition Assistance Program for the Commonwealth of the North Mariana Islands. (This is the Block Grant spin-off of the Food Stamp Program for CNMI).	Trust Territory of the Pacific Island, 48 U.S.C. 1681 note.
Administered by Forest Service	
60. Permits for use of National Forests and National Grasslands by other than individuals at a nominal or no charge.	Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 501 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1761; Term Permit Act of March 4, 1915, as amended, 16 U.S.C. 4971, Secs. 3 and 4 of the American Antiquities Act of June 8, 1906, 16 U.S.C. 432; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
61. Youth Conservation Corps	Act of August 13, 1970, as amended, 16 U.S.C. 1701–1706. Note: This is a Federally financed and conducted program on National Forest land providing summer employment to teenage youth doing conservation work while learning about their natural environment and heritage. Recruitment of recipient youth is without regard to economic, social or racial classification. Policy requires that random selection from the qualified applicant pool be made in a public forum.
62. Job Corps	29 U.S.C. 1691–1701. Note: This is a Federally financed and conducted program providing education and skills training to young men and women. The U.S. Department of Labor is entirely responsible for recruiting of recipient youth.
63. Permits for disposal of common varieties of mineral material from lands under the Forest Service jurisdiction for use by other individuals at a nominal or no charge.	Secs. 1–4 of the Act of July 31, 1947, as amended, 30 U.S.C. 601–603, 611.
64. Use of Federal land for airports	Airport and Airway Improvement Act of 1982, as amended, 49 U.S.C. 2202, 2215. National Forest lands are exempt, Sec. 2215(c).
65. Conveyance of land to States or political subdivisions for widening highways, streets and alleys.	Act of October 13, 1964, 78 Stat. 1089. Forest Road and Trail Act, codified at 16 U.S.C. 532–538.
66. Payment of 25 percent of National Forest receipts to States for schools and roads.	Act of May 23, 1908, as amended, 16 U.S.C. 500.
67. Payment to Minnesota from National Forest receipts of a sum based on a formula.	Sec. 5 of the Act of June 22, 1948, as amended, 16 U.S.C. 577 g–l.
68. Payment of 25 percent of net revenues from Title III, Bankhead-Jones Farm Tenant Act lands to Counties for school and road purposes.	Sec. 33 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1012.
69. Cooperative action to protect, develop, manage and utilize forest resources on State and private lands.	Cooperative Forestry Assistance Act of 1976, 16 U.S.C. 2101–2111.
70. Advance of funds for cooperative research	Sec. 20 of the Granger-Thye Act of April 24, 1950, 16 U.S.C. 581–1.
71. Grants for support of scientific research	Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, 16 U.S.C. 1600 *et seq.*
72. Research Cooperation	Forest and Rangeland Renewable Resources Research Planning Act of 1974, as amended, 16 U.S.C.
73. Grants to Maine, Vermont and New Hampshire for the purpose of assisting economically disadvantaged citizens over 55 years of age.	Older American Act of 1965, as amended, 42 U.S.C. 3056.
74. Senior Community Service Employment, develop, manage and utilize forest resources on State and private lands.	Older American Act of 1965, as amended, 42 U.S.C. 3056.
75. Cooperative Law Enforcement	16 U.S.C. 551a and 553.

Type of Federal Financial Assistance	Authority
76. Forest Utilization and Marketing	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313, 16 U.S.C. 1606, 2101–2111.
77. Fire prevention and suppression	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313, Sec. 7, 16 U.S.C. 2106.
78. Assistance to States for tree planting	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313, Secs. 3, 6, 16 U.S.C. 2102, 2105.
79. Technical assistance forest management	Cooperative Forestry Assistance Act of 1978, Pub. L. 95–313, Sec. 8, 16 U.S.C. 2107.
80. Extramural Research (Cooperative Agreements and Grants).	Range Renewable Resources Act of 1978; Rangeland and Latest Renewable Resources Research Act; 16 U.S.C. 1641–1647.
Administered by Food Safety and Inspection Service	
81. Federal-State Cooperative Agreements and Talmadge-Aiken Agreements.	Federal Meat Inspection Act; 21 U.S.C. 601 *et seq.* Talmadge-Aiken Act; 7 U.S.C. 450. Poultry Products Inspection Act; 21 U.S.C. 451 *et seq.*
Administered by Office of International Cooperation and Development	
82. Technical Assistance	7 U.S.C. 3291; 22 U.S.C. 2357; 22 U.S.C. 2392.
83. International Training	7 U.S.C. 3291; 22 U.S.C. 2357; 22 U.S.C. 2392.
84. Scientific and Technical Exchanges	7 U.S.C. 3291.
85. International Research	7 U.S.C. 3291.
Administered by Soil Conservation Service	
86. Conservation Technical Assistance to Landusers	Sec. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, 16 U.S.C. 590a–590f, 590g.
87. Plant Materials Conservation	Soil Conservation Act of 1935, Pub. L. 74–46; 49 Stat. 163, 16 U.S.C. 590(a–f).
88. Technical and financial assistance in Watershed Protection and flood prevention.	Watershed Protection and Flood Protection Act, as amended, 16 U.S.C. 1001–1005, 1007–1008; Flood Control Act, as amended and supplemented; 33 U.S.C. 701; 16 U.S.C. 1606(a) and Sec. 403–405 of the Agriculture Credit Act of 1978; 16 U.S.C. 2203–2205. Flood Prevention: Pub. L. 78–534; 58 Stat. 905; 33 U.S.C. 701(b)(1); Pub. L. 81–516.
89. Technical and financial assistance in Watershed Protection and flood prevention.	Emergency Operation (216); 68 Stat. 184; 33 U.S.C. 701(b)(1). Watershed Operation: Pub. L. 83–566; 68 Stat. 666:16 U.S.C. 1001 *et seq.*
90. Soil Survey	Sec. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a–590f, 590g.
91. Rural Abandoned Mine Program	Surface Mining Control and Reclamation Act of 1977, Sec. 406; Pub. L. 95–87, 30 U.S.C. 1236, 91 Stat. 460.
92. Resource Conservation and Development	Soil Conservation Act of 1935; Pub. L. 74–46; Bankhead-Jones Farm Tenant Act; Pub. L. 75–210, as amended, Pub. L. 89–796; Pub. L. 87–703; Pub. L. 91–343; Pub. L. 92–419; Pub. L. 97–98; 95 Stat. 1213; 16 U.S.C. 590a–590f, 590g.
93. Great Plains Conservation	Soil Conservation and Domestic Allotment Act, Pub. L. 74–46, as amended by the Great Plains Act of August 7, 1956; Pub. L. 84–1021, Pub. L. 86–793 approved September 14, 1980. Pub. L. 91–118 approved November 1, 1969; Pub. L. 96–263 approved June 6, 1980; 16 U.S.C. 590a–590f, 590g.

[53 FR 48506, Dec. 1, 1988, as amended at 68 FR 51341, Aug. 26, 2003]

Subpart B [Reserved]

Subpart C—Rules of Practice and Procedure for Hearings, Decisions and Administrative Review Under the Civil Rights Act of 1964

AUTHORITY: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; sec. 15.9(d) of subpart A to 7 CFR, part 15, and laws referred to in the appendix to subpart A, part 15, title 7 CFR.

SOURCE: 30 FR 14355, Nov. 17, 1965, unless otherwise noted.

GENERAL INFORMATION

§ 15.60 Scope of rules.

The rules of practice and procedure in this subpart supplement §§15.9 and 15.10 of subpart A of this part and govern the practice for hearings, decisions, and administrative review conducted by the Department of Agriculture, pursuant to title VI of the Civil Rights Act of 1964, section 602 (78 Stat. 252) and this part, title 7, CFR, except these rules shall not apply to any stage of a proceeding which has occurred prior to the effective date hereof.

§ 15.61 Records to be public.

All documents and papers filed in any proceeding under this part may be inspected and copied in the Office of the Department Hearing Clerk.

§ 15.62 Definitions.

All terms used in this subpart shall, unless the context otherwise requires, have the same meaning as defined in subpart A of this part.

§ 15.63 Computation of time.

A period of time begins with the day following the act or event and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed in the District of Columbia, in which case it shall be the following workday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

§ 15.64 Parties.

The term *party* shall include an applicant or recipient with respect to whom the agency has issued a notice of hearing or opportunity to request a hearing in accordance with subpart A of this part and §15.81. The agency shall be deemed a party to all proceedings.

§ 15.65 Appearance.

Any party may appear in person or by counsel or authorized representative and participate fully in any proceeding.

§ 15.66 Complainants not parties.

A person submitting a complaint pursuant to §15.6 is not a party to the proceedings governed by this subpart, but may petition, after proceedings have been commenced, to become an intervener.

§ 15.67 Intervener.

Any interested person or organization may file a petition to intervene which will include a statement of position and a statement of what petitioner expects to contribute to the hearing, and a copy of the petition will be served on all parties. Such petition should be filed prior to the prehearing conference, or if none is held, before the commencement of the hearing, unless the petitioner shows good cause for filing the petition later. The hearing officer may grant the petition if he believes that such participation will not unduly delay a hearing and will contribute materially to the proceeding. An intervener is not a party and may not introduce evidence at a hearing, or propound questions to a witness, unless the hearing officer determines that the proposed additional evidence is relevant and will clarify the facts. The intervener may submit and serve on all parties a brief in support or opposition to any brief of a party. All service and notice required by and upon a party shall apply to an intervener.

§ 15.68 *Ex parte* communications.

(a) *General.* After proceedings have been commenced, any communication or discussion *ex parte*, as regards the merits of the proceeding or a factually related proceeding, between an employee of the Department involved in the decisional process and a person not employed by the Department, and any such communication or discussion between any employee of the Department, who is or has been engaged in any way in the investigation or prosecution of the proceeding or a factually related proceeding, and an employee of the Department who is involved or may be involved in the decisional process of a proceeding, except at a conference, hearing or review proceeding under these rules is improper and prohibited.

(b) *Request for information.* A request for information about the status of a

proceeding without discussing issues or expressing points of view and inquiries with respect to procedural matters or an emergency request for an extension of time are not deemed *ex parte* communications. When practical all parties should be notified of any request for an extension of time. Communication between an applicant or recipient and the agency or the Secretary with respect to securing voluntary compliance with any requirement of subpart A of this part is not prohibited.

(c) *Unsponsored written material.* Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a proceeding will be placed in the correspondence section of the docket of the proceeding. Such are not deemed part of the evidence or record.

FORM, EXECUTION, FILING AND SERVICE OF DOCUMENTS

§ 15.71 Form of documents to be filed.

All copies of documents filed in a proceeding shall be dated, signed in ink, shall show the address and position or title of the signatory, and shall show the docket number and title of the proceeding on the front page.

§ 15.72 Filing.

All documents relating to a proceeding under this subpart shall be filed in an original and two copies of such document with the Office of the Hearing Clerk at Room 112, Administration Building, Department of Agriculture, Washington, D.C., 20250, during regular business hours. Regular business hours are every Monday through Friday (legal holidays in the District of Columbia excepted) from 9 a.m. to 5:30 p.m., eastern standard or daylight saving time, whichever is effective in the District of Columbia at the time.

§ 15.73 Service.

Service shall be made by the Hearing Clerk by personal delivery of one copy to each person to be served or by mailing by first-class mail, or air mail if more than 300 miles, properly addressed with postage prepaid. When a party or intervener has appeared by attorney or representative, service upon such attorney or representative will be deemed proper service. The initial notice of hearing, opportunity to request a hearing, or notice setting a date for a hearing shall be by certified mail, return receipt requested.

§ 15.74 Date of service.

The date of service shall be the day when the matter is deposited in the U.S. mail or is delivered in person, except that the date of service of the initial notice a hearing or notice of opportunity to request a hearing or notice setting a date for a hearing shall be the date of its delivery, or of its attempted delivery if delivery is refused.

INITIAL NOTICE AND RESPONSE

§ 15.81 How proceedings are commenced.

Proceedings are commenced by mailing a notice to an applicant or recipient of alleged noncompliance with the Act and the Secretary's regulations thereunder. The notice will be signed by the interested agency head or by the Secretary and shall be filed with the hearing clerk for proper service by the hearing clerk according to the rules of this subpart. The notice shall include either a notice of hearing or notice of opportunity to request a hearing as determined by the Secretary and shall comply with the requirements of § 15.9(a).

§ 15.82 Notice of hearing and response thereto.

A notice of hearing shall fix a date not less than 30 days from the date of service of the notice of a hearing on matters alleged in the notice. If the applicant or recipient does not desire a hearing, he should so state in writing, in which case the applicant or recipient shall have the right to submit written information and argument for the record, and the additional right to further participate in the proceeding. Failure to appear at the time set for a hearing, without good cause, shall be deemed a waiver of the right to a hearing under section 602 of the Act and the regulations in this part and consent to the making of a decision on such information as is available which may be presented for the record.

§ 15.83 Notice of opportunity to request a hearing and response thereto.

A notice of opportunity to request a hearing shall set a date not less than 20 days from service of said notice within which the applicant or recipient may file a request for a hearing, or may wiave a hearing and submit written information and argument for the record, in which case, the applicant or recipient shall have the right to further participate in the proceeding. When the applicant or recipient elects to file a request for a hearing, a time shall be set for the hearing at a date not less than 20 days from the date applicant or recipient is notified of the date set for the hearing. Failure of the applicant or recipient to request a hearing or to appear at the date set shall be deemed a waiver of the right to a hearing, under section 602 of the Act and the regulations in this part and consent to the making of a decision on such information as is available which may be presented for the record.

§ 15.84 Answer.

In any case covered by § 15.82 or § 15.83 the applicant or recipient shall file an answer. Said answer shall admit or deny each allegation of the notice, unless the applicant or recipient is without knowledge, in which case the answer shall so state, and the statement will be considered a denial. Failure to file an answer shall be deemed an admission of all allegations of fact in the notice. Allegations of fact in the notice not denied or controverted by answer shall be deemed admitted. Matters intended to be offered as affirmative defenses must be stated as a separate part of the answer. The answer under § 15.82 shall be filed within 20 days from the date of service of the notice of hearing. The answer under § 15.83 shall be filed within 20 days of service of the notice of opportunity to request a hearing.

§ 15.85 Amendment of notice or answer.

The notice of hearing or notice of opportunity to request a hearing may be amended once as a matter of course before an answer thereto is served, and each applicant or recipient may amend his answer once as a matter of course not later than 10 days before the date fixed for hearing but in no event later than 20 days from the date of service of his original answer. Otherwise a notice or answer may be amended only by leave of the hearing officer. An applicant or recipient shall file his answer to an amended notice within the time remaining for filing the answer to the original notice or within 10 days after service of the amended notice, whichever period may be the longer, unless the hearing officer otherwise orders.

§ 15.86 Consolidated or joint hearings.

Two or more proceedings against the same respondent, or against different respondents in which the same or related facts are asserted to constitute noncompliance, may be consolidated for hearing or decision or both by the agency head, if he has the principal responsibility within the Department for the administration of all the laws extending the Federal financial assistance involved. If laws administered by more than one agency head are involved, such officials may by agreement order consolidation for hearing. The Secretary may order proceedings in the Department consolidated for hearing with proceedings in other Federal Departments or agencies, by agreement with such other Departments or agencies. All parties to any proceeding consolidated subsequently to service of the notice of hearing or notice of opportunity to request a hearing shall be promptly served with notice of such consolidation.

HEARING OFFICER

§ 15.91 Who presides.

A hearing officer shall preside over all proceedings held under this part. The hearing officer shall be a hearing examiner qualified under section 11 of the Administrative Procedure Act (5 U.S.C. 1001 *et seq.*), and designated to hold hearings under the regulations in this subpart or any person authorized to hold a hearing and make a final decision. The hearing officer will serve until he has made an initial decision, certified the record to the Secretary, or made a final decision if so authorized.

§ 15.92 Designation of hearing officer.

Unless otherwise provided by an order of the Secretary at the time the notice of alleged noncompliance provided in § 15.81 is filed with the Office of the Hearing Clerk, the hearing shall be held before a hearing examiner, who shall be appointed by the Chief Hearing Examiner, Office of Hearing Examiners within five days after the filing of such notice. Unless otherwise provided, the hearing examiner shall certify the entire record with his recommended findings and proposed decision to the Secretary for final decision.

§ 15.93 Time and place of hearing.

When a notice of hearing is sent to an applicant or recipient, the time and place of hearing shall be fixed by the Secretary, and when the applicant or recipient requests a hearing, the time and place shall be set by the hearing officer and in either case in conformity with § 15.9(b). The complainant, if any, shall be advised of the time and place of the hearing.

§ 15.94 Disability of hearing officer.

In the case of death, illness, disqualification, or unavailability of the designated hearing officer, another hearing officer may be designated by the Secretary to take his place. If such death, illness, disqualification or unavailability occurs during the course of a hearing, the hearing will be either continued under a substitute hearing officer, or terminated and tried de novo in the discretion of the Secretary. In the absence of the designated hearing officer any hearing examiner may rule on motions and other interlocutory papers.

§ 15.95 Responsibilities and duties of hearing officer.

The hearing officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He shall have all powers necessary to these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time and place of hearings, or, upon due notice to the parties, to change the date, time and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(c) Require parties and interveners to state their position with respect to the various issues in the proceeding.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him.

(f) Regulate the course of the hearing and conduct of parties therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(j) In accordance with his authority issue an initial decision, or recommended findings and proposed decision, or final decision.

(k) Take any other action a hearing officer is authorized to take under these rules or subpart A of this part.

MOTIONS

§ 15.101 Form and content.

(a) *General.* Motions shall state the relief sought and the authority relied upon. If made before or after the hearing, the motion shall be in writing and filed with the hearing clerk with a copy to all parties. If made at the hearing, they should be stated orally but the hearing officer may require that any motion be reduced to writing and filed and served on all parties in the same manner as a formal motion.

(b) *Extension of time or postponement.* A request for an extention of time should be filed and served on all parties and should set forth the reasons for the request and may be granted upon a showing of good cause. Answers to such requests are permitted, if made promptly.

§ 15.102 Responses to motions.

Within 8 days or such reasonable time as may be fixed by the hearing officer, or Secretary, if the motion is properly addressed to him, any party

may file a response to the motion, unless the motion is made at a hearing in which case an immediate response may be required. The hearing officer may dispose of motions at a prehearing conference.

§ 15.103 Disposition of motions.

The hearing officer may not sustain or grant a motion prior to expiration of the time for filing responses thereto, but may overrule or deny such motion without waiting on a response: *Provided*, *however*, That prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions. Oral motions may be ruled on immediately. Motions submitted to the hearing officer not disposed of in separate rulings or in his decision will be deemed denied. Oral argument shall not be held on written motions unless expressly ordered. Interlocutory appeals from rulings on motions shall be governed by § 15.123.

HEARING PROCEDURES

§ 15.110 Prehearing conferences.

(a) In any case in which it appears that such procedure will expedite the proceeding, the hearing officer may, prior to the commencement of the hearing, request the parties to meet with him or to correspond with him regarding any of the following:

(1) Simplification and clarification of the issues;

(2) Necessity or desirability of amendments to the pleadings;

(3) Stipulations, admissions of fact and of the contents and authenticity of documents;

(4) Matters of which official notice will be taken;

(5) Limitation of the number of experts or other witnesses;

(6) Disposal of all motions; and

(7) Such other matters as may expedite and aid in the disposition of the proceeding.

(b) The hearing officer shall enter in the record a written summary of the results of the conference or correspondence with the parties.

§ 15.111 Purpose of hearing.

(a) The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda or briefs, as determined by the hearing officer. Brief opening statements, which shall be limited to a statement of the party's position and what he intends to prove, may also be made at hearings.

(b) Hearings for the reception of evidence will be held only in cases where issues of fact must be resolved in order to determine whether the respondent has failed to comply with one or more applicable requirements of subpart A of this part. In any case where it appears from the answer of the applicant or recipient to the notice of hearing or notice of opportunity to request a hearing, from his failure timely to answer, or from his admissions or stipulations in the record that there are no matters of material fact in dispute, the hearing officer may enter an order so finding, and fixing the time for the submission of evidence by the Government for the record. Thereafter, the proceedings shall go to conclusion in accordance with subpart A of this part and the rules of this subpart. An appeal from such order may be allowed in accordance with the rules for interlocutory appeal in § 15.123.

§ 15.112 Statement of position and brief.

The hearing officer may require all parties and any intervener to file a written statement of position or brief prior to the beginning of a hearing.

§ 15.113 Testimony.

(a) Testimony shall be given orally under oath or affirmation by witnesses at the hearing, but the hearing officer, in his discretion, may require or permit that the testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing and filed as part of the record thereof. Unless authorized by the hearing officer, witnesses will not be permitted to read prepared testimony into the record. Except as provided in §§ 15.115 and 15.116, witnesses shall be available at the hearing for cross-examination.

(b) Proposed exhibits shall be exchanged either at a prehearing conference, or otherwise prior to the hearing. Proposed exhibits not so exchanged may be denied admission as evidence unless good cause is shown why they were not exchanged. The authenticity of all proposed exhibits exchanged prior to hearing will be deemed admitted unless written objection thereto is filed prior to the hearing or unless good cause is shown at the hearing for failure to file such written objection.

§ 15.115 Affidavits.

An affidavit, intended to be used as evidence without cross-examination of the affiant, will be filed and served on the parties at least 15 days prior to the hearing; and not less than seven days prior to hearing a party may file and serve written objections to any affidavit on the ground that he believes it necessary to test the truth of assertions therein by cross-examination. In such event, the affidavit objected to will not be received in evidence unless the affiant is made available for cross-examination at the hearing or otherwise as prescribed by the hearing officer. In absence of an objection being filed within the time specified, such affidavit will be received in evidence.

§ 15.116 Depositions.

Upon such terms as may be just, the hearing officer, in his discretion, may authorize the testimony of any witness to be taken by deposition.

§ 15.117 Evidence.

Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded, and technical rules of evidence shall not apply but rules or principles designed to assure the most credible evidence available and to subject testimony to test by cross-examination shall apply.

§ 15.118 Cross-examination.

Cross-examination will be limited to the scope of direct examination and matters at issue in the hearing.

§ 15.119 Objections.

Objections to evidence shall be timely and briefly state the ground relied upon. The ruling of the hearing officer will be part of the record. Argument in support of the objection will not be part of the record.

§ 15.120 Exceptions to rulings of hearing officer unnecessary.

Exceptions to rulings of the hearing officer are unnecessary. It is sufficient that a party, at the time the ruling of the hearing officer is sought, makes known the action which he desires the hearing officer to take, or his objection to an action taken, and his grounds therefor.

§ 15.121 Official notice.

A public document, or part thereof, such as an official report decision, opinion, or published scientific or economic statistical data issued by any branch of the Federal or a State Government which has been shown to be reasonably available to the public, may be offered for official notice and accepted in the record without further proof of authenticity. Where official notice is to be taken, any party, on timely request, shall have an opportunity to show the contrary.

§ 15.122 Offer of proof.

An offer of proof made in connection with an objection taken to any ruling of the hearing officer rejecting or excluding proposed oral testimony shall consist of a statement for the record of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such evidence shall be marked for identification and shall accompany the record as an offer of proof.

§ 15.123 Appeals from ruling of hearing officer.

A ruling of the hearing officer may not be appealed to the Secretary prior to consideration of the entire proceeding by the hearing officer except with the consent of the hearing officer and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any part or substantial

detriment to the public interest. If an appeal is allowed, any party may file a brief with the Secretary within such period as the hearing officer directs. Oral argument will be heard in the discretion of the Secretary.

§ 15.124 Admissions as to facts and documents.

Not later than 15 days prior to the scheduled date of the hearing except for good cause shown, or prior to such earlier date as the hearing officer may order, any party may serve upon an opposing party a written request for the admission of the genuineness and authenticity of any relevant documents described in and exhibited with the request, or for the admission of the truth of any relevant matters of fact stated in the request. Each of the matters of which an admission is requested shall be deemed admitted, unless within a period designated in the request (not less than 10 days after service thereof, or within such further time as the hearing officer may allow upon motion and notice) the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny such matters. Copies of requests for admission and answers thereto shall be served on all parties. Any admission made by a party to such request is only for the purposes of the pending proceeding, or any proceeding or action instituted for the enforcement of any order entered therein, and shall not constitute an admission by him for any other purpose or be used against him in any other proceeding or action.

[31 FR 8586, June 21, 1966]

THE RECORD

§ 15.131 Official transcript.

The hearing clerk will designate the official reporter for all hearings. The official transcript of testimony taken, together with any affidavits, exhibits, depositions, briefs, or memoranda of law shall be filed with the hearing clerk. Transcripts of testimony in hearings will be supplied by the official reporter to the parties and to the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the hearing officer may authorize corrections to the transcript which involve matters of substance.

§ 15.132 Record for decision.

The transcript of testimony, exhibits, affidavits, depositions, briefs, memoranda of law, and all pleadings, motions, papers, and requests filed in the proceeding, except the correspondence section of the docket, including rulings, and any recommended findings and proposed decision, or initial decision shall constitute the exclusive record for final decision.

POSTHEARING PROCEDURES

§ 15.135 Posthearing briefs.

The hearing officer shall fix a reasonable time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs. Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon. Briefs shall be filed in the Office of the Hearing Clerk with a copy to all parties.

§ 15.136 Decisions and notices.

When the time for submission of posthearing briefs has expired the hearing officer shall either make an initial decision or final decision, if so authorized, or certify the entire record including his recommended findings and proposed decision to the Secretary for a final decision and a copy of such initial, or final decision or certification shall be mailed to the applicant or recipient and other parties by the hearing clerk.

§ 15.137 Exceptions to initial or proposed decision.

Within 30 days of the mailing of such notice of initial or recommended findings and proposed decision, the applicant or recipient and other parties may file with the hearing clerk for consideration by the Secretary exceptions to

the initial or recommended findings and proposed decision, with reasons therefor. Each party will be given reasonable opportunity to file briefs or other written statements of contentions in which the party may request that the decision be modified, reversed, affirmed or adopted.

§ 15.138 Review of initial decision.

In the absence of exceptions to an initial decision, the Secretary may on his own motion within 45 days after an initial decision serve upon the parties a notice that he will review the decision and will give the parties reasonable opportunity to file briefs or other written statements of contentions. At the expiration of said time for filing briefs, the Secretary will review the initial decision and issue a final decision thereon. In the absence of either exceptions to an initial decision or a notice or review, the initial decision shall constitute the final decision of the Secretary.

§ 15.139 Oral argument.

If any party desires to argue orally before the Secretary on the review of recommended findings and proposed decision, or an initial decision, he shall so state at the time he files his exceptions or brief. The Secretary may grant such request in his discretion. If granted, he will serve notice of oral argument on all parties and will set forth the order of presentation and the amount of time allotted, and the time and place of argument.

§ 15.140 Service of decisions.

All final decisions shall be promptly served on all parties and the complainant.

§ 15.141 Contents of decision.

Each decision of a hearing officer shall set forth his ruling on each finding, conclusion, or exception presented, and shall identify the requirement or requirements imposed by or pursuant to the regulations in this part with which it is found that the applicant or recipient has failed to comply.

§ 15.142 Content of orders.

The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved, and may contain such terms, conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and the regulations in this part, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the applicant or recipient determined by such decision to be in default in its performance of an assurance given by it pursuant to the regulations in this part, or to have otherwise failed to comply with the regulations in this part, unless and until it corrects its noncompliance and satisfies the Agency that it will fully comply with the regulations in this part.

§ 15.143 Decision where financial assistance affected.

The Secretary shall make any final decision which provides for the suspension or termination of, or the refusal to grant or continue Federal financial assistance, or the imposition of any other sanction available under the regulations in this part or the Act.

PART 15a—EDUCATION PROGRAMS OR ACTIVITIES RECEIVING OR BENEFITTING FROM FEDERAL FINANCIAL ASSISTANCE

Subpart A—Introduction

Sec.

15a.100 Purpose.
15a.105 Definitions.
15a.110 Remedial and affirmative action and self-evaluation.
15a.115 Assurance required.
15a.120 Transfers of property.
15a.125 Effect of other requirements.
15a.130 Effect of employment opportunities.
15a.135 Designation of responsible employee and adoption of grievance procedures.
15a.140 Dissemination of policy.

Subpart B—Coverage

15a.200 Application.
15a.205 Educational institutions and other entities controlled by religious organizations.
15a.210 Military and merchant marine educational institutions.
15a.215 Membership practices of certain organizations.
15a.220 Admissions.

15a.225 Educational institutions eligible to submit transition plans.
15a.230 Transition plans.
15a.235 Statutory amendments.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

15a.300 Admission.
15a.305 Preference in admission.
15a.310 Recruitment.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

15a.400 Education programs or activities.
15a.405 Housing.
15a.410 Comparable facilities.
15a.415 Access to course offerings.
15a.420 Access to schools operated by LEAs.
15a.425 Counseling and use of appraisal and counseling materials.
15a.430 Financial assistance.
15a.435 Employment assistance to students.
15a.440 Health and insurance benefits and services.
15a.445 Marital or parental status.
15a.450 Athletics.
15a.455 Textbooks and curricular material.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

15a.500 Employment.
15a.505 Employment criteria.
15a.510 Recruitment.
15a.515 Compensation.
15a.520 Job classification and structure.
15a.525 Fringe benefits.
15a.530 Marital or parental status.
15a.535 Effect of state or local law or other requirements.
15a.540 Advertising.
15a.545 Pre-employment inquiries.
15a.550 Sex as a bona fide occupational qualification.

Subpart F—Other Provisions

15a.605 Enforcement procedures.

AUTHORITY: 20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688; 42 U.S.C. 7101 *et seq.;* and 50 U.S.C. 2401 *et seq.*

SOURCE: 82 FR 46656, Oct. 6, 2017, unless otherwise noted.

Subpart A—Introduction

§ 15a.100 Purpose.

The purpose of this part is to effectuate Title IX of the Education Amendments of 1972, as amended (except sections 904 and 906 of those Amendments) (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688), which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution as defined in this part.

§ 15a.105 Definitions.

As used in this part, the term:

Administratively separate unit means a school, department, or college of an educational institution (other than a local educational agency) admission to which is independent of admission to any other component of such institution.

Admission means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.

Applicant means one who submits an application, request, or plan required to be approved by an official of the Federal agency that awards Federal financial assistance, or by a recipient, as a condition to becoming a recipient.

Designated agency official means the Secretary of Agriculture or any officer or employees of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act for the Secretary under the regulations in this part.

Educational institution means a local educational agency (LEA) as defined by 20 U.S.C. 8801(18), a preschool, a private elementary or secondary school, or an applicant or recipient that is an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, as defined in this section.

Federal financial assistance means any of the following, when authorized or extended under a law administered by the Federal agency that awards such assistance:

(1) A grant or loan of Federal financial assistance, including funds made available for:

(i) The acquisition, construction, renovation, restoration, or repair of a building or facility or any portion thereof; and

(ii) Scholarships, loans, grants, wages, or other funds extended to any entity for payment to or on behalf of students admitted to that entity, or extended directly to such students for payment to that entity.

(2) A grant of Federal real or personal property or any interest therein, including surplus property, and the proceeds of the sale or transfer of such property, if the Federal share of the fair market value of the property is not, upon such sale or transfer, properly accounted for to the Federal Government.

(3) Provision of the services of Federal personnel.

(4) Sale or lease of Federal property or any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient or in recognition of public interest to be served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement that has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

Institution of graduate higher education means an institution that:

(1) Offers academic study beyond the bachelor of arts or bachelor of science degree, whether or not leading to a certificate of any higher degree in the liberal arts and sciences;

(2) Awards any degree in a professional field beyond the first professional degree (regardless of whether the first professional degree in such field is awarded by an institution of undergraduate higher education or professional education); or

(3) Awards no degree and offers no further academic study, but operates ordinarily for the purpose of facilitating research by persons who have received the highest graduate degree in any field of study.

Institution of professional education means an institution (except any institution of undergraduate higher education) that offers a program of academic study that leads to a first professional degree in a field for which there is a national specialized accrediting agency recognized by the Secretary of Education.

Institution of undergraduate higher education means:

(1) An institution offering at least two but less than four years of college level study beyond the high school level, leading to a diploma or an associate degree, or wholly or principally creditable toward a baccalaureate degree; or

(2) An institution offering academic study leading to a baccalaureate degree; or

(3) An agency or body that certifies credentials or offers degrees, but that may or may not offer academic study.

Institution of vocational education means a school or institution (except an institution of professional or graduate or undergraduate higher education) that has as its primary purpose preparation of students to pursue a technical, skilled, or semiskilled occupation or trade, or to pursue study in a technical field, whether or not the school or institution offers certificates, diplomas, or degrees and whether or not it offers full-time study.

Recipient means any State or political subdivision thereof, or any instrumentality of a State or political subdivision thereof, any public or private agency, institution, or organization, or other entity, or any person, to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives such assistance, including any subunit, successor, assignee, or transferee thereof.

Student means a person who has gained admission.

Title IX means Title IX of the Education Amendments of 1972, Public Law 92–318, 86 Stat. 235, 373 (codified as amended at 20 U.S.C. 1681–1688) (except sections 904 and 906 thereof), as amended by section 3 of Public Law 93–568, 88 Stat. 1855, by section 412 of the Education Amendments of 1976, Public Law 94–482, 90 Stat. 2234, and by Section 3 of Public Law 100–259, 102 Stat. 28, 28–29 (20 U.S.C. 1681, 1682, 1683, 1685, 1686, 1687, 1688).

Transition plan means a plan subject to the approval of the Secretary of

Education pursuant to section 901(a)(2) of the Education Amendments of 1972, 20 U.S.C. 1681(a)(2), under which an educational institution operates in making the transition from being an educational institution that admits only students of one sex to being one that admits students of both sexes without discrimination.

§ 15a.110 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the designated agency official finds that a recipient has discriminated against persons on the basis of sex in an education program or activity, such recipient shall take such remedial action as the designated agency official deems necessary to overcome the effects of such discrimination.

(b) *Affirmative action.* In the absence of a finding of discrimination on the basis of sex in an education program or activity, a recipient may take affirmative action consistent with law to overcome the effects of conditions that resulted in limited participation therein by persons of a particular sex. Nothing in this part shall be interpreted to alter any affirmative action obligations that a recipient may have under Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12086, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264.

(c) *Self-evaluation.* Each recipient education institution shall, within one year of the effective date of this part:

(1) Evaluate, in terms of the requirements of this part, its current policies and practices and the effects thereof concerning admission of students, treatment of students, and employment of both academic and nonacademic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices that do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination that resulted or may have resulted from adherence to these policies and practices.

(d) *Availability of self-evaluation and related materials.* Recipients shall maintain on file for at least three years following completion of the evaluation required under paragraph (c) of this section, and shall provide to the designated agency official upon request, a description of any modifications made pursuant to paragraph (c)(2) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

§ 15a.115 Assurance required.

(a) *General.* Either at the application stage or the award stage, Federal agencies must ensure that applications for Federal financial assistance or awards of Federal financial assistance contain, be accompanied by, or be covered by a specifically identified assurance from the applicant or recipient, satisfactory to the designated agency official, that each education program or activity operated by the applicant or recipient and to which this part applies will be operated in compliance with this part. An assurance of compliance with this part shall not be satisfactory to the designated agency official if the applicant or recipient to whom such assurance applies fails to commit itself to take whatever remedial action is necessary in accordance with § 15a.110(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior to or subsequent to the submission to the designated agency official of such assurance.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended to provide real property or structures thereon, such assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used to provide an education program or activity.

(2) In the case of Federal financial assistance extended to provide personal property, such assurance shall obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases such assurance shall obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Form.* (1) The assurances required by paragraph (a) of this section, which may be included as part of a document that addresses other assurances or obligations, shall include that the applicant or recipient will comply with all applicable Federal statutes relating to nondiscrimination. These include but are not limited to: Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681–1683, 1685–1688).

(2) The designated agency official will specify the extent to which such assurances will be required of the applicant's or recipient's subgrantees, contractors, subcontractors, transferees, or successors in interest.

§ 15a.120 Transfers of property.

If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee that operates any education program or activity, and the Federal share of the fair market value of the property is not upon such sale or transfer properly accounted for to the Federal Government, both the transferor and the transferee shall be deemed to be recipients, subject to the provisions of §§ 15a.205 through 15a.235(a).

§ 15a.125 Effect of other requirements.

(a) *Effect of other Federal provisions.* The obligations imposed by this part are independent of, and do not alter, obligations not to discriminate on the basis of sex imposed by Executive Order 11246, 3 CFR, 1964–1965 Comp., p. 339; as amended by Executive Order 11375, 3 CFR, 1966–1970 Comp., p. 684; as amended by Executive Order 11478, 3 CFR, 1966–1970 Comp., p. 803; as amended by Executive Order 12087, 3 CFR, 1978 Comp., p. 230; as amended by Executive Order 12107, 3 CFR, 1978 Comp., p. 264; sections 704 and 855 of the Public Health Service Act (42 U.S.C. 295m, 298b–2); Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*); the Equal Pay Act of 1963 (29 U.S.C. 206); and any other Act of Congress or Federal regulation.

(b) *Effect of State or local law or other requirements.* The obligation to comply with this part is not obviated or alleviated by any State or local law or other requirement that would render any applicant or student ineligible, or limit the eligibility of any applicant or student, on the basis of sex, to practice any occupation or profession.

(c) *Effect of rules or regulations of private organizations.* The obligation to comply with this part is not obviated or alleviated by any rule or regulation of any organization, club, athletic or other league, or association that would render any applicant or student ineligible to participate or limit the eligibility or participation of any applicant or student, on the basis of sex, in any education program or activity operated by a recipient and that receives Federal financial assistance.

§ 15a.130 Effect of employment opportunities.

The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for members of one sex than for members of the other sex.

§ 15a.135 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) *Complaint procedure of recipient.* A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited by this part.

§ 15a.140 Dissemination of policy.

(a) *Notification of policy.* (1) Each recipient shall implement specific and continuing steps to notify applicants for admission and employment, students and parents of elementary and secondary school students, employees, sources of referral of applicants for admission and employment, and all unions or professional organizations holding collective bargaining or professional agreements with the recipient, that it does not discriminate on the basis of sex in the educational programs or activities that it operates, and that it is required by Title IX and this part not to discriminate in such a manner. Such notification shall contain such information, and be made in such manner, as the designated agency official finds necessary to apprise such persons of the protections against discrimination assured them by Title IX and this part, but shall state at least that the requirement not to discriminate in education programs or activities extends to employment therein, and to admission thereto unless §§ 15a.300 through 15a.310 do not apply to the recipient, and that inquiries concerning the application of Title IX and this part to such recipient may be referred to the employee designated pursuant to § 15a.135, or to the designated agency official.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the date this part first applies to such recipient, which notification shall include publication in:

(i) Newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(ii) Memoranda or other written communications distributed to every student and employee of such recipient.

(b) *Publications.* (1) Each recipient shall prominently include a statement of the policy described in paragraph (a) of this section in each announcement, bulletin, catalog, or application form that it makes available to any person of a type, described in paragraph (a) of this section, or which is otherwise used in connection with the recruitment of students or employees.

(2) A recipient shall not use or distribute a publication of the type described in paragraph (b)(1) of this section that suggests, by text or illustration, that such recipient treats applicants, students, or employees differently on the basis of sex except as such treatment is permitted by this part.

(c) *Distribution.* Each recipient shall distribute without discrimination on the basis of sex each publication described in paragraph (b)(1) of this section, and shall apprise each of its admission and employment recruitment representatives of the policy of nondiscrimination described in paragraph (a) of this section, and shall require such representatives to adhere to such policy.

Subpart B—Coverage

§ 15a.200 Application.

Except as provided in §§ 15a.205 through 15a.235(a), this part applies to every recipient and to each education program or activity operated by such recipient that receives Federal financial assistance.

§ 15a.205 Educational institutions and other entities controlled by religious organizations.

(a) *Exemption.* This part does not apply to any operation of an educational institution or other entity that is controlled by a religious organization to the extent that application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption claims.* An educational institution or other entity that wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the designated agency official a statement by the highest-ranking official of the institution, identifying the provisions of this part that conflict with a specific tenet of the religious organization.

§ 15a.210 Military and merchant marine educational institutions.

This part does not apply to an educational institution whose primary purpose is the training of individuals

for a military service of the United States or for the merchant marine.

§ 15a.215 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership practices of social fraternities and sororities that are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), the active membership of which consists primarily of students in attendance at institutions of higher education.

(b) *YMCA, YWCA, Girl Scouts, Boy Scouts, and Camp Fire Girls.* This part does not apply to the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls.

(c) *Voluntary youth service organizations.* This part does not apply to the membership practices of a voluntary youth service organization that is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 26 U.S.C. 501(a), and the membership of which has been traditionally limited to members of one sex and principally to persons of less than nineteen years of age.

§ 15a.220 Admissions.

(a) Admissions to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purposes only of this section, §§ 15a.225 and 15a.230, and §§ 15a.300 through 15a.310, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of §§ 15a.300 through 15a.310.* Except as provided in paragraphs (d) and (e) of this section, §§ 15a.300 through 15a.310 apply to each recipient. A recipient to which §§ 15a.300 through 15a.310 apply shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 15a.300 through 15a.310.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients that are educational institutions, §§ 15a.300 through 15a.310 apply only to institutions of vocational education, professional education, graduate higher education, and public institutions of undergraduate higher education.

(e) *Public institutions of undergraduate higher education.* Sections 15a.300 through 15a.310 do not apply to any public institution of undergraduate higher education that traditionally and continually from its establishment has had a policy of admitting students of only one sex.

§ 15a.225 Educational institutions eligible to submit transition plans.

(a) *Application.* This section applies to each educational institution to which §§ 15a.300 through 15a.310 apply that:

(1) Admitted students of only one sex as regular students as of June 23, 1972; or

(2) Admitted students of only one sex as regular students as of June 23, 1965, but thereafter admitted, as regular students, students of the sex not admitted prior to June 23, 1965.

(b) *Provision for transition plans.* An educational institution to which this section applies shall not discriminate on the basis of sex in admission or recruitment in violation of §§ 15a.300 through 15a.310.

§ 15a.230 Transition plans.

(a) *Submission of plans.* An institution to which § 15a.225 applies and that is composed of more than one administratively separate unit may submit either a single transition plan applicable to all such units, or a separate transition plan applicable to each such unit.

(b) *Content of plans.* In order to be approved by the Secretary of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education Code of the educational institution submitting such plan, the administratively separate units to which the plan is applicable, and the name, address, and telephone number of the person to whom questions concerning the plan may be addressed. The person who submits the plan shall be the chief administrator or president of the institution, or another individual legally authorized to bind the institution to all actions set forth in the plan.

(2) State whether the educational institution or administratively separate unit admits students of both sexes as regular students and, if so, when it began to do so.

(3) Identify and describe with respect to the educational institution or administratively separate unit any obstacles to admitting students without discrimination on the basis of sex.

(4) Describe in detail the steps necessary to eliminate as soon as practicable each obstacle so identified and indicate the schedule for taking these steps and the individual directly responsible for their implementation.

(5) Include estimates of the number of students, by sex, expected to apply for, be admitted to, and enter each class during the period covered by the plan.

(c) *Nondiscrimination.* No policy or practice of a recipient to which §15a.225 applies shall result in treatment of applicants to or students of such recipient in violation of §§15a.300 through 15a.310 unless such treatment is necessitated by an obstacle identified in paragraph (b)(3) of this section and a schedule for eliminating that obstacle has been provided as required by paragraph (b)(4) of this section.

(d) *Effects of past exclusion.* To overcome the effects of past exclusion of students on the basis of sex, each educational institution to which §15a.225 applies shall include in its transition plan, and shall implement, specific steps designed to encourage individuals of the previously excluded sex to apply for admission to such institution. Such steps shall include instituting recruitment programs that emphasize the institution's commitment to enrolling students of the sex previously excluded.

§15a.235 Statutory amendments.

(a) This section, which applies to all provisions of this part, addresses statutory amendments to Title IX.

(b) This part shall not apply to or preclude:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference;

(2) Any program or activity of a secondary school or educational institution specifically for:

(i) The promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) The selection of students to attend any such conference;

(3) Father-son or mother-daughter activities at an educational institution or in an education program or activity, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided to students of the other sex;

(4) Any scholarship or other financial assistance awarded by an institution of higher education to an individual because such individual has received such award in a single-sex pageant based upon a combination of factors related to the individual's personal appearance, poise, and talent. The pageant, however, must comply with other nondiscrimination provisions of Federal law.

(c) *Program or activity or program* means:

(1) All of the operations of any entity described in paragraphs (c)(1)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity that is established by two or more of the entities described in paragraphs (c)(1)(i), (ii), or (iii) of this section.

(2)(i) *Program or activity* does not include any operation of an entity that is controlled by a religious organization if the application of 20 U.S.C. 1681 to such operation would not be consistent with the religious tenets of such organization.

(ii) For example, all of the operations of a college, university, or other postsecondary institution, including but not limited to traditional educational operations, faculty and student housing, campus shuttle bus service, campus restaurants, the bookstore, and other commercial activities are part of a ''program or activity'' subject to this part if the college, university, or other institution receives Federal financial assistance.

(d)(1) Nothing in this part shall be construed to require or prohibit any person, or public or private entity, to provide or pay for any benefit or service, including the use of facilities, related to an abortion. Medical procedures, benefits, services, and the use of facilities, necessary to save the life of a pregnant woman or to address complications related to an abortion are not subject to this section.

(2) Nothing in this section shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion. Accordingly, subject to paragraph (d)(1) of this section, no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, employment, or other educational program or activity operated by a recipient that receives Federal financial assistance because such individual has sought or received, or is seeking, a legal abortion, or any benefit or service related to a legal abortion.

Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

§ 15a.300 Admission.

(a) *General.* No person shall, on the basis of sex, be denied admission, or be subjected to discrimination in admission, by any recipient to which §§ 15a.300 through 15a.310 apply, except as provided in §§ 15a.225 and 15a.230.

(b) *Specific prohibitions.* (1) In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 15a.300 through 15a.310 apply shall not:

(i) Give preference to one person over another on the basis of sex, by ranking applicants separately on such basis, or otherwise;

(ii) Apply numerical limitations upon the number or proportion of persons of either sex who may be admitted; or

(iii) Otherwise treat one individual differently from another on the basis of sex.

(2) A recipient shall not administer or operate any test or other criterion for admission that has a disproportionately adverse effect on persons on the basis of sex unless the use of such test or criterion is shown to predict validly success in the education program or activity in question and alternative tests or criteria that do not have such a disproportionately adverse effect are shown to be unavailable.

(c) *Prohibitions relating to marital or parental status.* In determining whether a person satisfies any policy or criterion for admission, or in making any offer of admission, a recipient to which §§ 15a.300 through 15a.310 apply:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant that treats persons differently on the basis of sex;

(2) Shall not discriminate against or exclude any person on the basis of pregnancy, childbirth, termination of pregnancy, or recovery therefrom, or establish or follow any rule or practice that so discriminates or excludes;

(3) Subject to §15a.235(d), shall treat disabilities related to pregnancy, childbirth, termination of pregnancy, or recovery therefrom in the same manner and under the same policies as any other temporary disability or physical condition; and

(4) Shall not make pre-admission inquiry as to the marital status of an applicant for admission, including whether such applicant is ''Miss'' or ''Mrs.'' A recipient may make pre-admission inquiry as to the sex of an applicant for admission, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

§15a.305 Preference in admission.

A recipient to which §§15a.300 through 15a.310 apply shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity that admits as students only or predominantly members of one sex, if the giving of such preference has the effect of discriminating on the basis of sex in violation of §§15a.300 through 15a.310.

§15a.310 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which §§15a.300 through 15a.310 apply shall not discriminate on the basis of sex in the recruitment and admission of students. A recipient may be required to undertake additional recruitment efforts for one sex as remedial action pursuant to §15a.110(a), and may choose to undertake such efforts as affirmative action pursuant to §15a.110(b).

(b) *Recruitment at certain institutions.* A recipient to which §§15a.300 through 15a.310 apply shall not recruit primarily or exclusively at educational institutions, schools, or entities that admit as students only or predominantly members of one sex, if such actions have the effect of discriminating on the basis of sex in violation of §§15a.300 through 15a.310.

Subpart D—Discrimination on the Basis of Sex in Education Programs or Activities Prohibited

§15a.400 Education programs or activities.

(a) *General.* Except as provided elsewhere in this part, no person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any academic, extracurricular, research, occupational training, or other education program or activity operated by a recipient that receives Federal financial assistance. Sections 15a.400 through 15a.455 do not apply to actions of a recipient in connection with admission of its students to an education program or activity of a recipient to which §§15a.300 through 15a.310 do not apply, or an entity, not a recipient, to which §§15a.300 through 15a.310 would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in §§15a.400 through 15a.455, in providing any aid, benefit, or service to a student, a recipient shall not, on the basis of sex:

(1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;

(2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;

(3) Deny any person any such aid, benefit, or service;

(4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;

(5) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for instate fees and tuition;

(6) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person that discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;

(7) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

(c) *Assistance administered by a recipient educational institution to study at a foreign institution.* A recipient educational institution may administer or assist in the administration of scholarships, fellowships, or other awards established by foreign or domestic wills, trusts, or similar legal instruments, or by acts of foreign governments and restricted to members of one sex, that are designed to provide opportunities to study abroad, and that are awarded to students who are already matriculating at or who are graduates of the recipient institution; Provided, that a recipient educational institution that administers or assists in the administration of such scholarships, fellowships, or other awards that are restricted to members of one sex provides, or otherwise makes available, reasonable opportunities for similar studies for members of the other sex. Such opportunities may be derived from either domestic or foreign sources.

(d) *Aids, benefits or services not provided by recipient.* (1) This paragraph (d) applies to any recipient that requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or that facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in educational consortia and cooperative employment and student-teaching assignments.

(2) Such recipient:

(i) Shall develop and implement a procedure designed to assure itself that the operator or sponsor of such other education program or activity takes no action affecting any applicant, student, or employee of such recipient that this part would prohibit such recipient from taking; and

(ii) Shall not facilitate, require, permit, or consider such participation if such action occurs.

§ 15a.405 Housing.

(a) *Generally.* A recipient shall not, on the basis of sex, apply different rules or regulations, impose different fees or requirements, or offer different services or benefits related to housing, except as provided in this section (including housing provided only to married students).

(b) *Housing provided by recipient.* (1) A recipient may provide separate housing on the basis of sex.

(2) Housing provided by a recipient to students of one sex, when compared to that provided to students of the other sex, shall be as a whole:

(i) Proportionate in quantity to the number of students of that sex applying for such housing; and

(ii) Comparable in quality and cost to the student.

(c) *Other housing.* (1) A recipient shall not, on the basis of sex, administer different policies or practices concerning occupancy by its students of housing other than that provided by such recipient.

(2)(i) A recipient which, through solicitation, listing, approval of housing, or otherwise, assists any agency, organization, or person in making housing available to any of its students, shall take such reasonable action as may be necessary to assure itself that such housing as is provided to students of one sex, when compared to that provided to students of the other sex, is as a whole:

(A) Proportionate in quantity; and

(B) Comparable in quality and cost to the student.

(ii) A recipient may render such assistance to any agency, organization, or person that provides all or part of such housing to students of only one sex.

§ 15a.410 Comparable facilities.

A recipient may provide separate toilet, locker room, and shower facilities on the basis of sex, but such facilities provided for students of one sex shall be comparable to such facilities provided for students of the other sex.

§ 15a.415 Access to course offerings.

(a) A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home

economics, music, and adult education courses.

(b)(1) With respect to classes and activities in physical education at the elementary school level, the recipient shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of these regulations. With respect to physical education classes and activities at the secondary and post-secondary levels, the recipient shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of these regulations.

(2) This section does not prohibit grouping of students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex.

(3) This section does not prohibit separation of students by sex within physical education classes or activities during participation in wrestling, boxing, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(4) Where use of a single standard of measuring skill or progress in a physical education class has an adverse effect on members of one sex, the recipient shall use appropriate standards that do not have such effect.

(5) Portions of classes in elementary and secondary schools, or portions of education programs or activities, that deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(6) Recipients may make requirements based on vocal range or quality that may result in a chorus or choruses of one or predominantly one sex.

§ 15a.420 Access to schools operated by LEAs.

A recipient that is a local educational agency shall not, on the basis of sex, exclude any person from admission to:

(a) Any institution of vocational education operated by such recipient; or

(b) Any other school or educational unit operated by such recipient, unless such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools.

§ 15a.425 Counseling and use of appraisal and counseling materials.

(a) *Counseling.* A recipient shall not discriminate against any person on the basis of sex in the counseling or guidance of students or applicants for admission.

(b) *Use of appraisal and counseling materials.* A recipient that uses testing or other materials for appraising or counseling students shall not use different materials for students on the basis of their sex or use materials that permit or require different treatment of students on such basis unless such different materials cover the same occupations and interest areas and the use of such different materials is shown to be essential to eliminate sex bias. Recipients shall develop and use internal procedures for ensuring that such materials do not discriminate on the basis of sex. Where the use of a counseling test or other instrument results in a substantially disproportionate number of members of one sex in any particular course of study or classification, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination in the instrument or its application.

(c) *Disproportion in classes.* Where a recipient finds that a particular class contains a substantially disproportionate number of individuals of one sex, the recipient shall take such action as is necessary to assure itself that such disproportion is not the result of discrimination on the basis of sex in counseling or appraisal materials or by counselors.

§ 15a.430 Financial assistance.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, in providing financial assistance to any of its students, a recipient shall not:

(1) On the basis of sex, provide different amounts or types of such assistance, limit eligibility for such assistance that is of any particular type or

source, apply different criteria, or otherwise discriminate;

(2) Through solicitation, listing, approval, provision of facilities, or other services, assist any foundation, trust, agency, organization, or person that provides assistance to any of such recipient's students in a manner that discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance that treats persons of one sex differently from persons of the other sex with regard to marital or parental status.

(b) *Financial aid established by certain legal instruments.* (1) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established pursuant to domestic or foreign wills, trusts, bequests, or similar legal instruments or by acts of a foreign government that require that awards be made to members of a particular sex specified therein; Provided, that the overall effect of the award of such sex-restricted scholarships, fellowships, and other forms of financial assistance does not discriminate on the basis of sex.

(2) To ensure nondiscriminatory awards of assistance as required in paragraph (b)(1) of this section, recipients shall develop and use procedures under which:

(i) Students are selected for award of financial assistance on the basis of nondiscriminatory criteria and not on the basis of availability of funds restricted to members of a particular sex;

(ii) An appropriate sex-restricted scholarship, fellowship, or other form of financial assistance is allocated to each student selected under paragraph (b)(2)(i) of this section; and

(iii) No student is denied the award for which he or she was selected under paragraph (b)(2)(i) of this section because of the absence of a scholarship, fellowship, or other form of financial assistance designated for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aid, it must provide reasonable opportunities for such awards for members of each sex in proportion to the number of students of each sex participating in interscholastic or intercollegiate athletics.

(2) A recipient may provide separate athletic scholarships or grants-in-aid for members of each sex as part of separate athletic teams for members of each sex to the extent consistent with this paragraph (c) and § 15a.450.

§ 15a.435 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient that assists any agency, organization, or person in making employment available to any of its students:

(1) Shall assure itself that such employment is made available without discrimination on the basis of sex; and

(2) Shall not render such services to any agency, organization, or person that discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient that employs any of its students shall not do so in a manner that violates §§ 15a.500 through 15a.550.

§ 15a.440 Health and insurance benefits and services.

Subject to § 15a.235(d), in providing a medical, hospital, accident, or life insurance benefit, service, policy, or plan to any of its students, a recipient shall not discriminate on the basis of sex, or provide such benefit, service, policy, or plan in a manner that would violate §§ 15a.500 through 15a.550 if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service that may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient that provides full coverage health service shall provide gynecological care.

§ 15a.445 Marital or parental status.

(a) *Status generally.* A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status that treats students differently on the basis of sex.

(b) *Pregnancy and related conditions.* (1) A recipient shall not discriminate against any student, or exclude any student from its education program or

activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

(2) A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation as long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

(3) A recipient that operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section, shall ensure that the separate portion is comparable to that offered to non-pregnant students.

(4) Subject to §15a.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan, or policy that such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

(5) In the case of a recipient that does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence for as long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status that she held when the leave began.

§ 15a.450 Athletics.

(a) *General.* No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, be treated differently from another person, or otherwise be discriminated against in any interscholastic, intercollegiate, club, or intramural athletics offered by a recipient, and no recipient shall provide any such athletics separately on such basis.

(b) *Separate teams.* Notwithstanding the requirements of paragraph (a) of this section, a recipient may operate or sponsor separate teams for members of each sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport. However, where a recipient operates or sponsors a team in a particular sport for members of one sex but operates or sponsors no such team for members of the other sex, and athletic opportunities for members of that sex have previously been limited, members of the excluded sex must be allowed to try out for the team offered unless the sport involved is a contact sport. For the purposes of this part, contact sports include boxing, wrestling, rugby, ice hockey, football, basketball, and other sports the purpose or major activity of which involves bodily contact.

(c) *Equal opportunity.* (1) A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics shall provide equal athletic opportunity for members of both sexes. In determining whether equal opportunities are available, the designated agency official will consider, among other factors:

(i) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(ii) The provision of equipment and supplies;

(iii) Scheduling of games and practice time;

(iv) Travel and per diem allowance;

(v) Opportunity to receive coaching and academic tutoring;

(vi) Assignment and compensation of coaches and tutors;

(vii) Provision of locker rooms, practice, and competitive facilities;

(viii) Provision of medical and training facilities and services;

(ix) Provision of housing and dining facilities and services;

(x) Publicity.

(2) For purposes of paragraph (c)(1) of this section, unequal aggregate expenditures for members of each sex or unequal expenditures for male and female

teams if a recipient operates or sponsors separate teams will not constitute noncompliance with this section, but the designated agency official may consider the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex.

(d) *Adjustment period.* A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the elementary school level shall comply fully with this section as expeditiously as possible but in no event later than one year from the effective date of these regulations. A recipient that operates or sponsors interscholastic, intercollegiate, club, or intramural athletics at the secondary or postsecondary school level shall comply fully with this section as expeditiously as possible but in no event later than three years from the effective date of these regulations.

§ 15a.455 Textbooks and curricular material.

Nothing in this part shall be interpreted as requiring or prohibiting or abridging in any way the use of particular textbooks or curricular materials.

Subpart E—Discrimination on the Basis of Sex in Employment in Education Programs or Activities Prohibited

§ 15a.500 Employment.

(a) *General.* (1) No person shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment, or recruitment, consideration, or selection therefor, whether full-time or part-time, under any education program or activity operated by a recipient that receives Federal financial assistance.

(2) A recipient shall make all employment decisions in any education program or activity operated by such recipient in a nondiscriminatory manner and shall not limit, segregate, or classify applicants or employees in any way that could adversely affect any applicant's or employee's employment opportunities or status because of sex.

(3) A recipient shall not enter into any contractual or other relationship which directly or indirectly has the effect of subjecting employees or students to discrimination prohibited by §§ 15a.500 through 15a.550, including relationships with employment and referral agencies, with labor unions, and with organizations providing or administering fringe benefits to employees of the recipient.

(4) A recipient shall not grant preferences to applicants for employment on the basis of attendance at any educational institution or entity that admits as students only or predominantly members of one sex, if the giving of such preferences has the effect of discriminating on the basis of sex in violation of this part.

(b) *Application.* The provisions of §§ 15a.500 through 15a.550 apply to:

(1) Recruitment, advertising, and the process of application for employment;

(2) Hiring, upgrading, promotion, consideration for and award of tenure, demotion, transfer, layoff, termination, application of nepotism policies, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation, and changes in compensation;

(4) Job assignments, classifications, and structure, including position descriptions, lines of progression, and seniority lists;

(5) The terms of any collective bargaining agreement;

(6) Granting and return from leaves of absence, leave for pregnancy, childbirth, false pregnancy, termination of pregnancy, leave for persons of either sex to care for children or dependents, or any other leave;

(7) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(8) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, selection for tuition assistance, selection for sabbaticals and leaves of absence to pursue training;

(9) Employer-sponsored activities, including social or recreational programs; and

(10) Any other term, condition, or privilege of employment.

§ 15a.505 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity that has a disproportionately adverse effect on persons on the basis of sex unless:

(a) Use of such test or other criterion is shown to predict validly successful performance in the position in question; and

(b) Alternative tests or criteria for such purpose, which do not have such disproportionately adverse effect, are shown to be unavailable.

§ 15a.510 Recruitment.

(a) *Nondiscriminatory recruitment and hiring.* A recipient shall not discriminate on the basis of sex in the recruitment and hiring of employees. Where a recipient has been found to be presently discriminating on the basis of sex in the recruitment or hiring of employees, or has been found to have so discriminated in the past, the recipient shall recruit members of the sex so discriminated against so as to overcome the effects of such past or present discrimination.

(b) *Recruitment patterns.* A recipient shall not recruit primarily or exclusively at entities that furnish as applicants only or predominantly members of one sex if such actions have the effect of discriminating on the basis of sex in violation of §§ 15a.500 through 15a.550.

§ 15a.515 Compensation.

A recipient shall not make or enforce any policy or practice that, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and that are performed under similar working conditions.

§ 15a.520 Job classification and structure.

A recipient shall not:

(a) Classify a job as being for males or for females;

(b) Maintain or establish separate lines of progression, seniority lists, career ladders, or tenure systems based on sex; or

(c) Maintain or establish separate lines of progression, seniority systems, career ladders, or tenure systems for similar jobs, position descriptions, or job requirements that classify persons on the basis of sex, unless sex is a bona fide occupational qualification for the positions in question as set forth in § 15a.550.

§ 15a.525 Fringe benefits.

(a) *''Fringe benefits'' defined.* For purposes of this part, fringe benefits means: Any medical, hospital, accident, life insurance, or retirement benefit, service, policy or plan, any profit-sharing or bonus plan, leave, and any other benefit or service of employment not subject to the provision of § 15a.515.

(b) *Prohibitions.* A recipient shall not:

(1) Discriminate on the basis of sex with regard to making fringe benefits available to employees or make fringe benefits available to spouses, families, or dependents of employees differently upon the basis of the employee's sex;

(2) Administer, operate, offer, or participate in a fringe benefit plan that does not provide for equal periodic benefits for members of each sex and for equal contributions to the plan by such recipient for members of each sex; or

(3) Administer, operate, offer, or participate in a pension or retirement plan that establishes different optional or compulsory retirement ages based on sex or that otherwise discriminates in benefits on the basis of sex.

§ 15a.530 Marital or parental status.

(a) *General.* A recipient shall not apply any policy or take any employment action:

(1) Concerning the potential marital, parental, or family status of an employee or applicant for employment that treats persons differently on the basis of sex; or

(2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.

(b) *Pregnancy.* A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

(c) *Pregnancy as a temporary disability.* Subject to §15a.235(d), a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, recovery therefrom, and any temporary disability resulting therefrom as any other temporary disability for all job-related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

(d) *Pregnancy leave.* In the case of a recipient that does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status that she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§ 15a.535 Effect of state or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with §§15a.500 through 15a.550 is not obviated or alleviated by the existence of any State or local law or other requirement that imposes prohibitions or limits upon employment of members of one sex that are not imposed upon members of the other sex.

(b) *Benefits.* A recipient that provides any compensation, service, or benefit to members of one sex pursuant to a State or local law or other requirement shall provide the same compensation, service, or benefit to members of the other sex.

§ 15a.540 Advertising.

A recipient shall not in any advertising related to employment indicate preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job in question.

§ 15a.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is ''Miss'' or ''Mrs.''

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by this part.

§ 15a.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§15a.500 through 15a.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Other Provisions

§ 15a.605 Enforcement procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) are hereby adopted and applied to this part. These procedures may be found at 7 CFR 15.5–15.11 and 15.60–15.143.

PART 15b—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Subpart A—General Provisions

Sec.
15b.1 Purpose.
15b.2 Applicability.
15b.3 Definitions.
15b.4 Discrimination prohibited.
15b.5 Assurances required.
15b.6 Designation of responsible employee and adoption of grievance procedures.
15b.7 Notice of nondiscrimination and accessible services.
15b.8 Remedial action, voluntary action, and self-evaluation.
15b.9 Effect of State or local law or other requirements, and effect of employment opportunities.
15b.10 Effect of compliance with regulations of other Federal agencies.

Subpart B—Employment Practices

15b.11 Applicability.
15b.12 Discrimination prohibited.
15b.13 Reasonable accommodation.
15b.14 Employment criteria.
15b.15 Preemployment inquiries.

Subpart C—Accessibility

15b.16 Applicability.
15b.17 Discrimination prohibited.
15b.18 Existing facilities.
15b.19 New construction.

Subpart D—Preschool, Elementary, Secondary, Adult, and Extension Education

15b.20 Applicability
15b.21 Location and notification.
15b.22 Free appropriate public education.
15b.23 Educational setting.
15b.24 Evaluation and placement.
15b.25 Procedural safeguards.
15b.26 Nonacademic services.
15b.27 Extension education.
15b.28 Private education.

Subpart E—Postsecondary Education

15b.29 Applicability.
15b.30 Admissions and recruitment.
15b.31 Treatment of students.
15b.32 Academic adjustments.
15b.33 Housing.
15b.34 Financial and employment assistance to students.
15b.35 Nonacademic services.

Subpart F—Other Aid, Benefits, or Services

15b.36 Applicability.
15b.37 Auxiliary aids.
15b.38 Health care facilities.
15b.39 Education of institutionalized persons.
15b.40 Food services.
15b.41 Multi-family rental housing.

Subpart G—Procedures

15b.42 Procedures.

APPENDIX A TO PART 15b—LIST OF FEDERAL FINANCIAL ASSISTANCE FROM USDA

AUTHORITY: 29 U.S.C. 794.

SOURCE: 47 FR 25470, June 11, 1982, unless otherwise noted.

Subpart A—General Provisions

§ 15b.1 Purpose.

The purpose of this part is to implement section 504 of the Rehabilitation Act of 1973, as amended, to the end that no otherwise qualified handicapped individual in the United States shall solely by reason of his or her handicap be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 15b.2 Applicability.

This part applies to all programs or activities that receive Federal financial assistance extended by the Department of Agriculture after the effective date of this part whether or not the assistance was approved after the effective date. Subparts A, B, and C are of general applicability. Subparts D, E, and F are more specifically tailored. Subpart G is procedural.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990; 68 FR 51342, Aug. 26, 2003]

§ 15b.3 Definitions.

As used in this part, the term or phrase:

(a) *The Act* means the Rehabilitation Act of 1973, Public Law 93–112, 87 Stat. 390 (1973), as amended by the Rehabilitation Act Amendments of 1974, Public Law 93–651, 89 Stat. 2 (1974) and Public Law 93–516, 88 Stat. 1617 (1974) and the Rehabilitation, Comprehensive Services and Developmental Disabilities

Amendments of 1978, Public Law 95–602, 92 Stat. 2955 (1978). The Act appears at 29 U.S.C. 701–794.

(b) *Section 504* means section 504 of the Act, 29 U.S.C. 794.

(c) *Education of the Handicapped Act* means the Education of the Handicapped Act, Public Law 92–230, Title VI, 84 Stat. 175 (1970), as amended by the Education of the Handicapped Amendments of 1974, Public Law 93–380, Title VI, 88 Stat. 576 (1974), the Education for All Handicapped Children Act of 1975, Public Law 94–142, 89 Stat. 773 (1975), and the Education of the Handicapped Amendments of 1977, Public Law 95–49, 91 Stat. 230 (1977). The Education of the Handicapped Act appears at 20 U.S.C. 1401–1461.

(d) *Department* means the Department of Agriculture and includes each of its operating agencies and other organizational units.

(e) *Secretary* means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has delegated or may delegate the authority to act under the regulations of this part.

(f) *Recipient* means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(g) *Federal financial assistance* or *assistance* means any grant, contract (other than a procurement contract or a contract of insurance or guaranty), cooperative agreement, formula allocation, loan, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal Federal property or any interest in Federal property, including:

(i) A sale, transfer, lease or use (on other than a casual or transient basis) of Federal property for less than fair market value, for reduced consideration or in recognition of the public nature of the recipient's program or activity; and

(ii) Proceeds from a subsequent sale, transfer or lease of Federal property if the Federal share of its fair market value is not returned to the Federal Government.

(4) Any other thing of value.

(h) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(i) *Handicapped person* means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(j) *Physical or mental impairment* means (1) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (2) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis, cancer; heart disease; diabetes; mental retardation; emotional illness; and drug addiction and alcoholism.

(k) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(l) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(m) *Is regarded as having an impairment* means (1) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (2) has a

physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairments, or (3) has none of the impairments defined in paragraph (j) of this section but is treated by a recipient as having such an impairment.

(n) *Qualified handicapped person* (used synonymously with *otherwise qualified handicapped individual*) means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question, but the term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others;

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which nonhandicapped persons are provided such services, (ii) of an age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets all academic and technical standards requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(o) *Handicap* means any condition or characteristic that renders a person a handicapped person as defined in paragraph (i) of this section.

(p) For purposes of §15b.18(d), *Historic Preservation Programs* are those that receive Federal financial assistance that has preservation of historic properties as a primary purpose.

(q) For purposes of §15b.18(e), *Historic properties* means those buildings or facilities that are eligible for listing in the National Register of Historic Places, or such properties designated as historic under a statute of the appropriate State or local government body.

(r) For purposes of §15b.18(d), *Substantial impairment* means a significant loss of the integrity of finished materials, design quality or special character which loss results from a permanent alteration.

(s) *Program or activity* means all of the operations of any entity described in paragraphs (s)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities

described in paragraph (s)(1), (2), or (3) of this section.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990; 68 FR 51342, Aug. 26, 2003]

§ 15b.4 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving assistance from this Department.

(b) *Discriminatory actions prohibited.* (1) A recipient, in providing any aid, benefit or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit or services;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit or services that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit or to reach the same level of achievement in the most integrated setting appropriate as that provided to others;

(iv) Provide a different or separate aid, benefit or service to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with an aid, benefit or service that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit or service to beneficiaries of the recipient's program or activity;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any rights, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service.

(2) For purposes of this part, aids, benefits and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different aid, benefits, or services provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons, from denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, an aid, benefit or service provided under a program or activity receiving Federal financial assistance includes any aid, benefit or service provided in or through a facility that has been constructed, expanded, altered, leased or

rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Aid, benefits, or services limited by Federal law.* The exclusion of nonhandicapped persons from aid, benefits, or services limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from aid, benefits, or services limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) *Communications.* Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51342, Aug. 26, 2003]

§ 15b.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance to which this part applies shall submit an assurance, on a form specified by the Secretary, that the program or activity will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient, or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for the purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (c)(1) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51342, Aug. 26, 2003]

§ 15b.6 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of

complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

(c) The Secretary may require any recipient with fewer than fifteen employees to designate a responsible employee and adopt grievance procedures when the Secretary finds a violation of this part or finds that complying with these administrative requirements will not significantly impair the ability of the recipient to provide benefits or services.

§ 15b.7 Notice of nondiscrimination and accessible services.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs or activities. The recipient shall also identify the responsible employee designated pursuant to §15b.6(a), and identify the existence and location of accessible services, activities, and facilities. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include but are not limited to the posting of notices, placement of notices in the recipient's publications, radio announcements, and the use of other visual and aural media.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51342, Aug. 26, 2003]

§ 15b.8 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program or activity but who were participants in the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program or activity had the discrimination not occurred, or (iii) with respect to handicapped persons presently in the program or activity, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part.

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51342, Aug. 26, 2003]

§ 15b.9 Effect of State or local law or other requirements, and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

§ 15b.10 Effect of compliance with regulations of other Federal agencies.

A recipient that has designated a responsible official and established a grievance procedure, provided notice, completed a self-evaluation, or prepared a transition plan in the course of complying with regulations issued by other Federal agencies under section 504 will be in compliance with § 15b.6, § 15b.7, § 15b.8(c), or § 15b.18(f), respectively, if all requirements of those sections have been met in regard to programs or activities assisted by this Department.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51342, Aug. 26, 2003]

Subpart B—Employment Practices

§ 15b.11 Applicability.

This subpart applies to all programs or activities that receive Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990; 68 FR 51342, Aug. 26, 2003]

§ 15b.12 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicapped, be subjected to discrimination in employment under any program or activity receiving assistance from this Department.

(2) A recipient shall make all decisions concerning employment in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractural or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. This includes relationships with employment and referral agencies, with labor unions with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(4) All provisions of this subpart pertaining to employment, apply equally to volunteer service.

(b) *Specific activities.* The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right to return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.13 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include (1) Making facilities used by employees readily accessible to and useable by handicapped persons, and (2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provisions of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's programs or activities, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of recipient's workforce;

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.14 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless: (1) The recipient shows that the test score or other selection criterion, as used by the recipient, is job-related for the position in question, and (2) the Secretary cannot show that alternative job-related tests or criteria are available that do not screen out or tend to screen out as many handicapped persons.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 15b.15 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §15b.8(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to §15b.8(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped: *Provided*, That (1) the recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary affirmative action efforts; and (2) the recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient for conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty: *Provided*, That (1) all entering employees are subjected to such an examination regardless of handicap; and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded the same confidentiality as medical records except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Governement officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Accessibility

§ 15b.16 Applicability.

This subpart applies to all programs or activities that receive Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990; 68 FR 51343, Aug. 26, 2003]

§ 15b.17 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusuable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity receiving assistance from this Department.

§ 15b.18 Existing facilities.

(a) *Accessibility.* A recipient shall operate each assisted program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by qualified handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by qualified handicapped persons.

(b) *Method.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible

buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of exiting facilities and construction of new facilities in conformance with the requirements of §15b.19, or any other method that results in making its program or activity accessible to qualified handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve qualified handicapped persons in the most intergrated setting appropriate.

(c) *Small providers.* If a recipient with fewer than fifteen employees finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than by making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible at no additional cost to handicapped persons.

(d) *Application for modification of requirements.* Recipients that determine after a self-evaluation conducted according to the requirements of §15b.8(c), that accessibility can only be accomplished through substantial modifications which would result in a fundamental alteration in the nature of the program or activity, may apply to the Secretary for a modification of the requirements of this section.

(e) *Historic Preservation Programs; Application for waiver of program accessibility requirements.* (1) A recipient shall operate each assisted program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. This paragraph does not necessarily require a recipient to make each of its existing historic properties or every part of an historic property accessible to and usable by handicapped persons. Methods of achieving accessibility include:

(i) Making physical alterations which enable handicapped persons to have access to otherwise inaccessible areas or features of historic properties;

(ii) Using audio-visual materials and devices to depict otherwise inaccessible areas or features of historic properties;

(iii) Assigning persons to guide handicapped persons into or through otherwise inaccessible portions of historic properties;

(iv) Adopting other innovative methods to achieve accessibility. Because the primary benefit of an Historic Preservation Program is the experience of the historic property itself, in taking steps to achieve accessibility, recipients shall give priority to those means which make the historic property, or portions thereof physicially accessible to handicapped individuals.

(2) Where accessibility cannot be achieved without causing a substantial impairment of significant historic features, the Secretary may grant a waiver of the accessibility requirement. In determining whether accessibility can be achieved without causing a substantial impairment, the Secretary shall consider the following factors:

(i) Scale of property, reflecting its ability to absorb alterations;

(ii) Use of the property, whether primarily for public or private purpose;

(iii) Importance of the historic features of the property to the conduct of the program or activity; and,

(iv) Cost of alterations in comparison to the increase in accessibility.

The Secretary shall periodically review any waiver granted under this section and may withdraw it if technological advances or other changes so warrant.

(3) Where the property is federally owned or where Federal funds may be used for alterations, the comments of the Advisory Council on Historic Preservation shall be obtained when required by section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), and 36 CFR part 800, prior to effectuation of structural alterations.

(f) *Time period.* A recipient shall comply with the requirements of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall

be made within three years of the effective date of this part and as expeditiously as possible.

(g) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within one year of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full accessibility under paragraph (a) of this section and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Identify the person responsible for implementation of the plan.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51342, 51343, Aug. 26, 2003]

§ 15b.19 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction is commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *Conformance with Uniform Federal Accessibility Standards.* (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards (USAF) (appendix A to 41 CFR subpart 101–19.6) shall be deemed to comply with the requirements of this section with respect to those buildings. Departures from particular technical and scoping requirements of UFAS by the use of other methods are permitted where substantially equivalent or greater access to and usability of the building is provided.

(2) For purposes of this section, section 4.1.6(1)(g) of UFAS shall be interpreted to exempt from the requirements of UFAS only mechanical rooms and other spaces that, because of their intended use, will not require accessibility to the public or beneficiaries or result in the employment or residence therein of persons with physical handicaps.

(3) This section does not require recipients to make building alterations that have little likelihood of being accomplished without removing or altering a load-bearing structural member.

(d) *Compliance with the Architectural Barriers Act of 1968.* Nothing in this section of §15b.18 relieves recipients, whose facilities are covered by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) from their responsibility of complying with the requirements of that Act and any implementing regulations.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52138, 52139, Dec. 19, 1990]

Subpart D—Preschool, Elementary, Secondary, Adult, and Extension Education

§ 15b.20 Applicability.

Except as otherwise noted, this subpart applies to public and private schools, elementary, secondary, adult, and extension education programs or activities that receive Federal financial assistance provided by the Department of Agriculture after the effective date of this part and to recipients that

operate, or that receive Federal financial assistance for the operation of, such programs or activities.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990; 68 FR 51343, Aug. 26, 2003]

§ 15b.21 Location and notification.

A recipient that operates a public elementary or secondary education program or activity shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.22 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 15b.23, 15b.24, and ;15b.25.

(2) Implementation of an Individualized Education Program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person or refer such person for aid, benefits, or services other than those that it operates or provides as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to handicapped persons or their parents or guardians, except for those fees that are imposed on nonhandicapped persons or their parents or guardians. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, payment for the costs of the aid, benefits, or services. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places a handicapped person or refers such person for aid, benefits, or services not operated or provided by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from aid, benefits, or services is provided at no greater cost than would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) *Residential placement.* If a public or private residential placement is necessary to provide a free appropriate public education to a handicapped person because of their handicap, the placement, including nonmedical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) *Placement of handicapped persons by parents.* If a recipient has made available in conformance with the requirements of this section and § 15b.23, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school.

Disagreements between a parent or guardian and a recipient regarding whether the recipient has made a free appropriate education available or otherwise regarding the question of financial responsibility are subject to the due process procedures of §15b.25.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this regulation. A recipient that is not, on the effective date of this regulation, in full compliance with the other requirements of the preceding paragraphs of this section shall meet such requirements at the earliest practicable time but in no event later than September 1, 1982.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§15b.23 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic setting.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in §15b.26(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§15b.24 Evaluation and placement.

(a) *Placement evaluation.* A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this section applies shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and

achievement tests, teacher recommendations, physical conditions, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 15b.23.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.25 Procedural safeguards.

A recipient that provides a public elementary or secondary education shall establish and implement, with respect to action regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.26 Nonacademic services.

(a) *General.* (1) Recipients to which this subpart applies shall provide nonacademic and extracurricular services and activities in such a manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical education and athletics, food services, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and assistance in obtaining outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, and services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation.

(2) A recipient may offer handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with requirements of § 15b.23, and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(d) *Food services.* In providing food services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. (1) Recipients shall serve special meals, at no extra charge, to students whose handicap restricts their diet. Recipients may require students to provide medical certification that special meals are needed because of their handicap.

(2) Where existing food service facilities are not completely accessible and usable, recipients may provide aides or use other equally effective methods to serve food to handicapped persons. Recipients shall provide all food services in the most intergrated setting appropriate to the needs of handicapped persons as required by §15b.23(b).

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§15b.27 Extension education.

(a) *General.* A recipient to which this subpart applies that provides extension education may not, on the basis of handicap, exclude qualified handicapped persons. A recipient shall take into account the needs of such persons in determining the benefits or services to be provided.

(b) *Delivery sites.* (1) Where existing extension office facilities are inaccessible, recipients may make aid, benefits, or services normally provided at those sites available to qualified handicapped persons through other methods which are equally effective. These methods may include meetings in accessible locations, home visits, written or telephonic communications, and other equally effective alternatives.

(2) For aid, benefits, or services delivered at other publicly-owned facilities, recipients shall select accessible facilities wherever possible. If accessible facilities cannot be selected because they are unavailable or infeasible due to the nature of the activity, recipients shall use other methods to deliver aid, benefits, or services to qualified handicapped persons. These methods may include the redesign of activities or some sessions of activities, the provision of aides, home visits, or other equally effective alternatives.

(3) For aid, benefits, or services delivered at privately-owned facilities, such as homes and farm buildings, recipients shall use accessible facilities whenever qualified handicapped persons requiring such accessibility are participating, have expressed an interest in participating, or are likely to participate. If accessible facilities cannot be selected because they are unavailable or infeasible due to the nature of the activity, recipients shall use other methods to deliver aid, benefits, or services to qualified handicapped persons. These methods may include the redesign of activities or some sessions of activities, the provision of aides, home visits, or other equally effective alternatives.

(4) Recipients shall make camping activities accessible to qualified handicapped persons. Recipients are not required to make every existing camp, all existing camp facilities, or all camp sessions accessible, but recipients who operate more than one camp or session may not limit qualified handicapped persons to one camp or session.

(c) *Materials.* Recipients shall make materials accessible to qualified handicapped persons with sensory or mental impairments. Commonly-used materials shall be readily available in alternate forms such as Braille or tape. Upon request, recipients shall make other materials available through appropriate means such as Braille, tape, readers, large print formats, simplified versions, written scripts, or interpreters. Recipients need not provide individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51342, 51343, Aug. 26, 2003]

§15b.28 Private education.

(a) A recipient that provides private elementary or secondary education may not, on the basis of handicap, exclude a qualified handicapped person if the person can, with minor adjustments, be provided an appropriate education, as defined by §15b.22(b)(1)(i). Each recipient to which this section applies is also subject to the provisions of §§15b.23 and 15b.26.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

Subpart E—Postsecondary Education

§ 15b.29 Applicability.

Subpart E applies to public and private postsecondary education programs or activities, including postsecondary vocational education programs and activities, that receive Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990; 68 FR 51343, Aug. 26, 2003]

§ 15b.30 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may take inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to §15b.8(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to §15b.8(b), the recipient may invite applicants for admissions to indicate whether and to what extent they are handicapped: *Provided,* That (1) the recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and (2) the recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 15b.31 Treatment of students.

(a) *General.* No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any

academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, other postsecondary education aid, benefits, or services to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs or activities in the most integrated setting appropriate.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.32 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represent the students' achievements in the course, rather than reflecting the students' impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.33 Housing.

(a) *Housing provided by the recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in subpart C, such housing shall be available in sufficient quantity and variety

so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 15b.34 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient to which this subpart applies may not, (i) on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates subpart B.

§ 15b.35 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar aid, benefits, or services to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of §15b.31(d) and only of no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandcapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

Subpart F—Other Aid, Benefits, or Services

§ 15b.36 Applicability.

Subpart F applies to aid, benefits, or services, other than those covered by subparts D and E, that receive Federal financial assistance provided by the Department of Agriculture after the effective date of this part.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990; 68 FR 51343, Aug. 26, 2003]

§ 15b.37 Auxiliary aids.

(a) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(b) The Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(c) For the purpose of this section, auxiliary aids may include Brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 15b.38 Health care facilities.

(a) *Communications.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(b) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(c) *Drug and alcohol addicts.* A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

§ 15b.39 Education of institutionalized persons.

A recipient to which this subpart applies that operates or supervises a program or activity that provides aid, benefits, or services for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in §15b.3(n)(2), in its program or activity is provided an appropriate education, as defined in §15b.22(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under subpart D.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.40 Food services.

(a) Recipients which provide food services shall serve special meals, at no extra charge, to persons whose handicap restricts their diet. Recipients may require handicapped persons to provide medical certification that special meals are needed because of their handicap.

(b) Where existing food service facilities are not completely accessible and usable, recipients may provide aides or use other equally effective methods to serve food to handicapped persons. Recipients shall provide all food services in the most integrated setting appropriate to the needs of handicapped persons.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

§ 15b.41 Multi-family rental housing.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in multi-family rental housing.

(b) *New construction.* (1) Recipients receiving assistance from the Department for multi-family rental housing projects constructed after the effective date of this part shall construct at least five percent of the units in the

project or one unit, whichever is greater, to be accessible to or adaptable for physically handicapped persons. The requirement that five percent of the units in the project or at least one unit, whichever is greater, be accessible or adaptable may be modified if a recipient shows, through a market survey approved by the Department, that a different percentage of accessible or adaptable units is appropriate for a particular project and its service area.

(i) The variety of units accessible to or adaptable for physically handicapped persons shall be comparable to the variety of units available in the project as a whole.

(ii) No extra charge may be made for use of accessible or adaptable units.

(iii) A recipient that operates multifamily rental housing projects on more than one site may not locate all accessible or adaptable units at one site unless only one accessible or adaptable unit is required.

(2) Standards for accessibility are contained in subpart C and in appropriate regulations.

(c) *Existing facilities.* Recipients receiving assistance from the Department for multi-family rental housing projects constructed prior to the effective date of this part shall assure that their facilities comply with the accessibility requirements established in §15b.18 if a qualified handicapped person applies for admission. Necessary physical alterations made pursuant to such requirements shall be completed within a reasonable amount of time after the unit becomes available for occupancy by the qualified handicapped person. Subject to the availability of funds and fulfillment by the recipient of all program eligibility requirements, the Department may assist recipients to comply with accessibility requirements through methods such as (1) consideration of subsequent loan applications for purposes of making existing facilities accessible or for the construction of additional units which are accessible and (2) consideration of approval to commit project reserve account funds for minor modifications in order to make existing facilities accessible.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51343, Aug. 26, 2003]

Subpart G—Procedures

§15b.42 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 7 CFR 15.5–15.11 and 15.60–15.143.

APPENDIX A TO PART 15b—LIST OF FEDERAL FINANCIAL ASSISTANCE FROM USDA

The types of Federal financial assistance administered by the U.S. Department of Agriculture include but are not limited to the following:

Type of Federal Financial Assistance	Authority
Administered by the Agricultural Cooperative Service	
1. Technical assistance for agricultural cooperatives.	Cooperative Marketing Act of 1926, 7 U.S.C., Secs. 451–457.
Administered by the Agricultural Marketing Service	
2. Federal-State marketing improvement program.	Sec. 204(b) of the Agricultural Marketing Act of 1946, 7 U.S.C. 1623(b).
3. Market news service	Sec. 203(g) of the Agricultural Marketing Act of 1946, 7 U.S.C. 1622(g); the Cotton Statistics and Estimates Act, as amended, 7 U.S.C. 471–476; the Tobacco Statistics Act, as amended, 7 U.S.C. 501–508; the Tobacco Inspection Act, 7 U.S.C. 511–511(q); the Naval Stores Act, 7 U.S.C. 91–99; the Turpentine and Rosin Statistics Act, 7 U.S.C. 2248; the United States Cotton Futures Act, 7 U.S.C. 15b; and the Peanut Statistics Act as amended, 7 U.S.C. 951–957.

Type of Federal Financial Assistance	Authority
Administered by the Agricultural Research Service	
4. Agriculture research grants	Secs. 1 and 10 of the Act of June 29, 1935, as amended, 7 U.S.C. 427 and 427i; and 202–208 of the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1621–1627.
Administered by the Agricultural Stabilization Conservation Service	
5. Price support programs operating through producer associations, cooperatives, and other recipients in which the recipient is required to furnish specified benefits to producers (e.g., tobacco, peanuts, sugar, cotton, rice, honey and soybeans price support programs).	Agricultural Act of 1949, as amended; 7 U.S.C. 1421–1447.
6. Disaster feed donation programs	Section 407 of the Agricultural Act of 1949, as amended, 7 U.S.C. 1427.
Administered by the Cooperative State Research Service	
7. Payments under the Hatch Act	Hatch Act of 1887, as amended, 7 U.S.C. 361a–361i.
8. McIntire-Stennis cooperative forestry research.	Act of October 10, 1962, as amended, 16 U.S.C. 582a–582a–7.
9. Payments to 1890 colleges and Tuskegee Institute for research.	Sec. 1445 of the Food and Agriculture Act of 1977, as amended, 7 U.S.C. 3222.
10. Native latex research	Native Latex Commercialization and Economic Development Act of 1978, 7 U.S.C. 178 *et seq.*
11. Alcohol Fuels research	Sec. 1419 of the Food and Agriculture Act of 1977, as amended, 7 U.S.C. 3154.
12. Animal Health Research	Sec. 1433 of the Food and Agriculture Act of 1977, as amended, 7 U.S.C. 3195.
13. Competitive research grants	Sec. 2(b) of the Act of August 4, 1965, as amended, 7 U.S.C. 450i(b).
14. Experiment station research facilities	Act of July 22, 1963, as amended, 7 U.S.C. 390–390j.
15. Special research grants	Sec. 2(c) of the Act of August 4, 1965, as amended, 7 U.S.C. 450i(c).
16. Rural development research	Title V of the Rural Development Act of 1972, as amended, 7 U.S.C. 2661 *et. seq.*
Administered by Extension Service	
17. Cooperative extension work	Smith-Lever Act, as amended, 7 U.S.C. 341–349; District of Columbia Public Postsecondary Education Reorganization Act, D.C. Code Secs. 31–1719; Rural Development Act of 1972, as amended, 7 U.S.C. 2661 *et. seq.;* Sec. 1444 of the Food and Agriculture Act of 1977, 7 U.S.C. 3221.
Administered by Farmers Home Administration	
18. Farm ownership loans to install or improve recreational facilities or other nonfarm enterprises.	Sec. 303 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1923.
19. Operating loans to install or improve recreational facilities or other nonfarm enterprises.	Sec. 312 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1942.
20. Soil and water conservation, (including pollution abatement facilities), and recreational facilities.	Sec. 304 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924.
21. Financial and other assistance to landowners, operators, or occupiers to carry out land uses and conservation.	Sec. 203 of the Appalachian Regional Development Act of 1965, as amended, 40 U.S.C. App. 203.
22. Rural renewal, resource, conservation development, land conservation and utilization.	Secs. 31–35 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1010–1035.
23. Watershed protection and flood prevention program.	Watershed Protection and Flood Prevention Act, as amended, 16 U.S.C. 1001–1008.
24. Resource conservation and development loans.	Sec. 32(e) of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011(e).
25. Farm labor housing loans	Sec. 514 of the Housing Act of 1949, 42 U.S.C. 1484.
26. Farm labor housing grants	Sec. 516 of the Housing Act of 1949, as amended, 42 U.S.C. 1486.
27. Rural rental housing for the elderly and families of low and moderate income persons.	Sec. 515 of the Housing Act of 1949, as amended, 42 U.S.C. 1485.
28. Rural cooperative housing	Sec. 515 of the Housing Act of 1949, as amended, 42 U.S.C. 1485.
29. Rural housing site loans	Sec. 524 of the Housing Act of 1949, as amended, 42 U.S.C. 1490d.
30. Technical and supervisory assistance grants.	Sec. 525 of the Housing Act of 1949, as amended, 42 U.S.C. 1490e.
31. Technical assistance grants	Sec. 523 of the Housing Act of 1949, as amended, 42 U.S.C. 1490c.
32. Rural housing self-help site loans	Sec. 523 of the Housing Act of 1949, as amended, 42 U.S.C. 1490c.
33. Mutual self-help housing	Sec. 523 of the Housing Act of 1949, as amended, 42 U.S.C. 1490c.

Type of Federal Financial Assistance	Authority
34. Water and waste facility loans and grants and community facility loans and grants.	Sec. 306 of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1926.
35. Rural and industrial loan program	Sec. 310(a) of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1932(a).
36. Private business enterprise grants	Sec. 310(c) of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1932(c).
37. Area development assistance planning grant program.	Sec. 306(a)(11) of the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1926(a)(11).
38. Energy impacted area development assistance program.	Sec. 601 of the Power Plant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8401.
Administered by the Federal Grain Inspection Service	
39. Inspection administration and supervision	U.S. Grain Standards Act, as amended, 7 U.S.C. 71–87; and, Sec. 203(h) of the Agricultural Marketing Act of 1946, 7 U.S.C. 1621–1630.
Administered by the Food and Nutrition Service	
40. Food stamp program	Food Stamp Act of 1964, as amended, 7 U.S.C. 2011–2027.
41. Special supplemental food program for women, infants, and children (WIC).	Sec. 17 of the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1786.
42. Commodity supplemental food program	Sec. 32 of the Act of August 24, 1935, as amended, 7 U.S.C. 612c; Sec. 416 of the Agricultural Act of 1949, as amended, 7 U.S.C. 1431.
43. Food distribution program	Sec. 416 of the Agricultural Act of 1949, as amended, 7 U.S.C. 1431; Sec. 32 of the Act of August 24, 1935, as amended, 7 U.S.C. 612c; Secs. 6, 13 and 17 of the National School Lunch Act, as amended, 42 U.S.C. 1755, 1761, 1766; Sec. 8 of the Child Nutrition Act of 1966, 42 U.S.C. 1777; Sec. 709 of the Food and Agriculture Act of 1965, as amended, 7 U.S.C. 1446a–1.
44. National school lunch program	National School Lunch Act, as amended, 42 U.S.C. 1751–1769a.
45. School breakfast program	Sec. 4 of the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1773.
46. Special milk program	Sec. 3 of the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1772.
47. Food service equipment assistance	Sec. 5 of the Child Nutrition Act of 1966, as amended, 42 U.S.C. 1774; Sec. 5 of the National School Lunch Act, as amended, 42 U.S.C. 1754.
48. Summer food service program	Sec. 13 of the National School Lunch Act, as amended, 42 U.S.C. 1761.
49. Child care food program	Sec. 17 of the National School Lunch Act, as amended, 42 U.S.C. 1766.
50. Nutrition education and training program	Secs. 18 and 19 of the Child Nutrition Act of 1966, 42 U.S.C. 1787, 1788.
Administered by the Food Safety and Inspection Service	
51. Payments to States for the inspection of egg handlers to insure that they are properly disposing of restricted eggs.	Egg Products Inspection Act, 21 U.S.C. 1031–1056.
52. Financial and technical assistance to States for meat inspection activities.	Federal Meat Inspection Act, as amended, 21 U.S.C. 601–695.
53. Financial and technical assistance to States for poultry inspection activities.	Poultry Products Inspection Act, as amended, 21 U.S.C. 451–470.
54. Financial and technical assistance to States for meat and poultry inspection activities.	Talmadge-Aiken Act, 7 U.S.C. 450.
Administered by the Forest Service	
55. Permits for use of National Forests and National Grasslands by other than individuals at a nominal or no charge.	Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 501 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1761; Term Permit Act of March 4, 1915; as amended, 16 U.S.C. 497; Secs. 3 and 4 of the American Antiquities Act of June 8, 1906, 16 U.S.C. 432; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.
56. Permit for land use of Government-owned improvements by other than individuals at a nominal charge.	Sec. 7 of the Granger-Thye Act of April 24, 1950, 16 U.S.C. 580d.
57. Permits for disposal of common varieties of mineral materials from lands under the Forest Service jurisdiction for use by other than individuals at a nominal or no charge.	Secs. 1–4 of the Act of July 31, 1947, as amended, 30 U.S.C. 601–603, 611.
58. Easements for use of National Forests and Grasslands by other than individuals at a nominal or no charge.	Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011; Sec. 501 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761.
59. Easements for road rights-of-way over lands administered by the Forest Service.	Sec. 2 of the Act of October 13, 1964, 16 U.S.C. 533.
60. Road rights-of-way	Federal Highway Act of 1958, 23 U.S.C. 107, 317.
61. Rights-of-ways for wagon roads or railroads	Sec. 501 of the Act of March 3, 1899, 16 U.S.C. 525.
62. Timber granted free or at nominal cost to any group.	Sec. 1 of the Act of June 4, 1897, as amended, 16 U.S.C. 551; Sec. 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1011.

Type of Federal Financial Assistance	Authority
63. Transfer for fire-lookout towers, improvements and land to States political subdivisions.	Sec. 5 of the Act of June 20, 1958, 16 U.S.C. 565b.
64. Payment of 25 percent of National Forest receipts to States for schools and roads.	Act of May 23, 1908, as amended, 16 U.S.C. 500.
65. Payment to Minnesota from National Forest receipts of a sum based on a formula.	Sec. 5 of the Act of June 22, 1948, as amended, 16 U.S.C. 577g, 577g–1.
66. Payment of 25 percent of net revenues from Title III, Bankhead-Jones Farm Tenant Act lands to counties for schools and road purposes.	Sec. 33 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1012.
67. Cooperative action to protect, develop, manage, and utilize forest resources on State and private lands.	Cooperative Forestry Assistance Act of 1978, 16 U.S.C. 2101–2111.
68. Advance of funds for cooperative research	Sec. 20 of the Granger-Thye Act of April 24, 1950, 16 U.S.C. 581i–1.
69. Grants for support of scientific research	Act of September 6, 1958, 42 U.S.C. 1891–1893.
70. Research cooperation	Forest and Rangeland Renewable Resources Research Planning Act of 1974, as amended, 16 U.S.C. 1600–1614.
71. Youth conservation corps State grant program.	Act of August 13, 1970, as amended, 16 U.S.C. 1701–1706.
72. Young adult conservation corps State grant program.	Secs. 801–809 of the Comprehensive Employment and Training Act, as amended, 29 U.S.C. 991–999.
73. Grants to Maine, Vermont, and New Hampshire for the purpose of assisting economically disadvantaged citizens over 55 years of age.	Older Americans Act of 1965, as amended, 42 U.S.C. 3001–3057g.
74. Senior community service employment program (SCSEP).	Sec. 902(b)(2) of Title IX of the Older Americans Amendments of 1975, 42 U.S.C.
Administered by the Rural Electrification Administration	
75. Rural electrification and rural telephone programs.	Rural Electrification Act of 1963, as amended, 7 U.S.C. 901–950b.
76. CATV, community facilities program	Secs. 306 and 310B of the Consolidated Farm and Rural Development Act of 1979, 7 U.S.C. 1926, 1932.
Administered by Science and Education Program Staff	
77. Higher education	Sec. 22 of the Act of June 29, 1935, as amended, 7 U.S.C. 329; Sec. 1417 of the Food and Agriculture Act of 1977, 7 U.S.C. 3152.
Administered by the Soil Conservation Service	
78. Soil and water conservation	Secs. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a–590f, 590q.
79. Plant materials for conservation	Secs. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a–590f, 590q.
80. Resource, conservation and development ..	Secs. 31 and 32 of the Bankhead-Jones Farm Tenant Act, as amended, 7 U.S.C. 1010, 1111; Secs. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a–590f, 590q.
81. Watershed protection and flood prevention	Watershed Protection and Flood Prevention Act, as amended, 16 U.S.C. 1001–1008.
82. Great plains conservation	Secs. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a–590f, 590q.
83. Soil survey	Secs. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a–590f, 590q.
84. River basin surveys and investigations	Sec. 6 of the Watershed Protection and Flood Prevention Act, 16 U.S.C. 1006.
85. Snow survey and water supply forecasting	Secs. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a–590f, 590q.
86. Land inventory and monitoring	Secs. 1–6 and 17 of the Soil Conservation and Domestic Allotment Act, as amended, 16 U.S.C. 590a–590f, 590q; Sec. 302 of the Rural Development Act of 1972, 7 U.S.C. 1010a.
87. Resource appraisal and program development.	Soil and Water Resources Conservation Act of 1977, 16 U.S.C. 2001–2009.
88. Rural clean water program	Clean Water Act, 33 U.S.C. 1251–1376.
89. Rural abandoned mine program	Secs. 406–413 of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1236–1243.
90. Emergency watershed protection	Sec. 7 of the Act of June 28, 1938, as amended, 33 U.S.C. 701b–1; Sec. 403, Agriculture Credit Act of 1978, 16 U.S.C. 2203.
91. Eleven authorized watershed projects	Sec. 13 of the Act of December 22, 1944, 58 Stat. 905.

Type of Federal Financial Assistance	Authority
Administered by the Office of Transportation	
92. Transportation services	Sec. 201 of the Agricultural Adjustment Act of 1938, 7 U.S.C. 1291; Sec. 203(j) of the Agricultural Marketing Act of 1946, as amended, 7 U.S.C. 1622(l); Sec. 104 of the Agricultural Trade Development and Assistance Act of 1954, as amended, 7 U.S.C. 1704.

[47 FR 25470, June 11, 1982, as amended at 68 FR 51342, Aug. 26, 2003]

PART 15c—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.

15c.1 Purpose.
15c.2 Definitions.
15c.3 Discrimination prohibited.
15c.4 Assurance and notice requirements.
15c.5 Information requirements.
15c.6 Compliance.
15c.7 Complaints.
15c.8 Prohibition against intimidation and retaliation.
15c.9 Enforcement.
15c.10 Exhaustion of administrative remedies.

APPENDIX A TO 7 CFR PART 15C—AGE DISTINCTIONS IN FEDERAL STATUTES OR REGULATIONS AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 6101 *et seq*.

SOURCE: 79 FR 73192, Dec. 10, 2014, unless otherwise noted.

§ 15c.1 Purpose.

The purpose of this part is to establish the nondiscrimination policy of the USDA on the basis of age in programs and activities funded in whole or in part by USDA, in compliance with the Age Discrimination Act of 1975, as amended (Age Act), and the requirements set by the HHS in its Government-wide regulation at 45 CFR part 90.

§ 15c.2 Definitions.

Action means any act, activity, policy, rule, standard, or method of administration or use of any policy, rule, standard or method of administration.

Age Act means The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq*.

Age means the number of elapsed years from the date of a person's birth.

Age distinction means any action using age or an age-related term.

Age-related term means a word or words that necessarily imply a particular age or range of ages (*e.g*. ''children,'' ''adult,'' or ''older person'').

Agency means a major organizational unit of USDA with delegated authorities to deliver programs, activities, benefits, and services.

Agency Head means the head of any agency within USDA which may hold the title Administrator, Chief, or Director depending on the agency.

Assistant Secretary for Civil Rights (ASCR) means the civil rights officer for USDA responsible for the performance and oversight of all civil rights functions within USDA, and who retains the authority to delegate civil rights functions to heads of USDA agencies and offices. The ASCR is also responsible for evaluating agency heads on their performance of civil rights functions.

Beneficiary means a person or group of persons with an entitlement to receive or enjoy the benefits, services, resources, and information from, or to participate in, the activities and programs funded in whole or in part by USDA.

Complainant means any person or group of persons who files with any USDA agency a complaint that alleges discrimination in a program or activity funded in whole or in part by USDA.

Complaint means a written statement that contains the complainant's name and address and describes the alleged discriminatory action in sufficient detail to inform the Office of the Assistant Secretary for Civil Rights (OASCR) of the nature and date of the alleged

civil rights violation. The statement must be signed by the complainant(s) or someone authorized to sign on behalf of the complainant(s). The complaint need not be written or signed if submitted in an alternate format to accommodate the complaint filing needs of a person who has Limited English Proficiency, a disability, or other special need. The complaint must be based on one or more prohibited bases.

Compliance Review means a systematically planned and regularly initiated investigation that assesses and evaluates the civil rights and equal opportunity policies, procedures and practices of a USDA agency or instrumentality to determine compliance with civil rights statutes, regulations, standards, and policies.

Department (used interchangeably with USDA) means the Department of Agriculture, and includes each of its operating agencies and other organizational units.

Discrimination means unlawful treatment or denial of benefits, services, terms, conditions, rights, or privileges to a person or persons based on a protected basis, including age.

(1) *Federal Financial Assistance* includes:

(i) Grants and loans of Federal funds;

(ii) The grant or donation of Federal property and interests in property;

(iii) The detail of Federal personnel;

(iv) The sale and lease of, and the permission to use (on other than a casual or transient basis), Federal property, or any interest in such property, or the furnishing of services without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale, lease or furnishing of services to the recipient; and

(v) Any Federal agreement, arrangement, or other contract which has as one of its purposes the provision of assistance.

(2) Federal financial assistance does not include procurement contracts at market value, contracts of guarantee or insurance, regulated programs, licenses, or programs that provide direct benefits. The complaint must be based on one or more prohibited bases.

HHS means The United States Department of Health and Human Services.

Normal Operation means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

Program or activity includes all of the operations of:

(1) *State and local governments.* (i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes Federal financial assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government.

(2) *Educational institutions.* (i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system.

(3) *Private organizations.* (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation.

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship.

(4) *Other organizations receiving Federal financial assistance.* Any other entity which is established by two or more of the entities described in paragraph (r)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

Recipient means any State, political subdivision of any State, or instrumentality of any State or political subdivision (to include the District of Columbia and any United States territories

and possessions), any public or private entity, institution, organization or any of their instrumentalities, or any individual (provided the individual is not the ultimate beneficiary) in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, including any successor, assignee, or transferee thereof.

Statutory Objective means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected general purpose legislative body.

§ 15c.3 Discrimination prohibited.

(a) *General.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Specific discriminatory actions prohibited.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance, or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) *Specific forms of age discrimination.* The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

(d) *Exceptions to the rules against age discrimination.* (1) A recipient is permitted to take an action, otherwise prohibited by this section, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(i) Age is used as a measure or approximation of one or more other characteristics;

(ii) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity;

(iii) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(iv) The other characteristic(s) are impractical to measure directly on an individual basis.

(2) A recipient is permitted to take an action otherwise prohibited by this section that is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

(3) If a recipient operating a program or activity provides special benefits to the elderly or to children, such use of age distinctions shall be presumed to be necessary to the normal operation of the program or activity, notwithstanding the provisions of this subpart.

(4) Any age distinctions contained in a rule or regulation issued by USDA shall be presumed to be necessary to the achievement of a statutory objective of the program or activity to which the rule or regulation applies, notwithstanding the provisions of this part.

§ 15c.4 Compliance, assurance, and notice requirements.

(a) USDA recipients have primary responsibility to ensure that their programs and activities are in compliance with the Age Act and this regulation and shall take steps to eliminate violations of the Age Act. Each recipient of Federal financial assistance from USDA shall sign a written assurance as specified by the Department that it shall comply with the Age Act and this regulation. Each recipient initially receiving funds from USDA that makes

the funds available to a sub-recipient must notify the sub-recipient of its obligations under the Age Act.

(b) Each recipient shall make necessary information about the Age Act and this regulation available to its beneficiaries in order to inform them about the protections against discrimination provided by the Act and this regulation.

§ 15c.5 Information requirements.

Each recipient shall maintain records in a form and containing information which the agency determines may be necessary to ascertain whether the recipient is complying with the Age Act and this regulation. Each recipient shall provide the agency any information necessary to determine whether the recipient is in compliance with the Age Act and this rule. Each recipient shall also permit reasonable access to the agency of the books, records, accounts, and other facilities and sources of information to the extent necessary to determine whether a recipient is in compliance with the Age Act and this regulation.

§ 15c.6 Compliance reviews.

(a) USDA may conduct compliance reviews or use other similar procedures to review the activities of recipients to determine whether they are complying with the Age Act and this regulation and to investigate and address violations of the Age Act. USDA may conduct these reviews, at any time, even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation of the Age Act or this regulation has occurred.

(b) If a compliance review indicates a violation of the Age Act or this regulation, USDA shall attempt to achieve voluntary compliance with the Age Act. USDA shall monitor and evaluate a recipient's efforts to remedy a violation to ensure compliance consistent with applicable civil rights requirements until compliance has been achieved. If voluntary compliance cannot be achieved, USDA shall undertake enforcement of the Age Act and this regulation.

§ 15c.7 Complaints.

(a) *Filing of complaints.* Any person who believes he/she or any specific class of individuals has been subject to discrimination by a recipient or believes that the recipient is otherwise in noncompliance with the provisions of the Age Act or this regulation may file a complaint with OASCR. The USDA Program Discrimination Complaint Form may be used to file a complaint.

(b) *Time and place of filing.* All age discrimination complaints alleging discrimination or noncompliance must be filed within 180 days of the last discriminatory act, to be timely. All complaints under this part shall be filed with the Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture, Washington, DC 20250.

(c) *Notice of rights and responsibilities.* USDA shall provide notice to the complainant and the recipient of their:

(1) Rights and obligations under complaint procedures including their right to have a representative at all stages of the complaint process;

(2) Rights to contact the agency for information and assistance regarding the complaint resolution process; and

(3) Obligation to participate actively in efforts toward speedy resolution of the complaint.

(d) *Mediation of complaints.* All complaints that allege discrimination based on age shall be mediated in an attempt to resolve disputes at the earliest stage possible. The complainant and the recipient are required to participate in the mediation process. If the complainant and recipient reach a mutually satisfactory resolution of the complaint during the mediation period, they shall reduce the agreement to writing.

(e) *Investigation of complaints.* If the parties are unable to reach a resolution, USDA shall investigate the complaint. During the investigation of the complaint, OASCR or an agency delegated complaint processing authority shall use informal fact finding methods, including joint or separate discussions with the complainant and recipient, to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. USDA may seek the assistance of

any involved State agency. If informal resolution efforts are unsuccessful, OASCR shall complete the investigation.

(f) *Final determination.* After a complete investigation, OASCR shall make a final determination as to the merits of the complaint. The complainant shall be notified of the final determination and provided notice of his or her right to file a civil action under the Age Act, 42 U.S.C. 6104(e), and 15c.10 of this part.

(g) *Voluntary compliance.* If OASCR or an agency delegated complaint processing authority finds that age discrimination has occurred, USDA shall attempt to obtain voluntary compliance. The recipient shall take any remedial action which USDA may require to overcome the effects of discrimination. If USDA cannot obtain voluntary compliance, it shall undertake enforcement of the Age Act and this regulation.

§ 15c.8 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Age Act; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the agency's investigation, conciliation, and enforcement process.

§ 15c.9 Enforcement.

(a) If USDA finds that a recipient has committed a violation of the Age Act and determines that voluntary compliance cannot be obtained, the Department shall enforce the requirements of the Age Act and this regulation through the termination of a recipient's Federal financial assistance under the program or activity involved where the recipient has violated the Age Act or this regulation. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge.

(1) Any termination under this paragraph (a) shall be limited to the particular recipient and particular program or activity receiving Federal financial assistance or portion thereof found to be in violation of the Age Act or this regulation.

(2) No action under this paragraph (a) may be taken until:

(i) OASCR, or designee, has advised the recipient of its failure to comply with the Age Act and this regulation, and has determined that voluntary compliance cannot be obtained; and

(ii) Thirty days have elapsed after the head of the agency involved has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the program or activity involved.

(3) An agency may defer granting new Federal financial assistance to a recipient when termination proceedings under this paragraph (a) are initiated.

(b) When an agency withholds funds from a recipient under this regulation, the Agency Head may disburse the withheld funds directly to any public or non-profit private organization or agency, or State or political subdivision of the State. These alternate recipients must demonstrate the ability to comply with this regulation and to achieve the goals of the Federal statute authorizing the Federal financial assistance.

(c) USDA may seek to achieve compliance with the Age Act and this regulation by any other means authorized by law.

§ 15c.10 Exhaustion of administrative remedies.

(a) A complainant may file a civil action, in a United States district court for the district in which the recipient is found or transacts business, following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the agency has made no finding with regard to the complaint; or

(2) The agency issues any finding in favor of the recipient.

(b) Before commencing the action, the complainant shall give 30 days' notice by registered mail to the Secretary of HHS, the Attorney General of the United States, the head of the

granting USDA agency, and the recipient stating the alleged violation of the Age Act, the relief requested, the court in which the action will be brought, and whether or not attorney's fees are demanded in the event the complainant prevails.

(c) No action shall be brought if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States. A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that these costs must be demanded in the complaint.

APPENDIX A TO 7 CFR PART 15C—AGE DISTINCTIONS IN FEDERAL STATUTES OR REGULATIONS AFFECTING FINANCIAL ASSISTANCE ADMINISTERED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Program	Statute	Section and age distinction	Regulation
Farm Service Agency			
Farm Loan Programs	7 U.S.C. 1941 Persons Eligible For Loans.	Section 761.2 defines "rural youth" as meaning a person who has reached the age of 10 but has not reached the age of 21 and resides in a rural area or any city or town with a population of 50,000 or fewer people.	7 CFR part 761.
Food and Nutrition Service			
Senior Farmer's Market Nutrition Program.	7 U.S.C. 3007 Senior Farmers' Market Nutrition Program.	Section 249.2 defines "senior" as meaning an individual 60 years of age or older, or as defined in §249.6(a)(1). Section 249.6(a)(1) establishes categorical eligibility for the Senior Farmers' Market Nutrition Program. The categorical eligibility states that: "participants must be not less than 60 years of age, except that State agencies may exercise the option to deem Native Americans who are 55 years of age or older as categorically eligible for SFMNP benefits. State agencies may, at their discretion, also deem disabled individuals less than 60 years of age who are currently living in housing facilities occupied primarily by older individuals where congregate nutrition services are provided, as categorically eligible to receive SFMNP benefits".	7 CFR part 249.
Special Supplemental Nutrition Program for Women, Infants, and Children.	42 U.S.C. 1786	Section 246.2 defines "children" as meaning persons who have had their first birthday but have not yet attained their fifth birthday. Section 246.2 defines "infants" as meaning persons under 1 year of age.	

Program	Statute	Section and age distinction	Regulation
		Section 246.10(e) establishes category and nutritional needs of the participant for each of the seven food packages available under the program. Food Packages I, II, and IV contain age distinctions. (e)(1) Food Package I—Infants birth through 5 months—(i) Participant category served. This food package is designed for issuance to infant participants from birth through age 5 months who do not have a condition qualifying them to receive Food Package III. (ii) Infant feeding categories—(A) Birth to one month. Three infant feeding options are available during the first month after birth(B) . . . One through 5 months. Three infant feeding options are available from 1 month through 5 months . . . (2) Food Package II—Infants 6 through 11 months—(i) Participant category served. This food package is designed for issuance to infant participants from 6 through 11 months of age . . . (4) Food Package IV—Children 1 through 4 years—(i) Participant category served. This food package is designed for issuance to participants 1 through 4 years of age.	7 CFR part 246.
Commodity Supplemental Food Program.	Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note); sec. 4201, Pub. L. 107–171, 116 Stat. 134 (7 U.S.C. 7901 note); sec. 4221, Pub. L. 110–246, 122 Stat. 1886 (7 U.S.C. 612c note).	Section 247.1 defines ''children'' as meaning persons who are at least 1 year of age but have not reached their sixth birthday. Section 247.1 defines ''elderly persons'' as meaning persons at least 60 years of age. Section 247.1 defines ''infants'' as meaning persons under 1 year of age.	7 CFR part 247.
Food Stamp and Food Distribution Program.	7 U.S.C. 2011–2036	Section 271.2 defines ''elderly or disabled member'' as meaning a member of a household who: (1) Is 60 years of age or older.	7 CFR part 271
		Section 271.2 defines ''Thrifty food plan'' as meaning the diet required to feed a family of four persons consisting of a man and a woman 20 through 50, a child 6 through 8, and a child 9 through 11 years of age, determined in accordance with the Secretary's calculations.	7 CFR part 273

Program	Statute	Section and age distinction	Regulation
		Section 273.1 defined ''Elderly and disabled persons'' as meaning an otherwise eligible member of a household who is 60 years of age or older and is unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act or a non-disease-related, severe, permanent disability may be considered. Section 273.1(b) outlines special household requirements. (b) Special household requirements—(1) Required household combinations. The following individuals who live with others must be considered as customarily purchasing food and preparing meals with the others, even if they do not do so, and thus must be included in the same household, unless otherwise specified.(i) Spouses; (ii) A person under 22 years of age who is living with his or her natural or adoptive parent(s) or step-parent(s); and (iii) A child (other than a foster child) under 18 years of age who lives with and is under the parental control of a household member other than his or her parent. A child must be considered to be under parental control for purposes of this provision if he or she is financially or otherwise dependent on a member of the household, unless State law defines such a person as an adult. Section 273.1(d) outlines head of household requirements. When designating the head of household, the State agency shall allow the household to select an adult parent of children (of any age) living in the household, or an adult who has parental control over children (under 18 years of age) living in the household, as the head of household provided that all adult household members agree to the selection. Section 273.4(a)(4)(iii) outlines household members meeting citizenship or alien status requirements. An unmarried dependent child of such Hmong or Highland Laotian who is under the age of 18 or if a full-time student under the age of 22; an unmarried child under the age of 18 or if a full time student under the age of 22 of such a deceased Hmong or Highland Laotian provided the child was dependent upon him or her at the time of his or her death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the person prior to the child's 18th birthday. For purposes of this paragraph (a)(4)(iii), child means the legally adopted or biological child of the person described in paragraph (a)(4)(i) of this section, Section 273.4(a)(5)(ii) outlines household members meeting citizenship or alien status requirements which includes an alien who has been subjected to a severe form of trafficking in persons and who is under the age of 18, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA; Section 273.4(a)(5)(iii) outlines household members meeting citizenship or alien status requirements which includes the spouse, child, parent or unmarried minor sibling of a victim of a severe form of trafficking in persons under 21 years of age, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA.	

Program	Statute	Section and age distinction	Regulation
		Section 273.4(a)(5)(iv) outlines household members meeting citizenship or alien status requirements which includes the spouse or child of a victim of a severe form of trafficking in persons 21 years of age or older, and who has received a derivative T visa, to the same extent as an alien who is admitted to the United States as a refugee under Section 207 of the INA. Section 273.4(a)(6)(ii)(A) outlines the criteria for a qualified alien which includes an alien age 18 or older lawfully admitted for permanent residence under the INA who has 40 qualifying quarters as determined under Title II of the SSA, including qualifying quarters of work not covered by Title II of the SSA, based on the sum of: quarters the alien worked; quarters credited from the work of a parent of the alien before the alien became 18 (including quarters worked before the alien was born or adopted); and quarters credited from the work of a spouse of the alien during their marriage if they are still married or the spouse is deceased. Section 273.4(a)(6)(ii)(G)(3) outlines the criteria for a qualified alien with military connections which includes the spouse and unmarried dependent children of a person described in paragraph (a)(6)(ii)(G)(1) or (2) of this section, including the spouse of a deceased veteran, provided the marriage fulfilled the requirements of 38 U.S.C. 1304, and the spouse has not remarried. An unmarried dependent child for purposes of this paragraph (a)(6)(ii)(G)(3) is: a child who is under the age of 18 or, if a full-time student, under the age of 22; such unmarried dependent child of a deceased veteran provided such child was dependent upon the veteran at the time of the veteran's death; or an unmarried disabled child age 18 or older if the child was disabled and dependent on the veteran prior to the child's 18th birthday. For purposes of this paragraph (a)(6)(ii)(G)(3), child means the legally adopted or biological child of the person described in paragraph (a)(6)(ii)(G)(1) or (2) of this section. Section 273.4(a)(6)(ii)(I) outlines the criteria for a qualified alien which includes an individual who on August 22, 1996, was lawfully residing in the U.S., and was born on or before August 22, 1931. Section 273.4(a)(6)(ii)(J) outlines the criteria for a qualified alien which includes an individual who is under 18 years of age. Section 273.4(a)(6)(iii)(A) outlines qualified aliens that must be in a qualified status for 5 years before being eligible to receive food stamps which includes an alien age 18 or older lawfully admitted for permanent residence under the INA. Section 273.4(c)(3)(vi) outlines exempt aliens which includes a sponsored alien child under 18 years of age of a sponsored alien. Section 273.4(c)(3)(vii)) outlines exempt aliens which includes a citizen child under age 18 of a sponsored alien. Section 273.5 (b)(1) outlines criteria for student eligibility for the program which includes be age 17 or younger or age 50 or older.	

Program	Statute	Section and age distinction	Regulation
		Section 273.5(b)(8) outlines criteria for student eligibility for the program which includes a person who is responsible for the care of a dependent household member under the age of 6. Section 273.5(b)(9) outlines criteria for student eligibility for the program which includes a person who is responsible for the care of a dependent household member who has reached the age of 6 but is under age 12. Section 273.5(b)(10) outlines criteria for student eligibility for the program which includes a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and be responsible for the care of a dependent child under age 12. Section 273.5(b)(4) states that if the household is unable to provide an SSN or proof of application for an SSN at its next recertification within 6 months following the baby's birth, the State agency shall determine if the good cause provisions of paragraph (d) of this section are applicable. Section 273.7(b)(1)(i) outlines exemptions from work requirements which includes a person younger than 16 years of age or a person 60 years of age or older and a person age 16 or 17 who is not the head of a household or who is attending school, or is enrolled in an employment training program, on at least a half-time basis, is also exempt. If the person turns 16 (or 18 under the preceding sentence) during a certification period, the State agency must register the person as part of the next scheduled recertification process, unless the person qualifies for another exemption. Section 273.9(b)(1)(v) defines income which includes the phrase this provision does not apply to household members under 19 years of age who are under the parental control of another adult member, regardless of school attendance and/or enrollment. Section 273.9(d)(4) outlines income deduction which include dependent care stating the maximum monthly dependent care deduction amount households shall be granted under this provision is $200 a month for each dependent child under two (2) years of age and $175 a month for each other dependent. Section 273.10(e)(2)(i)(A) outlines eligibility benefits states households which contain an elderly or disabled member as defined in §271.2. Section 273.10(e)(2)(i)(B) outlines eligibility benefits which states in addition to meeting the net income eligibility standards, households which do not contain an elderly or disabled member shall have their gross income, as calculated in accordance with paragraph (e)(1)(i)(A) of this section, compared to the gross monthly income standards defined in §273.9(a)(1). Section 273.10(e)(2)(i)(D) outlines eligibility benefits which states if a household contains a member who is 59 years old on the date of application, but who will become 60 before the end of the month of application, the State agency shall determine the household's eligibility in accordance with paragraph (e)(2)(i)(A) of this section.	

Program	Statute	Section and age distinction	Regulation
		Section 273.24(c)(1) outlines exceptions for when the time limit does not apply to an individual which include a person under 18 or 50 years of age or older. Section 273.24(c)(3) outlines exceptions for when the time limit does not apply to an individual which include a parent (natural, adoptive, or step) of a household member under age 18, even if the household member who is under 18 is not himself eligible for food stamps. Section 273.24(c)(4) outlines exceptions for when the time limit does not apply to an individual which include a person residing in a household where a household member is under age 18, even if the household member who is under 18 is not himself eligible for food stamps.	
National School Lunch Program.	42 U.S.C. 1751–1760, 1779.	Section 210.2 defines ''Child'' as meaning a (a) a student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (a) and (b) of the definition of ''School,'' including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled; or (b) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraph (c) of the definition of ''School;'' or (c) For purposes of reimbursement for meal supplements served in afterschool care programs, an individual enrolled in an afterschool care program operated by an eligible school who is 12 years of age or under, or in the case of children of migrant workers and children with disabilities, not more than 15 years of age. Section 12(d) defines ''Child'' as meaning an individual, regardless of age, who—(i) is determined by a State educational agency, in accordance with regulations prescribed by the Secretary, to have one or more disabilities; and (ii) is attending any institution, as defined in section 17(a), or a nonresidential public or nonprofit private school of high school grade or under, for the purpose of participating in a school program established for individuals with disabilities.	7 CFR part 210.
School Breakfast Program.	42 U.S.C. 1773, 1779 ..	Section 220.2 defines ''Child'' as meaning a (1) A student of high school grade or under as determined by the State educational agency, who is enrolled in an educational unit of high school grade or under as described in paragraphs (1) and (2) of the definition of ''School'', including students who are mentally or physically disabled as defined by the State and who are participating in a school program established for the mentally or physically disabled; or (2) a person under 21 chronological years of age who is enrolled in an institution or center as described in paragraph (3) of the definition of School in this section.	7 CFR part 220.
Child and Adult Care Food Program.	42 U.S.C. 1766	Section 1766 outlines that reimbursement may be provided under this section only for supplements served to school children who are not more than 18 years of age, except that the age limitation provided by this subsection shall not apply to a child.	7 CFR part 226.

Program	Statute	Section and age distinction	Regulation
		Section 1766(a)(3) and 7 CFR 226.2 outlines that reimbursement are permitted for meals served to children through the age of 12, children of migrant workers through the age of 15, and persons with disabilities, in child care centers and day care homes. Section 1766(o)(1) and 7 CFR 226.2 outlines that adult day care centers receive reimbursement for meals served to enrolled adults who are functionally impaired or age 60 and older. Section 1766(t)(5); and 7 CFR 226.2 outlines that reimbursement are permitted for emergency shelters for up to three meals served each day to residents age 18 and younger. Section 1766(r) and 7 CFR 226.17a(c) outlines that reimbursement are permitted in at-risk afterschool care programs for meals served during the regular school year to children through the age of 18.	
Summer Food Service Program.	42 U.S.C. 1761	Section 1761(a)(1)(B) and 7 CFR 225.2 outlines that Children age 18 and under may receive meals through SFSP. A person 19 years of age and over who has a mental or physical disability (as determined by a State of local educational agency) and who participates during the school year in a public or private nonprofit school program (established for the mentally or physically disabled) is also eligible to receive meals. In certain circumstances, pregnant women who receive Early Head Start services are also eligible to receive meals through SFSP if they are age 18 or under. To establish eligibility, prospective mothers must be enrolled in Early Head Start and be eligible to receive school meals through the NSLP or another child nutrition program.	7 CFR part 225.
		Forest Service	
National Parks and Federal Recreational Lands Pass.	16 U.S.C. 6808h	Section 6808h(b)(1) AGE DISCOUNT.—The Secretary shall make the National Parks and Federal Recreational Lands Pass available, at a cost of $10.00, to any United States citizen or person domiciled in the United States who is *62 years of age or older,* if the citizen or person provides adequate proof of such age and such citizenship or residency.	None.
		Natural Resources Conservation Service	
Agriculture Conservation Experienced Services (ACES).	16 U.S.C. 3851	Section 1252 authorizes and directs the Secretary to ''establish a conservation experienced services program (in this section referred to as the ''ACES Program'') for the purpose of utilizing the talents of individuals who are age 55 or older, but who are not employees of the Department of Agriculture or a State agriculture department, to provide technical services in support of the conservation-related programs and authorities carried out by the Secretary.''	None.
		Rural Development	
Section 504 Origination Loans and Grants.	42 U.S.C. 1474	Section 504 loans and grants are intended to help very low-income owner-occupants in rural areas repair their properties. Section 3550.103 provides that ''to be eligible for grant assistance, an application must be 62 years of age or older at the time of the application.''	7 CFR 3550.101 *et seq.*

Program	Statute	Section and age distinction	Regulation
Section 515 Rural Rental Housing Loans Program Section 521 Rental Assistance Program.	42 U.S.C. 1490a	Under the Direct Multi-Family Housing Loan and Grants, Section 515 Rural Rental Housing program supplies apartments for elderly and disabled people that are equipped with special amenities. USDA provides assistance through the separately appropriated Section 521 Rental Assistance Program, which brings tenants' rent down to 30 percent of their adjusted incomes. Section 3560 defines ''elderly person'' as ''a person who is at least 62 years old.''	7 CFR part 3560.
National Institute of Food and Agriculture			
Secondary Education, Two-Year Postsecondary Education, and Agriculture in the K–12 Classroom Challenge Grants Program.	7 U.S.C. 3152(j)	Section 1417(j) directs the Secretary to ''promote complementary and synergistic linkages among secondary, 2-year postsecondary, and higher education programs in the food and agricultural sciences in order to promote excellence in education and encourage more young Americans to pursue and complete a baccalaureate or higher degree in the food and agricultural sciences.'' The Act further empowers the Secretary to make competitive or noncompetitive grants to public secondary schools, institutions of higher education that award an associate's degree, other institutions of higher education, and nonprofit organizations [to] . . . (C) to interest young people in pursuing higher education in order to prepare for scientific and professional careers in the food and agricultural sciences; . . . and (G) to support current agriculture in the classroom programs for grades K–12.	None.
Hispanic-Serving Institutions—Competitive Grants Program for Hispanic Agricultural Workers and Youth.	7 U.S.C. 3243, as amended.	Section 1456(e)(1), as amended by the Agricultural Act of 2014, states that the ''Secretary shall establish a competitive grants program . . . (B) to award competitive grants to Hispanic-serving agricultural colleges and universities to provide for training in the food and agricultural sciences of Hispanic agricultural workers and Hispanic youth working in the food and agricultural sciences.	7 CFR part 3434.
Girl Scouts of the United States of America, the Boy Scouts of America, the National 4–H Council, and the National FFA Organization.	7 U.S.C. 7630, as amended.	Section 410(d). Grants for Youth Organizations of the Agricultural, Research, Extension and Education Reform Act of 1998, directs the Secretary to make grants available to the designated youth organizations for the organizations' establishment of pilot projects to expand their programs in rural areas and small towns. Eligibility is limited to the four statutorily-identified youth organizations.	None.
Youth Farm Safety and Education Certification (YFSEC).	7 U.S.C. 341, *et seq.;* 7 U.S.C. 343(d).	The primary purpose of program is to develop a coordinated approach to agricultural safety and health education for youth. YFSEC Program notices define ''youth'' as ''children or adolescents who have reached their 12th birthday; but not their 20th birthday.''	29 CFR part 570, subpart E–1.
Expanded Food and Nutrition Education Program (EFNEP).	7 U.S.C. 3175	Section 1425 authorizes a national education program to enable low-income individuals and families. Through EFNEP, the Department delivers several ''youth'' programs that offer education on nutrition, food preparation, and food safety.	7 CFR part 15, subpart A.

Program	Statute	Section and age distinction	Regulation
The Children, Youth, and Families At-Risk Sustainable Community Projects (CYFAR SCP).	7 U.S.C. 341, *et seq.;* 7 U.S.C. 343(d).	Section 3(d) of the Smith-Lever Act authorizes the Department to administer the CYFAR SCP. Per Program notices, CYFAR SCP supports community educational programs for at-risk children, youth, and families which are based on locally identified needs, soundly grounded in research, and which lead to the accomplishment of one of four CYFAR National Outcomes; and (2) [t]o integrate CYFAR programming into ongoing Extension programs for children, youth, and families—insuring that at-risk, low income children, youth, and families continue to be part of Extension and/or 4–H programs and have access to resources and educational opportunities.	7 CFR part 3015, 7 CFR part 3019, 7 CFR part 3430.
Risk Management Agency			
Federal Crop Insurance Program.	7 U.S.C. 1501	Per the Crop Insurance Handbook, which provides the official FCIC approved underwriting standards for policies administered by Approved Insurance Providers under the Common Crop Insurance Policy Basic Provisions, 7 CFR part 457 including the Catastrophic Risk Protection Endorsement, 7 CFR part 402, and the Actual Production History Regulation 7 CFR part 400 Subpart G for the 2014 and succeeding crop years, to be eligible for crop insurance the applicant must be of ''legal majority.'' Legal majority is defined as ''where the individual has reached 18 years old or was conferred legal majority by a court. (1) For individuals less than 18 years of age or where legal majority has not been conferred by a court, to be eligible for crop insurance: (a) A minor must provide evidence an insurable share exists; and (b) a court-appointed guardian or parent must co-sign the application. (2) When a court-appointed guardian or parent cosigns the application: (a) An acknowledgement guaranteeing payment of the annual premium must be include ed with the application; and (b) a written statement describing the farming operation and the insurable share must be provided. (3) For CAT coverage only, a minor who is competent to enter into a binding contract, may insure a crop at CAT level without a cosigner; however, if not competent to enter into a binding contract, a court-appointed guardian or parent must sign the application.''	7 CFR parts 400, 402, 457.

PART 15d—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.

15d.1 Purpose.
15d.2 Definitions.
15d.3 Discrimination prohibited.
15d.4 Compliance.
15d.5 Complaints.

AUTHORITY: 5 U.S.C. 301.

SOURCE: 64 FR 66709, Nov. 30, 1999, unless otherwise noted.

§ 15d.1 Purpose.

The purpose of this part is to set forth the nondiscrimination policy of the United States Department of Agriculture in programs or activities conducted by the Department, including such programs and activities in which the Department or any agency thereof makes available any benefit directly to persons under such programs and activities.

§ 15d.2 Definitions.

For the purpose of this part, the following definitions apply:

Agency means a major organizational unit of the Department with delegated authority to deliver programs, activities, benefits, and services. Heads of Agencies receive their delegated authority as prescribed in 7 CFR part 2.

Agency Head Assessment means the annual Agency Civil Rights Performance Plan and Accomplishment Report conducted by the Office of the Assistant Secretary for Civil Rights (OASCR). It is an evaluation tool used by OASCR to assess USDA Agency Heads and Staff Office Directors on their civil rights activities and accomplishments to ensure accountability throughout the Department on these issues.

Alternative Dispute Resolution or *ADR* means any number of conflict resolution procedures in which parties agree to use a third-party neutral to resolve complaints or issues in controversy. ADR methods include, but are not limited to, mediation, facilitation, fact finding, arbitration, use of ombuds, or any combination thereof.

Assistant Secretary for Civil Rights or *ASCR* means the civil rights officer for USDA responsible for the performance and oversight of all civil rights functions within USDA, and who retains the authority to delegate civil rights functions to heads of USDA agencies and offices. The ASCR is also responsible for evaluating agency heads on their performance of civil rights functions.

Complaint means a written statement that contains the complainant's name and address and describes an agency's alleged discriminatory action in sufficient detail to inform the ASCR of the nature and date of an alleged civil rights violation. The statement must be signed by the complainant(s) or someone authorized to sign on behalf of the complainant(s). To accommodate the needs of people with disabilities, special needs, or who have Limited English Proficiency, a complaint may be in an alternative format.

Compliance report means a written review of an agency's compliance with civil rights requirements, to be prepared by OASCR and to identify each finding of non-compliance or other civil rights related issue. The review is conducted at the discretion of OASCR or if there has been a formal finding of non-compliance.

Conducted Programs and Activities means the program services, benefits or resources delivered directly to the public by USDA.

Days mean calendar days, not business days.

Department (used interchangeably with USDA) means the Department of Agriculture and includes each of its operating agencies and other organizational units.

Discrimination means unlawful treatment or denial of benefits, services, rights or privileges to a person or persons because of their race, color, national origin, religion, sex, sexual orientation, disability, age, marital status, sexual orientation, familial status, parental status, income derived from a public assistance program, political beliefs, or gender identity.

Secretary means the Secretary of Agriculture or any officer or employee of the Department whom the Secretary has heretofore delegated, or whom the Secretary may hereafter delegate, the authority to act in his or her stead under the regulations in this part.

[79 FR 41410, July 16, 2014]

§ 15d.3 Discrimination prohibited.

(a) No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or gender identity, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

(b) No person shall be subjected to reprisal for opposing any practice(s) prohibited by this part, for filing a complaint, or for participating in any other manner in a proceeding under this part.

[79 FR 41411, July 16, 2014]

§ 15d.4 Compliance.

(a) *Compliance program.* OASCR shall evaluate each agency's efforts to comply with this part and shall make recommendations for improving such efforts.

(1) OASCR shall oversee the compliance reviews and evaluations, and issue compliance reports that monitor compliance efforts to ensure that there is equitable and fair treatment in conducted programs.

(2) OASCR shall monitor all settlement agreements pertaining to program complaints for compliance to ensure full implementation and enforcement.

(3) OASCR shall oversee Agency Head Assessments to ensure that Agency Heads are in compliance with civil rights laws and regulations.

(4) OASCR shall monitor all findings of non-compliance to ensure that compliance is achieved.

(5) OASCR shall require agencies to collect the race, ethnicity and gender of applicants and program participants, who choose to provide such information on a voluntary basis, in USDA-conducted programs, for purposes of civil rights compliance oversight, and evaluation.

(b) *Agency data collection and compliance reports.* (1) Each Agency shall, for civil rights compliance, collect, maintain and annually compile data on all program applicants and participants in conducted programs by county and State, including but not limited to, application and participation rate data regarding socially disadvantaged and limited resources applicants and participants. At a minimum, the data should include:

(i) Numbers of applicants and participants by race, ethnicity, and gender, subject to appropriate privacy protections, as determined by the Secretary and in accordance with law; and

(ii) The application and participation rate, by race, ethnicity, and gender, as a percentage of the total participation rate.

(2) Each Agency shall submit to the OASCR timely, complete and accurate program application and participation reports containing the information described in §15d.4(b)(1), on an annual basis, and upon the request of the OASCR independently of the annual requirement.

(c) *Complaint reporting compliance.* OASCR shall ensure compliance with mandated complaint reporting requirements, such as those required by section 14006 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

[79 FR 41411, July 16, 2014]

§ 15d.5 Complaints.

(a) Any person who believes that he or she (or any specific class of individuals) has been, or is being, subjected to practices prohibited by this part may file (or file through an authorized representative) a written complaint alleging such discrimination. The written complaint must be filed within 180 calendar days from the date the person knew or reasonably should have known of the alleged discrimination, unless the time is extended for good cause by the ASCR or designee. Any person who complains of discrimination under this part in any fashion shall be advised of the right to file a complaint as herein provided.

(b) All complaints under this part should be filed with the Office of the Assistant Secretary for Civil Rights, 1400 Independence Ave. SW., U.S. Department of Agriculture, Washington, DC 20250, who will investigate the complaints. The ASCR will make final determinations as to the merits of complaints under this part and as to the corrective actions required to resolve program complaints. The complainant will be notified of the final determination on the complaint.

(c) Any complaint filed under this part alleging discrimination on the basis of disability will be processed under 7 CFR part 15e.

(d) For complaints OASCR deems appropriate for ADR, OASCR shall offer ADR services to complainants.

[79 FR 41411, July 16, 2014]

PART 15e—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.
15e.101 Purpose.
15e.102 Application.
15e.103 Definitions.
15e.104–15e.109 [Reserved]
15e.110 Self-evaluation.
15e.111 Notice.
15e.112–15e.129 [Reserved]
15e.130 General prohibitions against discrimination.
15e.131–15e.139 [Reserved]
15e.140 Employment.
15e.141–15e.148 [Reserved]
15e.149 Program accessibility: Discrimination prohibited.
15e.150 Program accessibility: Existing facilities.
15e.151 Program accessibility: New construction and alterations.
15e.152–15e.159 [Reserved]
15e.160 Communications.
15e.161–15e.169 [Reserved]
15e.170 Compliance procedures
15e.171–15e.999 [Reserved]

AUTHORITY: 29 U.S.C. 794.

SOURCE: 58 FR 57697, 57699, Oct. 26, 1993, unless otherwise noted.

§ 15e.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 15e.102 Application.

This part (§§ 15e.101–15e.170) applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 15e.103 Definitions.

For purposes of this part, the term—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TTD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation programs means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term ''physical or mental impairment'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, HIV disease (whether symptomatic or asymptomatic), and drug addiction and alcoholism.

(2) *Major life activities* include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to preschool, elementary, or secondary education services provided by the agency, an individual with handicaps who is a member of a class of persons otherwise entitled by statute, regulation, or agency policy to receive education services from the agency;

(2) With respect to any other agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(3) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(4) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1614.203(a)(6), which is made applicable to this part by §15e.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended. As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration.

§§ 15e.104–15e.109 [Reserved]

§ 15e.110 Self-evaluation.

(a) The agency shall, by November 28, 1994, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the

self-evaluation, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 15e.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 15e.112–15e.129 [Reserved]

§ 15e.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in according equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards;

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are no separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licensees or certified entities that subject qualified

individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 15e.131–15e.139 [Reserved]

§ 15e.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§§ 15e.141–15e.148 [Reserved]

§ 15e.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §15e.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 15e.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §15e.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings,

shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of §15e.150(a) in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to an historic property is not required because of §15e.150(a)(2) or (a)(3), alternative methods of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by January 24, 1994, except that where structural changes in facilities are undertaken, such changes shall be made by November 26, 1996, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by May 26, 1994, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§15e.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§15e.152–15e.159 [Reserved]

§15e.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices

for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with §15e.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 15e.161–15e.169 [Reserved]

§ 15e.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Advocacy and Enterprise, shall be responsible for coordinating implementation of this section and shall make the determinations described in paragraph (g) of this section. Complaints may be sent to Office of Advocacy and Enterprise, U.S. Department of Agriculture, Washington, DC 20250.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by §15e.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the head of the agency.

(j) The head of the agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the head of the agency determines that additional information is needed from the complainant, he or she shall have 60 days from the date of receipt of the additional information to make his or her determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

[58 FR 57697, 57699, Oct. 26, 1993, as amended at 58 FR 57697, Oct. 26, 1993]

§§ 15e.171–15e.999 [Reserved]

PART 15f—ADJUDICATIONS UNDER SECTION 741

Subpart A—What Is the Purpose of These Regulations and to Whom and to What Programs Do They Apply?

Sec.

15f.1 What is the purpose of these regulations?
15f.2 Who may use these procedures for processing their discrimination complaint with USDA?
15f.3 If I want to use these procedures to have USDA consider my complaint, how long will it take for USDA to make a decision?
15f.4 What do certain words and phrases in these regulations mean?

Subpart B—I Filed a Complaint With USDA Prior to July 1, 1997, How Do I Request That USDA Consider My Complaint Using These Procedures?

15f.5 How do I request that USDA consider my complaint under these procedures?
15f.6 What must I say or include in my Section 741 Complaint Request?
15f.7 May I be represented by an attorney?

Subpart C—What Happens After I Send in My Request? May I Seek To Resolve My Complaint Informally With OCR?

15f.8 What does the Docketing Clerk do with my request?
15f.9 What will the Director do to settle my Section 741 Complaint Request when it is received?
15f.10 What if I do not want the Director to review my Section 741 Complaint Request and I want to proceed directly to a hearing?

Subpart D—If I Request a Hearing, What Will Happen? How Will the Hearing Be Conducted?

15f.11 Where must I file a hearing request and what happens to it?
15f.12 Am I entitled to a hearing in all circumstances?
15f.13 What is the function of the ALJ and who may communicate with him?
15f.14 What happens after I file a request for a hearing?
15f.15 What Happens after the Docketing Clerk notifies all parties?
15f.16 Although I request a hearing, may I request the ALJ to issue a decision without a hearing?
15f.17 What happens before the hearing?
15f.18 May I depose potential witnesses?
15f.19 Other than myself, OCR, and the agency, may any other interested party participate in the proceeding?
15f.20 May I subpoena witnesses to the hearing?
15f.21 What rules are applicable to the actual conduct of the hearing?
15f.22 What happens after the hearing?
15f.23 What will constitute the record for the final determination?
15f.24 When and in what form will a final determination be made on my complaint by USDA?
15f.25 Will USDA pay my attorneys fees if I win?

Subpart E—What if I Do Not Agree With the Final Determination by USDA?

15f.26 May I seek judicial review of the final determination?

Subpart F—How Do I Count Days for Purposes of Deadlines and What Happens if I Miss a Deadline in These Rules?

15f.27 When is something considered ''filed'' as required by these rules and to whom do I need to give copies of what I file?
15f.28 When I or someone else has to do something within a certain number of

days, how will USDA or the ALJ count the days?
15f.29 May I request an extension of a deadline or may I get relief for missing a deadline in these rules?

AUTHORITY: 5 U.S.C. 301; section 101(a) of Pub. L. 105–277, 112 Stat. 2681; Reorganization Plan No. 2 of 1953 (5 U.S.C. App.).

SOURCE: 63 FR 67394, Dec. 4, 1998, unless otherwise noted.

Subpart A—What Is the Purpose of These Regulations and to Whom and to What Programs Do They Apply?

§ 15f.1 What is the purpose of these regulations?

These regulations provide the rights of complainants and the procedures for the processing of certain nonemployment related complaints alleging discrimination by USDA that were filed with USDA prior to July 1, 1997, as authorized under section 741(b) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277.

§ 15f.2 Who may use these procedures for processing their discrimination complaint with USDA?

A person may use these procedures if he or she filed a nonemployment related discrimination complaint with USDA prior to July 1, 1997, that alleged discrimination by USDA at any time during the period beginning January 1, 1981 and ending December 31, 1996 :

(a) In violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) in administering—

(1) A farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(2) A housing program established under title V of the Housing Act of 1949; or

(b) In the administration of a commodity program or a disaster assistance program.

§ 15f.3 If I want to use these procedures to have USDA consider my complaint, how long will it take for USDA to make a decision?

To the maximum extent practicable, a final determination under these procedures will be issued within 180 days after you have filed your request.

§ 15f.4 What do certain words and phrases in these regulations mean?

Agency means the USDA agency, office, or committee that the complainant alleges has discriminated against the complainant in the administration of a covered program.

ALJ means an Administrative Law Judge appointed pursuant to the Administrative Procedure Act (5 U.S.C. 557(b)(3), 3105) who presides over a hearing if requested by a complainant.

ASCR means the Assistant Secretary for Civil Rights.

Complainant means a person who requests that USDA consider his or her complaint under the procedures of this part.

Complaint means a written document filed with USDA by a person alleging discrimination by USDA under a covered program.

Covered program means:

(1) A farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account;

(2) A housing program established under title V of the Housing Act of 1949; or

(3) A commodity program or disaster assistance program.

Director means the Director of USDA, OCR, or his or her subordinate designee.

Docketing clerk means an employee of the USDA Office of Civil Rights, designated to serve in this capacity.

Eligible complaint means a complaint that was filed with the Department of Agriculture before July 1, 1997, and that alleges discrimination occurring at any time during the period beginning on January 1, 1981 and ending December 31, 1996—

(1) In violation of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) in administering—

(i) A farm ownership, farm operating, or emergency loan funded from the Agricultural Credit Insurance Program Account; or

(ii) A housing program established under title V of the Housing Act of 1949; or

(2) In the administration of a commodity program or a disaster assistance program.

Ex parte communication means a prohibited communication between a party to a proceeding and the ALJ outside of the presence of, or without notice to, the other parties to the proceeding, as explained more fully in § 15f.13.

Final determination means the final USDA decision made on your complaint under these rules.

Hearing means a proceeding in which you may present your case before the ALJ.

Interested party means a person, other than the complainant, OCR, and the agency, who has an interest in a proceeding under these rules and is admitted to the proceeding under § 15f.20.

OCR means the USDA Office of Civil Rights.

Party or parties means the complainant, OCR, the agency, or a person admitted to the proceeding as an interested party.

Secretary means the Secretary of Agriculture.

Section 741 means section 741 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999, enacted in Division A, section 101(a) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Pub. L. 105–277.

Section 741 Complaint Request (or Request) means a request by a complainant to consider his complaint under these rules.

USDA means the United States Department of Agriculture.

[63 FR 67394, Dec. 4, 1998, as amended at 68 FR 27449, May 20, 2003]

Subpart B—I Filed a Complaint With USDA Prior to July 1, 1997, How Do I Request That USDA Consider My Complaint Using These Procedures?

§ 15f.5 How do I request that USDA consider my complaint under these procedures?

In order for USDA to consider your complaint under these procedures, a Section 741 Complaint Request must be docketed with the Docketing Clerk in the USDA OCR.

(a) *Do I have to file a ''Section 741 Complaint Request'' if USDA is already working on my complaint? Do I have to file again?* If USDA OCR already reviewed or is working on your complaint, you will receive a notice by March 1, 1999, indicating that your complaint automatically has been docketed as a Section 741 Complaint Request for consideration under these procedures. The notice will provide you with the docket number assigned your Request and will give you further instructions with respect to what options you have or what actions you must take.

(b) *What if USDA is not working on my complaint? If I think USDA has reviewed or is working on my complaint, but do not receive a letter by March 1, 1999, what should I do?* If USDA is not already working on your complaint, or you do not receive a letter from USDA by March 1, 1999, or within 30 days thereafter, you should file a Section 741 Complaint Request with the Docketing Clerk at USDA OCR.

(c) *How long do I have to file my Section 741 Complaint Request?* You have until October 21, 2000 to file your Section 741 Complaint Request. If you did not receive a notice form USDA by October 21, 2000, that your Section 741 Complaint Request had been docketed automatically under paragraph (a) of this section, and you did not file a Section 741 Complaint Request prior to October 21, 2000, under paragraph (b) of this section, then any Section 741 Complaint Request received by USDA after October 21, 2000, will not be accepted.

[63 FR 67394, Dec. 4, 1998, as amended at 68 FR 7412, Feb. 14, 2003]

§ 15f.6 What must I say or include in my Section 741 Complaint Request?

If you must file a Section 741 Complaint Request, it should include a copy of your original complaint, a request in writing that USDA consider the complaint in accordance with these procedures, a statement as to when your complaint was filed with USDA, and any other evidence you consider necessary to prove that your complaint is an eligible complaint suitable for consideration under these procedures.

§ 15f.7 May I be represented by an attorney?

(a) If your Section 741 Complaint Request is automatically docketed as set forth in §15f.5(a), and you already are represented by counsel of whom you have notified USDA, then this section does not apply.

(b) If you are filing your Section 741 Complaint Request with USDA, and if you are represented by an attorney, your Section 741 Complaint Request should also include an authorization signed by you indicating that the attorney is entitled to represent you on your behalf. If USDA receives such an authorization, all documents in connection with consideration of your complaint under these procedures will be sent to your attorney and not to you.

(c) Once your Section 741 Complaint Request is docketed with USDA, and you afterwards retain an attorney, you should forward an authorization to USDA signed by you indicating that the attorney is entitled to represent you on your behalf. If USDA receives such an authorization, all documents in connection with consideration of your complaint under these procedures will be sent to your attorney and not to you.

Subpart C—What Happens After I Send in My Section 741 Complaint Request? May I Seek To Resolve My Complaint Informally With OCR?

§ 15f.8 What does the Docketing Clerk do with my Section 741 Complaint Request?

All Section 741 Complaint Requests docketed by the OCR Docketing Clerk will be referred to the Director for an informal review. The Director will determine if the complaint is one that can be resolved informally, and, if so, the Director will seek to resolve the complaint informally with the complainant.

§ 15f.9 What will the Director do to settle my Section 741 Complaint Request when it is received?

The Director will review each Section 741 Complaint Request. If the Director finds that your complaint is an eligible complaint, the Director will: review all documents and evidence submitted by you; review all agency or CR files, if any exist, regarding the circumstances surrounding the alleged discrimination; review any damage claims; and seek any further clarification, if necessary, from either you or the agency. CR also may refer your eligible complaint for a formal investigation by the CR Program Investigation Division or by an outside contractor. Based on his or her review, the Director will either undertake negotiations with you to resolve the complaint; or inform you that CR will not settle the complaint and explain to you your options, including your right to request formal proceedings before an ALJ under subpart D of this part within 30 days of receipt of notice from the Director that CR will not settle the complaint. If the complaint is successfully resolved or settled, the Director will issue a final determination disposing of the matter. If you have received a notice that the Director will not settle the complaint prior to February 14, 2003, you have until 90 days after February 14, 2003 to request formal proceedings under subpart D of this part. Any request for formal proceedings received by USDA after the deadlines set

forth in this section will not be accepted.

[68 FR 7412, Feb. 14, 2003]

§ 15f.10 What if I do not want the Director to review my Section 741 Complaint Request and I want to proceed directly to a hearing?

If you do not want the Director to review your Section 741 Complaint Request, you may request a hearing following the procedures below in subpart D. You may request a hearing at any time during informal review or negotiations with the Director, or at any time during USDA consideration of your Section 741 Complaint Request.

Subpart D—If I Request a Hearing, What Will Happen? How Will the Hearing Be Conducted?

§ 15f.11 Where must I file a hearing request and what happens to it?

If you desire a hearing, you must file a request for a hearing with the Docketing Clerk, citing the docket number assigned to your Section 741 Complaint Request. When the Docketing Clerk receives your request for a hearing, your Section 741 Complaint Request will be assigned to an ALJ. The Docketing Clerk will send a notice of your hearing request to OCR and the agency, notifying them of the docket number and the assigned ALJ. The Docketing Clerk also will send you a notice of receipt of the hearing request that will inform you of the name of the assigned ALJ.

§ 15f.12 Am I entitled to a hearing in all circumstances?

Under section 741, you have a right to a hearing as part of the process for USDA to render a final determination on your eligible complaint. However, if at any time the ALJ determines that your complaint is not an eligible complaint, he or she may dismiss your complaint with a final determination and USDA review of your complaint will then have been completed. You also are not entitled to a hearing if there are no material issues of fact in dispute between you and USDA. In other words, if the only dispute remaining is a question of law, you will not receive a hearing and the ALJ will make a final determination under §15f.16.

§ 15f.13 What is the function of the ALJ and who may communicate with him?

(a) *What are the powers of the ALJ?* The ALJ is responsible for conducting a hearing at your request on your Section 741 Complaint Request. He or she will have all powers prescribed in these rules and will make a proposed determination on your complaint. The proposed determination then will become the final determination after 35 days, unless the ASCR reviews the proposed determination.

(b) *What is an ex parte communication?* An *ex parte* communication is a communication by one party to a proceeding with the ALJ outside of the presence of, or without notice to, the other parties to a proceeding. *Ex parte* communications in the proceedings on your complaint are prohibited and will be handled as follows:

(1) The ALJ will not engage in *ex parte* communications regarding the merits of a complaint with any party or with any person having any interest in the proceedings on the complaint, including OCR and any person in an advocacy or investigative capacity, at any time between the assignment of a hearing to him or her and the issuance of a proposed determination. This prohibition does not apply to:

(i) Discussions of procedural matters related to the complaint; or

(ii) Discussions of the merits of the complaint where all parties to the proceeding on the complaint have been given notice and an opportunity to participate.

(2) In the case of a communication described in paragraph (b)(1)(ii) of this section, a memorandum of any such discussion shall be included in the hearing record.

(3) No party to the proceeding or other interested person shall make or knowingly cause to be made to the ALJ an *ex parte* communication relevant to the merits of the complaint.

(4) If the ALJ receives an *ex parte* communication in violation of this section, the ALJ will place in the written record:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses to such communications, and memoranda stating the substance of any oral responses to such communications.

(c) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section the ALJ may, to the extent consistent with the interests of justice and the policy underlying these proceedings, require the party or other interested person making the communication to show cause why such party's claim or interest in the complaint should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

[63 FR 67394, Dec. 4, 1998, as amended at 68 FR 27449, May 20, 2003]

§ 15f.14 What happens after I file a request for a hearing?

Within 20 days after you have filed your request for a hearing, ALJ shall file with the Docketing Clerk a notice stating the time, place, and manner of the hearing. The ALJ will have due regard for the public interest and the convenience and necessity of the parties in determining the time, place, and manner of the hearing. The notice will state whether the hearing will be conducted by telephone, audiovisual telecommunication, or personal attendance of any individual expected to participate in the hearing. The Docketing Clerk will send copies of the notice to the complainant and to all other parties to the proceeding.

§ 15f.15 What happens after the Docketing Clerk notifies all parties?

The first step in this process involves a response to your hearing request by OCR. OCR will turn over its entire file on your complaint to the ALJ. OCR also will file a report with the ALJ stating its position with respect to whether or not your complaint is an eligible complaint, with reasons for its position, as well as stating its position with respect to the merits of your complaint. OCR must turn over its file and make its report on its position on your complaint within 35 days. OCR must provide a copy to you of anything it provides to the ALJ.

§ 15f.16 Although I request a hearing, may I request the ALJ to issue a decision without a hearing?

(a) At any time after the parties have been notified of your hearing request, you may file a request with the ALJ to make a determination based on the written record. With your request, you should file any other arguments or evidence that you wish the ALJ to consider. The agency and OCR will have 35 days after you file your request to file any additional information, arguments, or evidence for the consideration of the ALJ. The ALJ may recommend dismissal of your complaint on the basis of a finding that it is not an eligible complaint; recommend denial of your eligible complaint on the merits; or make a proposed finding of discrimination on your eligible complaint and recommend to award you such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed. The ALJ will make a proposed determination on your complaint based on the original complaint, the Section 741 Complaint Request, the OCR report, and any other evidence or written documents filed by the parties. The proposed determination will become the final determination 35 days after it is filed unless you request review of the proposed determination by the ASCR. The ASCR also may review the proposed determination on his or her own initiative. If the ASCR reviews the decision, he or she will allow the parties a reasonable opportunity to file briefs in support of or opposition to the proposed determination, and afterwards will issue a final determination within 35 days after you request review of the proposed determination.

(b) To the maximum extent practicable, a final determination will be made within 180 days of your filing of the Section 741 Complaint Request.

[63 FR 67394, Dec. 4, 1998, as amended at 68 FR 27449, May 20, 2003]

§ 15f.17 What happens before the hearing?

(a) *Do I need to file another answer or pre-hearing brief?* You may file a prehearing brief in support of your complaint.

(b) *Will there be a pre-hearing conference?* The ALJ may hold a pre-hearing conference. If such a conference is to be held, the notice of the pre-hearing conference also will contain a notice to the parties of a time and date for the pre-hearing conference. Pre-hearing conferences normally will be held by telephone. Issues that may be addressed at the pre-hearing conference may include: simplification of the issues; the possibility of obtaining stipulations of fact and of the authenticity of documents; limitation of the number of witnesses; exchange of copies of hearing exhibits; negotiation, compromise or settlement of issues; identification of documents of which official notice will be requested; a schedule for completion of the actions decided upon at the conference; and any other matters that may aid and expedite the conclusion of the proceeding. No transcript of the pre-hearing conference will be made but the ALJ will issue a written memorandum summarizing the results of the pre-hearing conference.

(c) *What else may the ALJ ask for before the hearing?* Prior to the hearing, the ALJ may require each of the parties to furnish any or all of the following: an outline of a party's position with respect to the complaint, the facts upon which the party intends to rely, the legal theories upon which the party intends to rely, copies of or a list of the documents and exhibits which the party anticipates on introducing at the hearing, and a list of anticipated witnesses.

§ 15f.18 May I depose potential witnesses?

(a) A party may request an order from the ALJ to take the testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence. The application for the order must specify the reason and need for taking testimony by deposition.

(b) The time, place, and manner of taking depositions will be as mutually agreed by the parties, or failing agreement, by order of the ALJ.

(c) No testimony taken by depositions will be considered as part of the evidence in the hearing until such testimony is offered and received in evidence at the hearing, and ordinarily it will not be received into evidence if the deponent is present and can testify at the hearing. However, when the deponent is present and can testify, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. Where you have requested a final determination by the ALJ based on the written record without a hearing, the ALJ, in his or her discretion, may receive depositions to supplement the record.

(d) Each party will bear its own expenses associated with the taking of any deposition.

§ 15f.19 Other than myself, OCR, and the agency, may any other interested party participate in the proceeding?

In most cases, there will be no parties to a proceeding under these rules, other than the complainant, OCR, and, and if it so desires, the agency. However, if there are circumstances in which additional parties have an interest in the proceeding, such as a bank which participated in a case involving a guaranteed loan, such other interested parties may be permitted to participate in the proceeding at the discretion of the ALJ.

§ 15f.20 May I subpoena witnesses to the hearings?

No. USDA has no statutory authority to subpoena witnesses to testify at the hearing.

§ 15f.21 What rules are applicable to the actual conduct of the hearing?

(a) *Who may appear at the hearing?* You may appear at the hearing in person or through your attorney. OCR or the agency will appear through a designated representative, which may include a USDA attorney. Any person who appears as counsel must conform to the standards of ethical conduct required of practitioners before the courts of the United States.

(b) *What happens if I fail to show up?* If, after having received notice of the

hearing under §15f.14, you fail to appear at the hearing without good cause, you will have waived your right to a hearing in the proceeding and the ALJ may proceed to issue a final determination based on the written record as provided for under §15f.16.

(c) *Which party presents its case first at the hearing?* You, as the complainant, will proceed first at the proceeding, unless otherwise determined by the ALJ.

(d) *What kind of evidence will be admitted and how will it be handled?*—(1) *In general.* The hearing will be conducted by the ALJ in the manner he or she determines most likely to obtain the facts relevant to the matter or matters at issue. The ALJ may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. Each party will have the opportunity to present oral and documentary evidence, oral testimony of witnesses, and arguments in support of the party's position; controvert evidence relied on by any other party; and question all witnesses. The testimony of witnesses at a hearing will be on oath or affirmation and will be subject to cross-examination. Any evidence may be received by the ALJ without regard to whether that evidence could be admitted in judicial proceedings. Upon a finding of good cause, the ALJ may order that any witness be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(2) *Objections.* (i) If a party objects to the admission of any evidence or to the limitation of the scope of any examination or cross-examination or to any other ruling of the ALJ, the party must state briefly the grounds of such objection.

(ii) Only objections made before the ALJ may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness will be admitted in the manner provided in and subject to the provisions of §15f.18(c) of these rules.

(4) *Exhibits.* Unless the ALJ finds that the furnishing of copies is impracticable, two copies of each exhibit must be filed with the ALJ. A party submitting an exhibit must provide every other party (except interested parties) a copy of the exhibit one week before the hearing. A true copy of an exhibit may be substituted for the original.

(5) *Official records or documents.* An official government record or document or entry therein, if admissible for any purpose, will be admissible in evidence without the production of the person who made or prepared the same, and will be *prima facie* evidence of the relevant facts stated therein. Such record or document must be evidenced by an official publication thereof or a copy certified by a person having legal authority to make such certification.

(6) *Official notice.* Official notice will be taken of such matters as are judicially noted by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character if the parties are given adequate notice of matters so noticed, and the parties will be given adequate opportunity to show that such facts are erroneously noticed.

(7) *Offer of proof.* Whenever evidence is excluded by the ALJ, the party offering such evidence may make an offer of proof, which must be included in the transcript. The offer of proof should consist of a brief statement describing the evidence excluded. If the evidence consists of a brief oral statement, it must be included in the transcript in its entirety. If the evidence consists of an exhibit, it must be marked for identification and inserted in the hearing record.

(8) *Interlocutory review.* Interlocutory review of rulings by the ALJ will not be permitted.

(9) *Transcript or recording.* (i) Hearings to be conducted by telephone will be recorded verbatim by electronic recording device. Hearings conducted by audio-visual telecommunication or by the personal attendance of parties and witnesses must be transcribed, unless the ALJ finds that recording the hearing verbatim would expedite the proceeding and the ALJ orders the hearing to be recorded verbatim. The ALJ must certify that to the best of his or her knowledge and belief any recording made pursuant to this paragraph with exhibits that were accepted into evidence is the record of the hearing.

(ii) If a hearing is recorded verbatim, a party requests the transcript of a hearing or part of a hearing, and the ALJ determines that the disposition of the proceeding would be expedited by a transcript of the hearing or part of a hearing, the ALJ shall order the verbatim transcription of the recording as requested by the party.

(iii) The costs of transcription or verbatim recordings will be paid for by USDA and charged to the agency whose action gave rise to the complaint at issue. Copies of recordings or transcripts of hearings will be made available to any party at the actual cost of duplication.

§ 15f.22 What happens after the hearing?

The ALJ will fix a reasonable time for filing posthearing briefs, proposed findings of fact and conclusions of law, and if permitted, reply briefs. Briefs should include a summary of evidence relied upon together with references to exhibit numbers and citations to the transcript and authorities relied upon. Briefs must be filed with the Docketing Clerk with copies to all parties.

§ 15f.23 What will constitute the record for the final determination?

The original complaint, the Section 741 Complaint Request, the OCR report, the agency answer, the transcript of testimony, exhibits, affidavits, depositions, briefs, memoranda of law, and all pleadings, motions, papers, and requests filed in the proceeding, including rulings, and the proposed determination by an ALJ (if applicable) shall constitute the exclusive record for the final determination.

§ 15f.24 When and in what form will a final determination be made on my complaint by USDA?

(a) The ALJ will make a proposed determination orally at the close of a hearing, or in writing within 35 days. The ALJ may recommend dismissal of your complaint on the basis of a finding that it is not an eligible complaint; recommend denial of your eligible complaint on the merits; or make a proposed finding of discrimination on your eligible complaint and recommend to award you such relief as would be afforded under the applicable statute or regulation under which the eligible complaint was filed. The proposed determination will become the final determination 35 days after it is made, unless you request review of the proposed determination by the ASCR. The ASCR also may review the proposed determination on his or her own initiative. If the ASCR reviews the proposed determination, he or she will allow the parties a reasonable opportunity to file briefs in support or opposition to the proposed determination, and afterwards file a final determination within 35 days after you request review of the proposed determination.

(b) To the maximum extent practicable, a final determination will be filed within 180 days after you filed your Section 741 Complaint Request.

[63 FR 67394, Dec. 4, 1998, as amended at 68 FR 27449, May 20, 2003]

§ 15f.25 Will USDA pay my attorneys fees if I win?

If you prevail on your eligible complaint, either in whole or in part, after a proceeding before an ALJ under the procedures in this subpart, you may be eligible for an award of attorneys fees as a prevailing party under the Equal Access to Justice Act (EAJA), 5 U.S.C. 504. To get an EAJA award, you must file an application for such fees with the ALJ within 30 days after the final determination is made. Instructions for filing an EAJA application and obtaining an EAJA award are contained in 7 CFR part 1, subpart J. The ALJ must follow those rules, and not these Section 741 Complaint Request rules, in making any EAJA award.

Subpart E—What if I Do Not Agree With the Final Determination by USDA?

§ 15f.26 May I seek judicial review of the final determination?

Section 741 provides that you have at least 180 days after a final determination denying your eligible complaint under these rules to seek judicial review in the United States Court of Federal Claims or a United States District Court of competent jurisdiction.

Subpart F—How Do I Count Days for Purposes of Deadlines and What Happens if I Miss a Deadline in These Rules?

§ 15f.27 When is something considered "filed" as required by these rules and to whom do I need to give copies of what I file?

A document, or other item, that must be ''filed'' under these rules is considered filed when postmarked or when it is received and date-stamped by the Docketing Clerk.

§ 15f.28 When I or someone else has to do something within a certain number of days, how will USDA or the ALJ count the days?

Unless otherwise specifically noted, a ''day'' refers to a calendar day and a document that must be filed by a certain date must either be postmarked on that date or received by the Docketing Clerk on that date. For documents that must be or are ''filed'' under these regulations, you count the number of days after filing starting with the day after the filing date as day one. For other time periods, you calculate the time period by counting the day after receipt by the party as day one. If the last day of a time period expires on a Saturday, a Sunday, or a Federal holiday, the last day of the time period will expire on the next business day.

§ 15f.29 May I request an extension of a deadline or may I get relief for missing a deadline in these rules?

You may request that the ALJ extend a deadline in these rules, or afford you relief for missing a deadline, which he or she may do, consistent with the principles of sovereign immunity, the terms of any applicable statute, these rules, and the necessity of expeditious completion of the public business. It is the intent of USDA that the time deadlines expressed in these regulations be construed equitably to ensure resolution of eligible complaints, to the extent permitted by law.

PART 16—EQUAL OPPORTUNITY FOR RELIGIOUS ORGANIZATIONS

Sec.

16.1 Purpose and applicability.
16.2 Definitions.
16.3 Faith-based organizations and Federal financial assistance.
16.4 Responsibilities of participating organizations.
16.5 Effect on State and local funds.
16.6 Compliance.

APPENDIX A TO PART 16—NOTICE OF ANNOUNCEMENT OF AWARD OPPORTUNITIES
APPENDIX B TO PART 16—NOTICE OF AWARD OR CONTRACT
APPENDIX C TO PART 16—WRITTEN NOTICE OF BENEFICIARY PROTECTIONS

AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 2000bb *et seq.;* E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; E.O. 13280, 67 FR 77145, 3 CFR, 2002 Comp., p. 262; E.O. 13559, 75 FR 71319, 3 CFR, 2010 Comp., p. 273; E.O. 13831, 83 FR 20715, 3 CFR, 2018 Comp., p. 806; E.O. 14015, 86 FR 10007, 3 CFR, 2021 Comp., p. 517.

SOURCE: 69 FR 41382, July 9, 2004, unless otherwise noted.

§ 16.1 Purpose and applicability.

(a) The purpose of this part is to set forth Department of Agriculture (USDA) policy regarding equal opportunity for faith-based organizations to participate in USDA assistance programs for which other private organizations are eligible.

(b) Except as otherwise specifically provided in this part, the policy outlined in this part applies to all recipients and subrecipients of USDA assistance to which 2 CFR part 400 applies, and to recipients and subrecipients of Commodity Credit Corporation assistance that is administered by agencies of USDA.

[89 FR 15707, Mar. 4, 2024]

§ 16.2 Definitions.

As used in this part:

Direct Federal financial assistance, *Federal financial assistance provided directly*, *Direct funding*, or *Directly funded* means financial assistance received by an entity selected by the Government or intermediary (under this part) to carry out a service (e.g., by contract, grant, loan agreement, or cooperative agreement). References to *Federal financial assistance* will be deemed to be references to direct Federal financial

assistance, unless the referenced assistance meets the definition of *indirect Federal financial assistance* or *Federal financial assistance provided indirectly*. Except as otherwise provided by USDA regulation, the recipients of sub-grants that receive Federal financial assistance through State-administered programs (*e.g.*, flow-through programs such as the National School Lunch Program authorized under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.*) are not considered recipients of USDA indirect assistance. These recipients of sub-awards are considered recipients of USDA direct financial assistance.

Explicitly religious activities include activities that involve overt religious content such as worship, religious instruction, or proselytization. Any such activities must be offered separately, in time or location, from the programs or services funded under the agency's grant or cooperative agreement, and participation must be voluntary for beneficiaries of the agency grant or cooperative agreement-funded programs and services.

Federal financial assistance means assistance that non-Federal entities receive or administer in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, food commodities, direct appropriations, or other assistance, but does not include a tax credit, deduction, or exemption. Federal financial assistance may be direct or indirect.

Indirect Federal financial assistance or *Federal financial assistance provided indirectly* refers to situations where the service provider receives the assistance wholly as a result of a genuine and independent private choice of the beneficiary, not a choice of the Government, and the cost of that service is paid through a voucher, certificate, or other similar means of Government-funded payment. The availability of adequate secular alternatives is a significant factor in determining whether a program affords a genuine and independent private choice.

Intermediary means an entity, including a non-governmental organization, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that accepts USDA direct assistance and distributes that assistance to other organizations that, in turn, provide government-funded services. If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is given the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the intermediary must ensure compliance by the recipient of a contract, grant, or agreement with this part and any implementing rules or guidance. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

Religious exercise has the meaning given to the term in 42 U.S.C. 2000cc–5(7)(A).

[85 FR 82132, Dec. 17, 2020], as amended at 89 FR 15707, Mar. 4, 2024]

§ 16.3 Faith-based organizations and Federal financial assistance.

(a) A faith-based organization is eligible, on the same basis as any other organization, to access and participate in any USDA assistance programs for which it is otherwise eligible. Neither the USDA awarding agency nor any State or local government or other intermediary receiving funds under any USDA awarding agency program or service shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization. Decisions about awards of USDA direct assistance or USDA indirect assistance must also be free from political interference, or even the appearance of such interference, and must be made on the basis of merit, not on the basis of religion or religious belief, or lack thereof. Notices or announcements of award opportunities and notices of award or contracts shall include language substantially similar

to that in appendices A and B to this part.

(b) A faith-based organization that participates in USDA assistance programs will retain its autonomy; right of expression; religious character; authority over its governance; and independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use USDA direct assistance to support any ineligible purposes, including explicitly religious activities that involve overt religious content such as worship, religious instruction, or proselytization. A faith-based organization may:

(1) Use its facilities to provide services and programs funded with financial assistance from USDA awarding agency without concealing, altering, or removing religious art, icons, scriptures, or other religious symbols,

(2) Retain religious terms in its organization's name,

(3) Select its board members and otherwise govern itself on a religious basis, and

(4) Include religious references in its mission statements and other governing documents.

(c) A faith-based organization's exemption from the Federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–1, is not forfeited when an organization participates in a USDA assistance program.

(d) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by a USDA awarding agency or a State or local government in administering Federal financial assistance from the USDA awarding agency shall require faith-based organizations to provide assurances or notices where they are not required of non-faith-based organizations.

(1) Any restrictions on the use of grant funds shall apply equally to faith-based organizations and non-faith-based organizations.

(2) All organizations that participate in USDA awarding agency programs or services, including organizations with religious character, motives, or affiliation, must carry out eligible activities in accordance with all program requirements and other applicable requirements governing the conduct of USDA awarding agency-funded activities, including those prohibiting the use of direct financial assistance to engage in explicitly religious activities, subject to any accommodations that are granted to organizations on a case-by-case basis in accordance with the Constitution and laws of the United States.

(3) No grant document, agreement, covenant, memorandum of understanding, policy, or regulation that is used by the USDA awarding agency or a State or local government in administering financial assistance from the USDA awarding agency shall disqualify faith-based organizations from participating in the USDA awarding agency's programs or services on the basis of the organizations' religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to disqualify a similarly situated secular organization.

(e) If an intermediary, acting under a contract, grant, or other agreement with the Federal Government or with a State or local government that is administering a program supported by Federal financial assistance, is delegated the authority under the contract, grant, or agreement to select non-governmental organizations to provide services funded by the Federal Government, the intermediary must ensure compliance by the subrecipient with the provisions of this part and any implementing regulations or guidance. If the intermediary is a non-governmental organization, it retains all other rights of a non-governmental organization under the program's statutory and regulatory provisions.

(f) USDA direct financial assistance may be used for the acquisition, construction, or rehabilitation of structures to the extent authorized by the applicable program statutes and regulations. USDA direct assistance may

not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used by the USDA funding recipients for explicitly religious activities. Where a structure is used for both eligible and ineligible purposes, USDA direct financial assistance may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to USDA funds. Sanctuaries, chapels, or other rooms that an organization receiving direct assistance from USDA uses as its principal place of worship, however, are ineligible for USDA-funded improvements. Disposition of real property after the term of the grant or any change in use of the property during the term of the grant is subject to government-wide regulations governing real property disposition (see 2 CFR part 400).

(1) Any use of USDA direct financial assistance for equipment, supplies, labor, indirect costs, and the like shall be prorated between the USDA program or activity and any ineligible purposes by the faith-based organization in accordance with applicable laws, regulations, and guidance.

(2) Nothing in this section shall be construed to prevent the residents of housing who are receiving USDA direct assistance funds from engaging in religious exercise within such housing.

(g) If a recipient contributes its own funds in excess of those funds required by a matching or grant agreement to supplement USDA awarding agency supported activities, the recipient has the option to segregate those additional funds or commingle them with the Federal award funds. If the funds are commingled, the provisions of this section shall apply to all of the commingled funds in the same manner, and to the same extent, as the provisions apply to the Federal funds. With respect to the matching funds, the provisions of this section apply irrespective of whether such funds are commingled with Federal funds or segregated.

(h) Nothing in this part shall be construed to preclude a USDA awarding agency or any State or local government or other intermediary from accommodating religion or making an accommodation for religious exercise with respect to one or more program requirements on a case-by-case basis in accordance with the Constitution and laws of the United States. A USDA awarding agency, State or local government, or other intermediary shall not disqualify an organization from participating in any USDA assistance program for which it is eligible on the basis of the organization's indication that it may request an accommodation with respect to one or more program requirements, unless the organization has made clear that the accommodation is necessary to its participation and the USDA awarding agency, State or local government, or other intermediary has determined that it would deny the accommodation.

[85 FR 82133, Dec. 17, 2020, as amended at 89 FR 15707, Mar. 4, 2024]

§ 16.4 Responsibilities of participating organizations.

(a) Any organization that receives direct or indirect Federal financial assistance shall not, with respect to services supported in whole or in part with Federal financial assistance, or in their outreach activities related to such services, discriminate against a current or prospective program beneficiary on the basis of religion, religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice. However, an organization that participates in a program funded by indirect financial assistance need not modify its program activities to accommodate a beneficiary who chooses to expend the indirect aid on the organization's program.

(b) Organizations that receive USDA direct assistance under any USDA program may not engage in explicitly religious activities, including activities that involve overt religious content such as worship, religious instruction, or proselytization, as part of the programs or services funded by USDA direct assistance. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services

supported with USDA direct assistance, and participation must be voluntary for beneficiaries of the programs or services supported with such USDA direct assistance. The use of indirect Federal financial assistance is not subject to this restriction. Nothing in this part restricts the Department's authority under applicable Federal law to fund activities that can be directly funded by the Government consistent with the Establishment Clause.

(c)(1) All organizations that receive USDA direct assistance under any domestic USDA program must give written notice to all beneficiaries and prospective beneficiaries of certain protections in a manner and form prescribed by USDA. The required language for this written notice to beneficiaries is set forth in appendix C to this part. This notice must include the following information:

(i) The organization may not discriminate against beneficiaries or prospective beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(ii) The organization may not require beneficiaries or prospective beneficiaries to attend or participate in any explicitly religious activities that are offered by the organization, and any participation by beneficiaries or prospective beneficiaries in such activities must be purely voluntary;

(iii) The organization must separate in time or location any privately funded explicitly religious activities from activities supported by direct Federal financial assistance; and

(iv) Beneficiaries or prospective beneficiaries may report violations of these protections (including denials of services or benefits) by an organization by contacting or filing a written complaint with USDA's Office of the Assistant Secretary for Civil Rights.

(2) The USDA awarding agency may determine that this written notice must also inform beneficiaries and prospective beneficiaries about how to obtain information from the awarding agency about other federally funded service providers in their area that provide the services available under the applicable program.

(3) This written notice must be given to beneficiaries prior to the time they enroll in the program or receive services from the program. When the nature of the service provided or exigent circumstances make it impracticable to provide such written notice in advance of the actual service, service providers must advise beneficiaries of their protections at the earliest available opportunity.

(d) A beneficiary or prospective beneficiary in a program supported by indirect Federal financial assistance may report an organization's violation of the religious protections in this part, including any denials of services or benefits by an organization, by contacting or filing a written complaint with USDA's Office of the Assistant Secretary for Civil Rights.

(e) Nothing in paragraphs (a) through (c) of this section shall be construed to prevent faith-based organizations that receive USDA assistance under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 *et seq.*, the Child Nutrition Act of 1966, 42 U.S.C. 1771 *et seq.*, or USDA international school feeding programs from considering religion in their admissions practices or from imposing religious attendance or curricular requirements at their schools.

[85 FR 82134, Dec. 17, 2020, as amended at 89 FR 15708, Mar. 4, 2024]

§ 16.5 Severability.

To the extent that any provision of this regulation is declared invalid by a court of competent jurisdiction, USDA intends for all other provisions that are capable of operating in the absence of the specific provision that has been invalidated to remain in effect.

[85 FR 82134, Dec. 17, 2020]

§ 16.6 Compliance.

USDA agencies will monitor compliance with this part in the course of regular oversight of USDA programs.

[89 FR 15709, Mar. 4, 2024]

APPENDIX A TO PART 16—NOTICE OR ANNOUNCEMENT OF AWARD OPPORTUNITIES

(a) Faith-based organizations may apply for this award on the same basis as any other

organization, as set forth at, and subject to the protections and requirements of, this part and any applicable constitutional and statutory requirements, including 42 U.S.C. 2000bb *et seq*. USDA will not, in the selection of recipients, discriminate for or against an organization on the basis of the organization's religious character, motives, or affiliation, or lack thereof, or on the basis of conduct that would not be considered grounds to favor or disfavor a similarly situated secular organization.

(b) A faith-based organization that participates in this program will retain its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(c) A faith-based organization may not use direct Federal financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by USDA, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

[89 FR 15709, Mar. 4, 2024]

APPENDIX B TO PART 16—NOTICE OF AWARD OR CONTRACT

(a) A faith-based organization that participates in this program retains its independence from the Government and may continue to carry out its mission consistent with religious freedom and conscience protections in Federal law. Religious accommodations may also be sought under many of these religious freedom and conscience protection laws.

(b) A faith-based organization may not use direct Federal financial assistance from USDA to support or engage in any explicitly religious activities except when consistent with the Establishment Clause of the First Amendment and any other applicable requirements. An organization receiving Federal financial assistance also may not, in providing services funded by USDA, or in their outreach activities related to such services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

[89 FR 15709, Mar. 4, 2024]

APPENDIX C TO PART 16—WRITTEN NOTICE OF BENEFICIARY PROTECTIONS

Name of Organization:

Name of Program:

Contact Information for Program Staff: [provide name, phone number, and email address, if appropriate]

Because this program is supported in whole or in part by financial assistance from the Federal Government, we are required to let you know that:

(1) We may not discriminate against you on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice;

(2) We may not require you to attend or participate in any explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) that are offered by our organization, and any participation by you in such activities must be purely voluntary;

(3) We must separate in time or location any privately funded explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) from activities supported with direct Federal financial assistance; and

(4) You may report violations of these protections, including any denials of services or benefits by an organization, by contacting or filing a written complaint with the U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, Executive Director, Center for Civil Rights Enforcement, 1400 Independence Avenue SW, Washington, DC 20250–9410, or by email to *program.intake@usda.gov*.

[When required by the Department, the notice must also state:] (5) If you would like to seek information about whether there are any other federally funded organizations that provide these kinds of services in your area, please contact [insert appropriate point of contact].

This written notice must be given to you before you enroll in the program or receive services from the program, unless the nature of the service provided or exigent circumstances make it impracticable to provide such notice before we provide the actual service. In such an instance, this notice must be given to you at the earliest available opportunity.

[89 FR 15709, Mar. 4, 2024]

PART 17—SALES OF AGRICULTURAL COMMODITIES MADE AVAILABLE UNDER TITLE I OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954, AS AMENDED

Sec.

17.1 General.
17.2 Definition of terms.
17.3 Purchase authorizations.
17.4 Agents of the participant or importer.
17.5 Contracts between commodity suppliers and importers.
17.6 Discounts, fees, commissions and payments.
17.7 Notice of sale procedures.
17.8 Ocean transportation.
17.9 CCC payment to suppliers.
17.10 Refunds and insurance.
17.11 Recordkeeping and access to records.

AUTHORITY: 7 U.S.C. 1701–1704, 1731–1736b, 1736f, 5676; E.O. 12220, 45 FR 44245.

SOURCE: 62 FR 52932, Oct. 10, 1997, unless otherwise noted.

§ 17.1 General.

(a) *What this part covers.* This part contains the regulations governing the financing of the sale and exportation of agricultural commodities by the Commodity Credit Corporation (CCC), through private trade channels to the maximum extent practicable, under the authority of title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (hereinafter called ''the Act'').

(b) *Agricultural commodities agreements.* (1) Under the Act, the Government of the United States enters into Agricultural Commodities Agreements with governments of foreign countries or with private entities. These agreements cover financing of the sale and exportation of agricultural commodities, including certain ocean transportation costs.

(2) Agricultural Commodities Agreements may provide that a participant will repay CCC for the financing extended by CCC either in dollars or in local currencies.

(3) A private entity must maintain a *bona fide* business office in the United States and have a person, principal, or agent on whom service of judicial process may be had in the United States unless the General Sales Manager determines that there are adequate assurances of repayment to CCC for the financing extended by CCC.

(c) *Purchase authorizations.* This part covers, among other things, the issuance by the General Sales Manager of purchase authorizations which authorize the participant to:

(1) Purchase agricultural commodities; and

(2) Procure ocean transportation therefor.

(d) *Financing.* For amounts to be financed by CCC, CCC will pay the supplier of commodity or of ocean transportation in accordance with § 17.9(a)(3). The cost of ocean freight or ocean freight differential will be financed by CCC only when specifically provided for in the purchase authorization.

(e) *Where information is available.* General information about operations under this part is available from the Director, Pub. L. 480 Operations Division, Foreign Agricultural Service, USDA, Washington, DC 20250–1033. Information about financing operations under this part, including forms prescribed for use thereunder, is available from the Controller, Commodity Credit Corporation, USDA, 1400 Independence Avenue, SW, Washington, DC 20250–0581.

[62 FR 52932, Oct. 10, 1997, as amended at 63 FR 59692, Nov. 5, 1998]

§ 17.2 Definition of terms.

Terms used in the regulations in this part are defined or identified as follows, subject to amplification in subsequent sections:

Affiliate and *associated company.* Any legal entity which owns or controls, or is owned or controlled by, another legal entity. For a corporation, ownership of the voting stock is the controlling criterion. A legal entity is considered to own or control a second legal entity if—

(1) The legal entity owns an interest of 50 percent or more in the second legal entity; or

(2) The legal entity and one or more other legal entities, in which it owns an interest of 50 percent or more, together own an interest of 50 percent or more in the second legal entity; or

(3) The legal entity owns an interest of 50 percent or more in another legal entity which in turn owns an interest of 50 percent or more in the second legal entity.

CCC. The Commodity Credit Corporation, USDA.

Commodity. An agricultural commodity produced in the United States, or product thereof produced in the United States, as specified in the applicable purchase authorization.

Controller. The Controller, Commodity Credit Corporation, or the Controller's designee.

Copy. A photocopy or other type of copy of an original document showing all data shown on the original, including signature or the name of the person signing the original or, if the signature or name is not shown on the copy, a statement that the original was signed.

Delivery. The transfer to or for the account of an importer of custody and right of possession of the commodity at U.S. ports or Canadian transshipment points in accordance with the delivery terms of the contract and purchase authorization. For purposes of financing, delivery is deemed to occur as of the on-board date shown on the ocean bill of lading.

Destination country The foreign country to which the commodity is exported.

Director. The Director, Pub. L. 480 Operations Division, Foreign Agricultural Service.

Expediting services. Services provided to the vessel owner at the discharge port in order to facilitate the discharge and sailing of the vessel; this may include assisting with paperwork, obtaining permits and inspections, supervision and consultation.

FAS. The Foreign Agricultural Service, USDA.

FSA. The Farm Service Agency, USDA.

FSA Office. The office designated in the purchase authorization to administer this financing operation on behalf of CCC.

Finance. To expend CCC funds, whether or not the participant is required to repay the funds to CCC. For example, this part refers to CCC ''financing'' both the ocean freight differential, which the participant does not repay, and the commodity cost, which the participant does repay.

Form CCC–106. The form entitled ''Advice of Vessel Approval.''

Form CCC–329. The signed original of the form entitled ''Supplier's Certificate.''

General Sales Manager and *GSM*. The General Sales Manager, FAS, or the General Sales Manager's designee.

Importer. The person that contracts with the supplier for the importation of the commodity. The importer may be the participant or any person to which a participant has issued a sub-authorization.

Importing country. Any nation with which an agreement has been signed under the Act.

Invitation for bids and *IFB*. A publicly advertised request for offers.

Legal entity includes, but is not limited to, an individual (except that an individual and his or her spouse and their minor children are considered as one legal entity), partnership, association, company, corporation and trust.

Letter of credit. An irrevocable commercial letter of credit issued, confirmed, or advised by a banking institution in the United States and payable in U.S. dollars.

Local currency. The currency of the importing or destination country.

Notice of arrival. A written notice in accordance with §17.8(g) stating that the vessel has arrived at the first port of discharge.

Ocean bill of lading—(1) *In the case of cargo carried on a vessel other than LASH barges:* An ''on-board'' bill of lading, or a bill of lading with an ''on-board'' endorsement, which is dated and signed or initialed on behalf of the carrier; or

(2) *In the case of cargo carried in a LASH barge:* (i) For the purpose of financing commodity price, an ''on-board'' bill of lading showing the date the commodity was loaded on board barges, which is dated and signed or initialed on behalf of the carrier, or a bill of lading or a LASH barge bill of lading with an ''on-board barge'' endorsement which is dated and signed or initialed on behalf of the carrier.

(ii) For the purpose of financing ocean freight or ocean freight differential, a bill of lading which is dated and

signed or initialed on behalf of the carrier indicating that the barge containing the cargo was placed aboard the vessel named in the Form CCC–106 not later than eight running days after the last LASH barge loading date (contract layday) specified in the Form CCC–106. This may be either an ''on board'' bill of lading or a bill of lading or a LASH barge bill of lading with an ''on-board ocean vessel'' endorsement.

(3) Documentary requirements for a copy of an ''ocean bill of lading'' refer to a non-negotiable copy thereof.

Ocean freight contract. A charter party or liner booking note.

Ocean transportation. Interchangeable with the term ''ocean freight''.

Ocean transportation brokerage. Services provided by shipping agents related to their engagement to arrange ocean transportation and services provided by ships brokers related to their engagement to arrange employment of vessels.

Ocean transportation-related services. Furnishing the following services: lightening, stevedoring, and bagging (whether these services are performed at load or discharge), and inland transportation, i.e., transportation from the discharge port to the designated inland point of entry in the destination country, if the discharge port is not located in the destination country.

Participant. The collective term used to denote the importing country or the private entity with which an agreement has been negotiated under the Act.

Person. An individual or other legal entity.

Private entity. The nongovernmental legal entity with which an agreement has been signed under the Act.

Purchase authorization. Form FAS–480, ''Authorization to Purchase Agricultural Commodities,'' issued to a participant under this part.

Purchasing agent. Any person engaged by a participant to procure agricultural commodities.

Secretary. The Secretary of Agriculture of the United States, or the Secretary's designee.

Selling agent. A representative for the supplier of the commodity, who is not employed by or otherwise connected with the importer or the participant.

Shipping agent. Any person engaged by a participant to arrange ocean transportation.

Ships broker. Any person engaged by a supplier of ocean transportation to arrange employment of vessels.

Supplier. Any person who sells a commodity to an importer under the terms of a purchase authorization, or who sells ocean transportation to an importer or supplier of the commodity under the terms of a purchase authorization.

USDA. The U.S. Department of Agriculture.

United States. The 50 States, the District of Columbia, and Puerto Rico.

§ 17.3 Purchase authorizations.

(a) *Issuance.* After an agreement is signed, the GSM will issue a purchase authorization to the participant for each commodity included in the agreement.

(b) *Contents.* Each purchase authorization includes the following information:

(1) The commodity to be purchased and specifications, approximate quantity and maximum dollar amount authorized;

(2) Contracting requirements;

(3) The contracting period, during which suppliers and importers must enter into contracts; and the delivery period, during which the commodity must be delivered;

(4) The terms of delivery to the importer;

(5) Documentation required for CCC financing in addition to or in lieu of the documentation specified in § 17.9;

(6) Provisions relating to payment to CCC, if applicable;

(7) The address of the FSA office administering the financing operation on behalf of CCC;

(8) The method of financing provided under the Agricultural Commodities Agreement;

(9) Any provisions relating to financing by CCC in addition to or in lieu of those specified in this part;

(10) Authorization to procure ocean transportation, and provisions relating to the financing of ocean freight or ocean freight differential, as applicable;

(11) Any other provisions considered necessary by the General Sales Manager.

(c) *Applicability of this part.* In addition to the provisions of a particular purchase authorization, each purchase authorization, unless otherwise provided, is subject to the provisions of this part to the same extent as if the provisions were fully set forth in the purchase authorization.

(d) *Modification or revocation.* The General Sales Manager reserves the right at any time for any reason or cause whatsoever to supplement, modify or revoke any purchase authorization, including the termination of deliveries, if it is determined to be in the interest of the U.S. Government. CCC shall reimburse suppliers who would otherwise be entitled to be financed by CCC for costs which were incurred as a result of such action by the GSM in connection with firm sales or shipping contracts, and which were not otherwise recovered by the supplier after a reasonable effort to minimize such costs: *Provided, however,* That such reimbursement shall not be made to a supplier if the GSM determines that the GSM's action was taken because the supplier failed to comply with the requirements of the regulations in this part or the applicable purchase authorization; *Provided further,* That reimbursement to suppliers of ocean transportation shall not exceed the ocean freight differential when the purchase authorization provides only for financing the differential.

(e) *Subauthorizations.* The participant may issue subauthorizations to importers consistent with the terms of the applicable purchase authorization. The participant, in subauthorizing, shall specify to importers all the provisions of the applicable purchase authorization which apply to the subauthorization.

(f) *Cotton textiles.* (1) Except as provided in paragraph (f)(2) of this section, financing of textiles under this part is limited to cotton yarns and fabrics processed up to and including the dyed and printed state, and preshrinking. Any processing of such yarns and fabrics beyond this stage will be at the expense of the participant.

(2) Purchase authorizations may permit cotton textiles processed beyond the stage described in paragraph (f)(1) of this section to be purchased, but the maximum financing by CCC is limited to the equivalent value of the cotton yarns and fabrics described in paragraph (f)(1) of this section, contained in the textiles, plus eligible ocean transportation costs.

(3) Financing is available only for textiles manufactured entirely of U.S. cotton in the United States.

§ 17.4 Agents of the participant or importer.

(a) *General.* (1) A participant or importer is not required to use a purchasing agent or shipping agent, or employ the services of any other agent, broker, consultant, or other representative (hereafter ''agent'') in connection with arranging the purchase of agricultural commodities under title I of the Act and arranging ocean transportation for such commodities. However, if an agent is used, the participant shall submit a written nomination of the agent to the Deputy Administrator, Export Credits, FAS, along with a copy of the proposed agreement between the participant or importer and such agent. The written nomination shall also specify the period of time to be covered by the nomination. A person may not act as agent for a participant or importer unless the Deputy Administrator, Export Credits, FAS, has provided a written statement that the nomination is accepted in accordance with the provisions of this section.

(2) See §17.6(c) regarding commissions, fees, or other compensation of any kind to agents of a participant or importer.

(3) A freight agent employed by the Agency for International Development under titles II and III is not eligible to act as an agent for the participant or importer during the period of such employment. A subcontractor of such freight agent is not eligible to act as an agent for the participant or importer during the period of its subcontract.

(b) *Affiliate defined.* For purposes of this section, the term affiliate has the meaning provided in §17.2 and, in addition, persons will also be considered to

be affiliates if any of the following conditions are met:

(1) There are any common officers or directors.

(2) There is any investment by eligible commodity suppliers, selling agents, or persons engaged in furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether or not any part of the ocean transportation is financed by the U.S. Government, or by agents of such persons, or their officers or directors, in the agent of the participant or importer.

(3) There is any investment by the agent of the participant or importer, or its officers or directors, in approved commodity suppliers; selling agents; or persons engaged in furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether or not any part of the ocean transportation is financed by the U.S. Government, or in agents of such persons. These conditions include those cases in which investment has been concealed by the utilization of any scheme or device to circumvent the purposes of this section but does not include investment in any mutual fund.

(c) *Information to be furnished.* A person nominated to act as an agent of the participant or importer, and any independent contractor that may be hired by such person to perform functions of a shipping agent, shall furnish to the Deputy Administrator, Export Credits, FAS, the following information or documentation as may be applicable:

(1) The names of all incorporators;

(2) The names and titles of all officers and directors;

(3) The names of all affiliates, including the names and titles of all officers and directors of each affiliate, and a description of the type of business in which the affiliate is engaged;

(4) The names and proportionate share interest of all stockholders;

(5) If beneficial interest in stock is held by other than the named shareholders, the names of the holders of the beneficial interest and the proportionate share of each;

(6) The amount of the subscribed capital;

(7) For USDA acceptance of a nomination covering services provided during each U.S. fiscal year (October 1–September 30), a written statement signed by such person:

(i) Certifying that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not engaged in, and will not engage in, supplying commodities under any title of the Act or the Food for Progress Act of 1985 or furnishing ocean transportation or ocean transportation-related services for commodities provided under any title of the Act, section 416(b) of the Agricultural Act of 1949, or the Food for Progress Act of 1985, whether any part of the ocean transportation is financed by the U.S. Government; and that the person has not served and will not serve as an agent of firms engaged in providing such commodities, ocean transportation and ocean transportation-related services;

(ii) Certifying that, for ocean transportation brokerage services provided during the U.S. fiscal year covered by USDA's acceptance of the nomination, the person has not shared and will not share freight commissions with the participant, the importer, or any agent of the participant or the importer, whether CCC finances any part of the ocean freight. CCC will consider as sharing a commission a situation where the agent forgoes part or all of a commission and the supplier of ocean transportation pays a commission directly to the participant, the importer, or any other person on behalf of the participant or the importer; and

(iii) Undertaking that, during the U.S. fiscal year covered by USDA's acceptance of the nomination, affiliates of such person have not engaged in and will not engage in the activities or actions prohibited in this paragraph (c)(7).

(8) A certification that neither the person nor any affiliates has arranged to give or receive any payment, kickback, or illegal benefit in connection with the person's selection as agent of the participant or importer.

(d) *USDA acceptance.* (1) USDA will consider accepting the nomination of a person to act as an agent of the participant or importer when the documents required to be submitted by this section are received by the Deputy Administrator, Export Credits, FAS.

(2) USDA's acceptance of such nomination shall remain in effect for the period of time requested by the participant or such shorter period as the Deputy Administrator, Export Credits, FAS, may determine. USDA will withdraw such acceptance if the agent of the participant or importer, or any of the affiliates of such agent, violates the certifications or undertakings made pursuant to paragraphs (c) (7) and (8) of this section.

(3) A person is required to submit the information and documentation required by §17.4(c) to support the person's first nomination to act as an agent of any participant or importer for each fiscal year. For subsequent nominations covering the same fiscal year, the person must provide a written certification that the information and documentation provided earlier are still accurate and complete, or must provide the details of any changes to previously submitted information.

(e) *Notification.* The Deputy Administrator, Export Credits, FAS, shall promptly notify persons nominated as agents of the participant or importer, of the determination or of the need for further inquiry, and shall provide a written response within 30 calendar days of receipt of all the required documents. If USDA will not accept the nomination, the notification shall state the reasons therefor. The determination of the Deputy Administrator, Export Credits, FAS, is effective immediately and continues in effect pending the result of any appeal to the General Sales Manager.

(f) *Non-acceptance or withdrawal.* (1) If USDA does not accept the nomination of a person, or if acceptance has been withdrawn pursuant to the provisions of this section, the person may, within 30 calendar days, present to the General Sales Manager, orally or in writing, any reasons as to why such action should not stand. Nothing in this paragraph shall be construed as to prohibit a person whose nomination has not been accepted or whose acceptance has been withdrawn by USDA from being nominated at a later time.

(2) If, in the procurement of commodities made available under title I, Pub. L. 480, a participant or importer uses an agent whose nomination has not been accepted in writing by the Deputy Administrator, Export Credits, FAS, USDA may withhold sales approval.

(3) If, in the shipping of commodities made available under title I, Pub. L. 480, a participant or importer uses an agent whose nomination has not been accepted in writing by the Deputy Administrator, Export Credits, FAS, USDA may withhold vessel approval or may deduct from the ocean freight differential to be paid, the amount of any commission to the agent in connection with the shipment.

(g) *No competitive advantage.* A shipping agent may not take any action which would give a competitive advantage to any supplier of commodities or ocean transportation. This includes, but is not limited to, providing advance notice of IFB's or amendments, or selectively enforcing IFB or contract requirements.

[62 FR 52932, Oct. 10, 1997; 62 FR 63606, Dec. 1, 1997]

§ 17.5 Contracts between commodity suppliers and importers.

(a) *Commodity suppliers and selling agents.* (1) Commodity suppliers must be determined to be eligible under the Pub. L. 480, title I program in order for their contracts to be eligible for CCC financing. A prospective commodity supplier must be engaged in the business of selling agricultural commodities for export from the United States. The commodity supplier must maintain a bona fide business office in the United States, and must have a person, principal or agent on whom service of judicial process may be had in the United States.

(2) Persons who wish to participate as commodity suppliers shall submit the following information to the Foreign Agricultural Service, Stop 1033, USDA, 1400 Independence Ave., SW, Washington, DC 20250–1033:

(i) A current financial statement of the prospective supplier, preferably an

audited statement, as evidence of financial responsibility. Submission of a letter of reference from a bank is also encouraged.

(ii) A statement containing general background information about the firm, including the names and titles of the chief executive officers and a description of the firm's experience as an exporter of U.S. agricultural commodities. Copies of bills of lading supporting this statement are also requested.

(iii) Any other information requested relating to whether the prospective supplier is responsible and is able to perform its obligations under this part and the purchase authorization.

(3) If, at the time the commodity supplier reports the sale it is determined that an agent employed or engaged by a commodity supplier to obtain a contract is not a selling agent as defined in §17.2, the sale will not be eligible for financing.

(b) *Eligibility for financing.* To be eligible for financing, commodity contracts must comply with the following requirements unless otherwise specified in the purchase authorization.

(1) Commodity contracts between suppliers and importers are considered to be conditioned on the approval by USDA of the contract price; conformance of the sale to the provisions of the purchase authorization; responsiveness of the offer to IFB terms; and compliance by the supplier and the selling agent, if any, with paragraph (a) of this section.

(2) Importers and suppliers must enter into contracts within the contracting period specified in the purchase authorization. The contracts must provide for deliveries to the importer in accordance with the delivery terms and during the delivery period specified in the purchase authorization, or any amendment or modification thereto.

(3) Contracts for a commodity, under a purchase authorization which limits delivery terms to f.o.b. or f.a.s., must be separate and apart from the contracts for ocean transportation of the commodity.

(4) The supplier's sales price may not exceed the prevailing range of export market prices as applied to the terms of sale at the time of sale, as determined by USDA. The ''time of sale'' is the date and time specified in the IFB for receipt of offers; or the date of the contract amendment if the amendment affects the sale price, as determined by USDA. The contract price may not be on a cost plus a percentage-of-cost basis.

(c) *Contracting procedures*—(1) *Purchasing—general.* (i) Importers must purchase commodities on the basis of IFB's.

(ii) The participant shall maintain a record of all offers received from suppliers until the expiration of three years after final payment under contracts awarded under the purchase authorization. The GSM may examine these records or request specific information in connection with the offers.

(2) *Invitations for bids.* The following conditions shall apply on all purchases of commodities on the basis of IFB's:

(i) The General Sales Manager must approve the terms of the IFB before it is issued by the importer.

(ii) The importer shall issue the IFB in the United States and shall open all offers in public in the United States at the time and place specified in the IFB.

(iii) The IFB must permit submission of offers from all suppliers who meet the requirements of this subpart.

(iv) The IFB may not preclude offers for shipment from any United States port(s) unless the purchase authorization provides for exportation only from certain ports.

(v) The IFB may not establish minimum quantities to be offered or which will be considered.

(vi) The IFB must stipulate the responsibility for each party for payment of any costs not eligible for financing by CCC.

(vii) The IFB must be in compliance with this part, the purchase authorization, and sound commercial standards.

(3) *Contract awards.* (i) The importer shall consider only offers which are responsive to the IFB and shall make awards either on the basis of the lowest commodity price(s) offered or on the basis of lowest landed cost. However, when vessels offered under the flag of the participant, the importing country or the destination country; or vessels

controlled by the participant, the importing country or the destination country are to be used, the participant must purchase commodities for shipment on such vessels only on the basis of the lowest commodity price(s) offered. This limitation may, however, be waived by the GSM:

(A) When the lowest commodity price(s) offered are in locations where vessels cannot reasonably be made available without a substantial increase in freight costs to the participant;

(B) For small quantities offered at additional loading points (in aggregate not more than 15 percent of the total tonnage offered by a vessel); or

(C) Where this limitation would conflict with the purposes of the program.

(ii) For purposes of this section, ''lowest commodity price(s)'' means the lowest commodity price(s) offered for loading onto the type of vessel (dry bulk carrier, tanker, etc.) to be utilized to carry the commodity purchased.

(iii) For purposes of this section, ''lowest landed cost'' means the combination of commodity price and ocean freight rate resulting in the lowest total cost to deliver the commodity to the importing country, considering the quantity which must be shipped on privately owned U.S.-flag commercial vessels, as determined by the Director. Lowest landed cost may be defined on either a foreign flag or U.S. flag basis. Awards may not be made on the lowest landed cost basis unless IFB's are issued for commodity and ocean freight so that all commodity and ocean freight offers are reviewed simultaneously.

(iv) Participants are encouraged to purchase commodities on the basis of lowest landed cost when U.S. flag vessels are to be used. If such commodity purchases are not made on the basis of lowest landed cost (U.S. flag), ocean freight differential payments will nonetheless be calculated on the rates of U.S. flag vessels which would represent the lowest landed cost.

(v) Announcement of awards shall be made in the United States. The importer shall promptly submit to the Director copies of all offers received with a copy of the IFB which was issued. No sale can be approved for financing until this information has been received by FAS. The decision of the GSM shall be final regarding the responsiveness of offers to IFB terms in the awarding of contracts.

(d) *Contract quantity eligible for financing.* The quantity eligible for financing in the contract between the supplier and the importer may not exceed that quantity approved by the Pub. L. 480 Operations Division, FAS, including any approved contract tolerance.

(e) *Contract disputes.* Contracts between suppliers and importers should stipulate the responsibility of each party for payment of any costs not eligible for financing by CCC. Questions as to payment of ineligible costs should be resolved between the contracting parties.

(f) *Contract provisions.* Each contract entered into for financing under this part is deemed to include all terms and conditions required by the regulations in this part.

(g) *Export Trade Act* (*Webb-Pomerene Law*). A supplier who is a member of a Webb-Pomerene association and who enters into contracts with importers as a member of such an association shall so indicate in a statement on, or attached to, the copy of the supplier's detailed invoice referred to in § 17.9(c)(2).

§ 17.6 Discounts, fees, commissions and payments.

For purposes of this section, the term ''payment'' means a commission, fee or other compensation of any kind. The term ''other compensation of any kind'' includes anything given in return for any consideration, services, or benefits received or to be received.

(a) *Discounts.* If a contract provides for one or more discounts (including but not limited to trade or quantity discounts and discounts for prompt payment) whether expressed as such or as ''commissions'' to the importer, CCC will only pay the invoice amount after the discount (supplier's contracted price less all discounts).

(b) *Selling agents.* (1) A supplier may not make a payment to a selling agent employed or engaged by the supplier to obtain a contract. This prohibition applies to any payment to a person who has acted as a selling agent to obtain a

contract even though the payment may be for services performed that are not themselves services to obtain a contract.

(2) A person is deemed to act ''to obtain a contract'' if the person acts on behalf of a commodity supplier to:

(i) Influence a buyer to award a contract to the supplier;

(ii) Give the supplier a competitive advantage in relation to other potential suppliers; or

(iii) Influence CCC to approve a contract for financing under this part.

(3) CCC will not consider acts which are purely ministerial in nature and do not require the exercise of personal influence, judgment, or discretion (such as attending bid openings or presenting offers at bid openings), or services to implement a contract after it has been entered into by the parties (such as handling documentation problems or contract disputes), as acts to obtain a contract.

(c) *Other prohibitions.* (1) Suppliers of commodities or ocean transportation may not:

(i) Pay a commission to the participant or importer; to any agency, including an agency of the government of the importing country or the destination country; or to a corporation owned or controlled by the participant or the government of the importing country or the destination country.

(ii) Pay a commission to any affiliate of the participant, if the participant is a private entity;

(iii) Make any payment to an agent of the participant or importer, in the person's capacity as such agent, other than ocean transportation brokerage commissions.

(iv) Pay an address commission or payment.

(2) For ocean transportation, in addition to this paragraph, see also §17.8(j).

(3) When any portion of the ocean freight is financed by CCC, total ocean transportation brokerage commissions earned on U.S. and non-U.S.-flag bookings by all parties arranging vessel fixtures shall not exceed 2½ percent of the total freight costs.

(4) If a payment is made in violation of this section, CCC may demand dollar refund of the entire amount financed by CCC under the contract.

§17.7 Notice of sale procedures.

(a) *Telephonic notice of sale.* The supplier shall, immediately upon making a firm sale, telephone a notice of sale to Pub L. 480 Operations Division, FAS. A sale is considered firm when the supplier has been notified by the importer of an award, even though the contract is conditioned on approval by FAS (see §17.5(b)(1).) If the supplier fails to furnish a notice of sale within 3 working days after the date of sale, CCC has the right to refuse to finance the sale.

(b) *Sale approval.* (1) Pub. L. 480 Operations Division will notify the supplier by telephone of approval of the notice of sale.

(2) The supplier will prepare Form FAS–359, ''Declaration of Sale,'' and submit it to Pub. L. 480 Operations Division promptly as soon as FAS has provided the CCC Registration Number to the supplier. The supplier or the supplier's authorized representative must sign the form.

(3) Each Form FAS–359 shall cover only a single sale contract. If a sale is made under two or more purchase authorizations, the supplier will prepare separate forms for each purchase authorization.

(4) If any correction is needed to the Form FAS–359, the supplier must immediately notify FAS. If a contract is amended, the supplier should present the original Form FAS–359 for payment along with a copy of the written USDA approval of the contract amendment.

(c) *Sale disapproval.* (1) Pub. L. 480 Operations Division, FAS, will notify the supplier by telephone when a sale is disapproved for financing. The related contract between the supplier and importer shall, for purposes of financing, be considered null and void.

(2) On receipt of a notice of disapproval, the supplier shall promptly notify the importer.

(d) *Contract delivery period.* Price approval is limited to exports made during the delivery period stated in the notice of sale or any contract amendment approved by the Pub. L. 480 Operations Division, FAS. If the supplier

cannot complete delivery by the terminal delivery date of the contract delivery period, the supplier and the participant or importer shall submit a notice of contract amendment as provided in paragraph (e) of this section. If the supplier fails to comply, §17.10(d) shall apply.

(e) *Contract amendments.* (1) The supplier and the participant or importer shall each submit a written notice of each contract amendment to the Director immediately after the amendment to the contract is made. This includes not only any change in the contract delivery period or any other terms and conditions of the contract as provided in the information given in the original notice of sale or any amendment thereto, but also any change in any other terms and conditions of the contract.

(2) The notice of contract amendment must contain the following:

(i) A request that USDA approve an amendment to the specifically identified sale contract between (the participant or importer) and (the commodity supplier).

(ii) A statement of what the amendment consists of (as, extension of delivery period through (date)) and a detailed explanation of the reasons for the amendment.

(iii) A statement that the contract amendment has been agreed to by both buyer and seller.

(3) Pub. Law 480 Operations Division, FAS, will notify the supplier as to whether the amendment is approved or disapproved.

(4) The supplier shall furnish a copy of the USDA approval of the amendment with other documentation submitted to obtain payment.

(5) If the supplier fails to furnish notice of a contract amendment to Pub. L. 480 Operations Division, FAS, within 3 working days after the date of such amendment, CCC has the right to refuse to finance the sale or any portion of the sale.

(6) Any amendment must be consistent with the provisions of the purchase authorization and this part and must otherwise be acceptable to Pub. L. 480 Operations Division, FAS.

§ 17.8 Ocean transportation.

(a) *General.* (1) This section applies to the financing of ocean freight or ocean freight differential. Ocean freight will be financed by CCC only to the extent specifically provided for in the purchase authorization. The purchase authorization may provide requirements in addition to or in lieu of those specified in this section.

(2) The supplier of ocean transportation must be engaged in the business of furnishing ocean transportation from the United States and must have a person, principal or agent, on whom service of judicial process may be had in the United States.

(3) The quantity of the commodity which must be shipped on privately owned U.S.-flag commercial vessels will be determined by the Director.

(4) The supplier of ocean transportation shall release copies of the ocean bills of lading to the supplier of the commodity promptly upon completion of loading of the vessel.

(5) When CCC finances any part of the ocean freight or the ocean freight differential, the participant must open an operable irrevocable letter of credit for the portion of the ocean freight not financed by CCC. All banking institution charges, such as commissions, expenses, etc., are for the account of the participant. The amount of the letter of credit shall be computed using the information provided in the Form CCC–106. The letter of credit shall provide for sight payment or acceptance of a draft, payable in U.S. dollars, on the basis of the quantities specified in the applicable ocean freight contract. If the supplier of ocean transportation accepts the commodity before receipt of an acceptable letter of credit from a bank, the supplier takes such action at its own risk. This action in itself does not affect eligibility for CCC financing.

(b) *Contracting procedures*—(1) *Invitations for Bids* (*IFB's*). (i) Public freight ''Invitations for Bids'' are required in the solicitation of freight offers from all U.S. and non-U.S. flag vessels when CCC is financing any portion of the ocean freight.

(ii) For non-U.S. flag vessels when CCC is not financing any portion of the ocean freight, public freight IFB's are

also required unless otherwise authorized by the Director, or unless the participant requires the use of vessels under its flag, the flag of the destination country, or other non-U.S. flag vessels under its control. Vessels considered to be under the control of the participant or the destination country include vessels under time charters, bare boat charters, consecutive voyage charters, or other contractual arrangements for the carriage of commodities which provide guaranteed access to vessels.

(iii) Prior to release to the trade, all freight IFB's must be submitted to the Director for approval. Freight IFB's must be issued by means of Bridge News, New York, plus at least one other means of communication.

(iv) All freight IFB's must:

(A) Specify a closing time for the receipt of offers and state that late offers will not be considered;

(B) Provide that offers are required to have a canceling date no later than the last contract layday specified in the IFB;

(C) Provide the same deadline for receipt of offers from both U.S. flag vessels and non-U.S. flag vessels;

(D) Stipulate the responsibility for each party for payment of any costs not eligible for financing by CCC (in the IFB or the pro forma charter party).

(2) *Competitive bidding.* When CCC is financing any portion of the freight, all offers shall be opened in public in the United States at the time and place specified in the IFB. Offers shall be opened prior to receipt of offers for the sale of commodities as the Director determines appropriate. Only offers which are responsive to the IFB may be considered, and no negotiation shall be permitted.

(3) *Records of offers.* Copies of all offers received must be promptly furnished to the Director, who may require the participant, or its shipping agent, to submit a written certification to the GSM that all offers received (with the times of receipt designated thereon) were transmitted to the Department. For purposes of this paragraph ''time of receipt'' shall be the time a hand-carried offer or a mailed offer was received at the designated location for presentation or, if transmitted electronically, the time the offer was received, as supported by evidence satisfactory to the Director.

(4) *Re-tenders.* The Director may permit or require a participant to refuse any and all bids, and in such case a participant may conduct a re-tender with the approval of the Director. The Director shall not approve or require freight re-tenders unless they will increase the likelihood of meeting U.S. flag cargo preference requirements, will permit the desired quantity to be shipped, will likely result in reduced CCC expenditures, or are otherwise determined to be in the best interest of the program.

(c) *Request for vessel approval.* The pertinent terms of all proposed charters and all proposed liner bookings, regardless of whether any portion of ocean freight is financed by CCC, must be submitted to the Director for review and approval before fixture of the vessel. Tentative advance vessel approvals may be obtained by telephone provided Form CCC–105, ''Ocean Shipment Data—Pub. L. 480 (Request for Vessel Approval)'', is furnished promptly confirming the information supplied by telephone. The Form CCC–105 shall be submitted in duplicate to the Director.

(d) *Advice of vessel approval.* (1) USDA will give written approval of charters and liner bookings on Form CCC–106, ''Advice of Vessel Approval.'' The Form CCC–106 will state whether CCC will finance any part of the ocean freight. For f.a.s. or f.o.b. shipments, CCC will issue a signed original of Form CCC–106 to the ocean carrier when CCC finances any part of the ocean freight. For c.& f. or c.i.f. shipments, CCC will issue Form CCC–106 to the supplier of commodity.

(2) If CCC agrees to finance any portion of the ocean freight, the participant or its agent shall forward a copy of the ocean freight contract immediately after execution to the Director for review and approval prior to issuance of Form CCC–106.

(3) CCC may also require the supplier of ocean transportation to submit copies of lightening, stevedoring, or bagging contracts for any voyage for which CCC finances ocean freight or ocean freight differential.

(e) *Special charter party provisions required when any part of ocean freight is financed by CCC.* This paragraph applies when CCC finances any part of the ocean freight for commodities booked on charter terms. In the event of any conflict between the provisions of the regulations in this part and the charter party or ocean bills of lading issued pursuant thereto, the provisions of the regulations in this part shall prevail. The charter party shall contain or, for the purpose of financing pursuant to the regulations in this part, be deemed to contain the following provisions:

(1) That if there is any failure on the part of the supplier of ocean transportation to perform the charter party after the vessel has tendered at the loading port, the charterer shall be entitled to incur all expenses which in the judgment of the General Sales Manager are required to enable the vessel to carry out her obligations under the charter party including, but not limited to, expenses for lifting any liens asserted against the vessel.

(2) That, notwithstanding any prior assignments of freight made by the owner or operator, the expenses authorized in paragraph (e)(1) of this section may be deducted from the freight earned under the charter party.

(3) That ocean freight is earned and that 100% thereof is payable by the charterers when the vessel and cargo arrive at the first port of discharge, subject to paragraph (e)(4) of this section, and to the further condition that if a force majeure as described in paragraph (l)(1) of this section results in the loss of part of the vessel's cargo, 100% of the ocean freight is payable on the part so lost. This provision does not relieve the carrier of the obligation to carry to other points of discharge if so required by the charter party.

(4) That if a force majeure as described in paragraph (l)(1) of this section prevents the vessel's arrival at the first port of discharge, the freight shall be payable by the charterer at the time the General Sales Manager determines that such force majeure was the cause of nonarrival.

(5) That laydays are non-reversible.

(6) That in a dispute involving any rights and obligations of CCC, including rights and obligations as successor or assignee, which cannot be settled by agreement, the dispute shall not be subject to arbitration.

(f) *Special charter party information required when any part of ocean freight is financed by CCC.* When CCC finances any part of the ocean freight for commodities booked on charter terms, the charter party shall contain the following information:

(1) The name of each party participating in the ocean freight brokerage commission, if any, and the percentage thereof payable to each party;

(2) The name of the vessel and the name of the substitute vessel, if any.

(g) *Notice of arrival.* Each Form CCC–106 will indicate whether a notice of arrival is required. A notice of arrival, when required, must be furnished promptly by the participant or its designated agent or other source acceptable to CCC (excluding the carrier or its agent) and must include the name of the vessel, the purchase authorization number, the first port of discharge, and the date of arrival. The notice of arrival of the vessel also constitutes prima facie evidence of arrival of the cargo.

(h) *Foreign flag vessels.* The cost of ocean transportation will be financed by CCC on non-U.S. flag vessels only when, and to the extent, specifically provided in the applicable purchase authorization.

(i) *U.S.-flag vessels.* When a commodity is required to be shipped on a privately owned U.S.-flag commercial vessel, Form CCC–106 will set forth:

(1) The rate of the ocean freight differential, if any, which the Director determines to exist between the prevailing foreign-flag vessel rate and the U.S.-flag vessel rate; and

(2) The approximate tonnage for which CCC will authorize reimbursement of ocean freight or ocean freight differential, as appropriate.

(j) *Items not eligible for financing by CCC.* The following costs will not be financed by CCC, either separately or as part of the commodity contract price:

(1) Loading, trimming, and other related shipping expenses unless included in the ocean freight rate;

(2) Discharge costs unless included in the ocean freight rate;

(3) The cost of ''dead freight'';

(4) Cargo dues and taxes assessed by the importing or recipient country;

(5) Surcharges assessed by steamship conferences or carriers, unless specifically authorized by the Director;

(6) General average contributions;

(7) Stevedoring overtime and vessel crew overtime;

(8) Ship's disbursements;

(9) Any payments prohibited in §17.6 (b) and (c); and

(10) Detention.

(k) *General financing provisions.* When any part of ocean freight will be financed either separately or as part of the commodity contract price, the following shall apply:

(1) Ocean freight contracts must show the ocean freight rate from one loading port to one discharge port, and may provide for an increase in rate for an additional port of loading or discharge, or other option. CCC, however, will finance initially the lowest such rate or OFD, as appropriate. Increased amounts due because of the exercise of such option will be financed only after receipt of an ocean bill of lading or other evidence showing that the option was exercised.

(2) In the case of transshipment to a foreign flag vessel, CCC will finance the ocean freight or OFD, as appropriate, only to the point of transshipment, at a rate determined by the GSM, and CCC will not finance any part of the ocean freight beyond the point of transshipment unless specifically approved by the GSM. If the commodity was transported from a U.S. port and was transshipped at another U.S. port, CCC will not finance, without prior approval of the GSM, any part of the ocean freight incurred before transshipment.

(3) The ocean freight rate eligible for CCC financing and the rate used for the U.S.-flag vessel in calculating ocean freight differential shall not exceed the following rates for the category of the vessel concerned:

(i) For commodities covered by published tariff rates—the published conference contract rate;

(ii) For other commodities—the market rate prevailing at the time of request for approval as determined by the Director, but in any event not in excess of rates charged other shippers (irrespective of booking dates) for like commodities on the voyage concerned.

(4) Payment will be made for ocean freight or OFD, as appropriate, from loading points to discharge points at rates approved by the Director on Form CCC–106 in conformity with paragraph (k)(3) of this section.

(5) Freight for a vessel designated on Form CCC–106 as a U.S. flag vessel shall not be eligible for financing unless such vessel complies with the provisions of Pub. L. 87–266.

(6) Ocean freight contracts must specify that the participant shall be liable for detention of the vessel for loading delays attributable solely to the decision of the supplier of ocean transportation not to commence loading because of the failure of the participant to establish an ocean freight letter of credit in accordance with paragraph (a)(5) of this section. However, ocean freight contracts may not contain a specified detention rate. The ocean transportation supplier shall be entitled to reimbursement for detention costs for all time so lost, for each calendar day or any part of the calendar day, including Saturdays, Sundays and holidays. The period of such delay shall not commence earlier than upon presentation of the vessel at the designated loading port within the laydays specified in the ocean freight contract, and upon notification of the vessel's readiness to load in accordance with the terms of the applicable ocean freight contract. The period of such delay shall end at the time that operable irrevocable letters of credit have been established for the applicable ocean freight or the time the vessel begins loading, whichever is earlier. Time calculated as detention shall not count as laytime. Reimbursement for such detention shall be payable no later than upon the vessel's arrival at the first port of discharge.

(l) *Force majeure.* (1) The GSM will waive the requirement for the notice of arrival required by Form CCC–106 by a written notice to the supplier of ocean transportation on the receipt of evidence satisfactory to the General Sales Manager that the vessel is lost or unable to proceed to destination after completion of loading as a result of one

or more of the following causes: Damage caused by perils of the sea or other waters; collisions; wrecks; stranding without the fault of the carrier; jettison; fire from any cause; Act of God; public enemies or pirates; arrest or restraint of princes, rulers or peoples without the fault of the supplier of ocean transportation; wars; public disorders; captures; or detention by public authority in the interest of public safety. The supplier may substitute such waiver for the notice of arrival.

(2) The determination of a force majeure by the GSM shall not relieve the participant from its obligation under the Agricultural Commodities Agreement to pay CCC, when due, the dollar amount of ocean freight, plus interest (exclusive of ocean freight differential), financed by CCC.

(m) *Demurrage/despatch.* CCC will not finance demurrage and CCC will not share in despatch earnings. Owners and commodity suppliers will settle laytime accounts at load port(s) and owners and charterers will settle laytime accounts at discharge port(s). Under no circumstances shall CCC be responsible for resolving disputes involving calculation of laytime or the payment of demurrage or despatch.

(n) *Ocean freight included in the commodity contract price.* For cost and freight or c.i.f. contracts the ocean freight, or the ocean freight differential, as appropriate, will be financed only to the extent specifically provided in the applicable purchase authorization.

(o) *Separate freight contracts.* Contracts for ocean transportation, under a purchase authorization which limits delivery terms to f.o.b. or f.a.s., must be separate and apart from the contracts for the commodity.

§ 17.9 CCC payment to suppliers.

(a) *General.* (1) The supplier shall request payment from CCC for the amount of the commodity price or the ocean freight or ocean freight differential to be financed by CCC.

(2) The supplier shall support such a request for payment by presenting to CCC the documents required by this section, the purchase authorization, and the IFB, unless such documents were previously submitted to CCC. Such documents, however, need not be submitted when and to the extent that the Controller determines that the intended purpose of a document is served by documents otherwise available to or under the control of CCC or by alternate documents specified in such determination.

(3) CCC will examine each document to ascertain that it is in accordance with this part, the purchase authorization, and the IFB. CCC will audit all the required documents to ensure accuracy, completeness, and consistency. When CCC has determined that all required documents have been submitted and that the documents are acceptable for payment, CCC will pay the supplier for the commodity price or the ocean freight or ocean freight differential to be financed by CCC which is supported by the documents.

(4) CCC is required to issue all payments by electronic transfer. Each supplier submitting documents to CCC for payment must provide the name of the company, the bank ABA number to which payment is to be made, the account number for the company at the bank, the company's Taxpayer Identification Number, and the type of account being used.

(b) *General documentation requirements.* The supplier must put the appropriate purchase authorization number on all required documents which are prepared under the supplier's control, and should arrange for the appropriate purchase authorization number to be put on all other required documents at the time of their preparation.

(c) *Documents required for payment—commodity.* The general provisions relating to such documents are as follows. Additional requirements for payment to commodity suppliers for c.& f. or c.i.f. sales are contained in paragraph (c)(8) of this section.

(1) *Supplier's certificate.* A signed original of Form CCC–329 ''Supplier's Certificate'' from the commodity supplier covering the net invoice price for the commodity.

(2) *Supplier's detailed invoice.* Two copies of the supplier's detailed invoice showing quantity, description, contracted price, net total invoice price expressed in dollars, the amount for which financing is requested from CCC,

the amount not eligible for financing by CCC, and basis of delivery of the commodity (e.g., f.o.b. vessel). In arriving at the net invoice price there shall be deducted:

(i) All discounts from the supplier's contracted price through payments, credits, or other allowances made or to be made to the importer, the importer's agent or consignee;

(ii) All purchasing agents' commissions;

(iii) All other amounts not eligible for financing.

(3) *Additional payment.* A request for an additional payment submitted for a transaction for which all or part of the required documents have been previously submitted to CCC shall be supported by a Form CCC–329 ''Supplier's Certificate'' and the supplier's detailed invoice, covering the additional amount requested. The supplier's invoice must show the date, serial number and the amount of the original invoice and the basis for the additional amount claimed.

(4) *Weight certificate.* The weight certificate shall be issued by or on authority of a State or other governmental weighing department, Chamber of Commerce, Board of Trade, Grain Exchange, or other independent organization or firm providing public weighing services. Such organization or firm must have:

(i) Qualified, impartial, paid employees who are stationed at the port facility or, if authorized under the applicable purchase authorization, other facility where weights customarily are determined, one of whom performed the weighing covered by the certificate; or

(ii) Qualified, independent, impartial, supervised, weighmasters stationed at the port facility or, if authorized under the applicable purchase authorization, other facility where weights are customarily determined, one of whom supervised the employee of such a facility in the performance of the weighing covered by the certificate.

(5) *Federal appeal inspection.* The official certificate representing the results of an appeal inspection, when included in the documents presented for payment, shall supersede any other inspection certificate required by this part, the applicable purchase authorization, the IFB or the contract.

(6) *Form CCC–359.* (i) Form FAS–359, ''Declaration of Sale,'' signed for the GSM, is the written document by which USDA notified the supplier that the sale was approved for financing. The supplier shall submit Form FAS–359 to CCC with the documents covering the first transaction under the contract. The unit price shown on the supplier's invoice must not exceed the approved unit price shown on the Form FAS–359.

(ii) For subsequent transactions under the same contract, the supplier shall certify on the CCC copy of the detailed invoice as follows:

I hereby certify that the applicable Form FAS–359 was submitted to CCC with documents covering Invoice No. _____ dated _____ for $_____.

(7) *Bill of lading.* Four copies of the ocean bill of lading.

(8) *C.&f. or c.i.f. sales.* In addition to the requirements of paragraph (c)(1) through (7) of this section, the following requirements apply for c.&f. or c.i.f. sales:

(i) Signed original of Form CCC–106.

(ii) The supplier's detailed invoice shall show a computation of the dollar amount of ocean freight differential, whenever the Form CCC–106 provides for an ocean freight differential on a cost and freight or c.i.f. sale and authorizes financing of any portion of ocean freight by CCC. In arriving at the net invoice price the supplier shall deduct the ocean freight, or portion thereof which is not being financed by CCC.

(iii) One nonnegotiable copy of the insurance certificate or policy where the cost of insurance is included in the price of the commodity to be financed by CCC.

(iv) A request for an additional payment shall also include a statement signed by the ship's master or owner (or agent of either of them) showing exercise of the higher-rated option, if the payment is stated to be due because of the exercise of a higher-rated option provided in an ocean freight contract.

(d) *Documents required for payment—ocean freight financed separately from commodity price*—(1) *Supplier's certificate.* A signed original of Form CCC–

329, ''Supplier's Certificate'', executed by the carrier or its agent, covering the dollar cost of ocean freight or ocean freight differential.

(2) *Ocean bill of lading*. One copy of the ocean bill of lading and, if required by the related Form CCC–106, a notice of arrival at the first port of discharge of the vessel named in the Form CCC–106. In lieu of a notice of arrival the carrier may present a waiver of the notice of arrival signed by the GSM or Controller.

(3) *Invoice*. One copy of the carrier's invoice which shows the total freight costs, the amount not eligible for financing by CCC, and the amount for which payment is requested from CCC. If the invoice relates to a U.S.-flag vessel, such invoice shall contain the following typed or stamped certification, executed by the supplier:

> The undersigned hereby certifies that the vessel named herein and for which ocean freight is claimed, qualifies as a privately owned U.S.-flag commercial vessel within the requirements of Pub. L. 87–266 and is an eligible U.S.-flag vessel for the purposes of Pub. L. 664, 83rd Congress.

(4) *Form CCC–106*. Signed original of Form CCC–106.

(5) *Ocean freight contract*. One copy of the ocean freight contract.

(6) *Higher rated option*. A request for payment of any amounts claimed because of the exercise of a higher rated option following payment of a lower rated option pursuant to §17.8(k)(1) shall be supported by the following documents:

(i) One copy of the carrier's invoice as described in paragraph (d)(3) of this section except for the certification required therein.

(ii) The Form CCC–329, ''Supplier's Certificate'', for the balance claimed.

(iii) A statement signed by the ship's master, owner, or owner's agent, and signed laytime statements or other written concurrence of charterer or the charterer's agent showing the exercise of the higher rated option.

(e) *Payment of freight by CCC prior to the vessel's arrival at the discharge port*. (1) Upon request by the supplier, CCC may pay the ocean freight or ocean freight differential to be financed by CCC before the vessel arrives at the first port of discharge if the supplier furnishes CCC financial coverage in the form of an acceptable letter of credit from a U.S. bank.

(2) The amount of security required by CCC under paragraph (e)(1) of this section may be computed by multiplying the ocean freight rate or ocean freight differential rate financed by CCC as shown on the related Form CCC–106 times either:

(i) The tonnage shown on the related bill of lading, if the bill of lading is furnished to CCC; or

(ii) The tonnage stated in the ocean freight contract (without tolerance).

(3) On receipt of an acceptable letter of credit, the Controller will issue a waiver of the notice of arrival which is required under paragraph (d)(2) of this section.

(f) *Advice of amount financed*. CCC will forward advice of payment to the participant.

§17.10 Refunds and insurance.

(a) *Participant—failure to comply*. The participant shall pay in U.S. dollars promptly to CCC on demand by the General Sales Manager the entire amount financed by CCC (or such lesser amount as the GSM may demand) whenever the GSM determines that the participant has failed to comply with any agreement or commitment made by the participant in connection with the transaction financed or with the applicable Agricultural Commodities Agreement between the U.S. and the participant.

(b) *Adjustment refunds*. All claims by importers for adjustment refunds arising out of terms of the contract or out of the normal customs of the trade, including arbitration and appeal awards, allowances, and claims for overpayment of ocean transportation, if such refunds relate to amounts financed by CCC, shall be settled by payment in U.S. dollars and such payment shall be remitted by the supplier to CCC. The remittance shall be identified with the date and amount of the original payment and the applicable purchase authorization number.

(c) *Insurance on c.i.f. sales*. The provisions of this paragraph apply only to transactions under purchase authorizations that specifically authorize c.i.f. sales in which the cost of insurance is

included in the net c.i.f. invoice price of the commodity financed. When the supplier furnishes insurance in favor of or for the account of the importer, the policies or certificates of insurance shall include a loss payable clause which provides that all claims shall be paid in U.S. dollars to the Controller. Such payments shall be accompanied by advice of the purchase authorization number, the names and addresses of the supplier and importer, the nature of the claim, the quantity of the commodity involved in the claim, the date of shipment, the bill of lading number, and the name of the vessel. CCC will credit the account of the participant or will refund local currency in accordance with paragraph (e) of this section.

(d) *Refund of ineligible amounts.* If a sale has been financed and CCC determines that the sales price exceeds the price permissible under §17.5(b)(4), or that the sale is otherwise ineligible for financing, in whole or in part, the supplier shall refund in dollars such excess price or ineligible amount to CCC promptly on demand. If not promptly refunded, such amount may be set off by CCC against monies it owes to the supplier. The making of any such refund to CCC, or any such setoff by CCC shall not prejudice the right of the supplier to challenge such determination in a court action brought against CCC for recovery of the amount refunded or set off.

(e) *Refund of local currency or reduction of amount due.* Immediately after receipt by CCC of U.S. dollar payment from suppliers, or from or for the account of the participant under this section, CCC will provide for payment to the participant of the local currency equivalent of dollars received, if such local currency has been deposited for the particular transaction, or will credit the participant's account as follows:

(1) For payments under this section, except paragraph (a), the local currency refunded will be at the exchange rate agreed to by the Government of the United States and the participant in effect at the time the local currency is paid to or for the account of the importer, except that if there has been a change in the exchange system or structure of the importing country or the destination country, such payment shall be made at the agreed exchange rate which was in effect on the date of dollar disbursement for the transaction financed, and except further that local currency shall not be paid when the dollars are to be reauthorized for replacement of the commodity.

(2) For payment under paragraph (a) of this section, the local currency refunded will be at the agreed exchange rate in effect on the date of the dollar disbursement for the transaction financed: *Provided,* that local currency will not be refunded to the extent that deposits of such currency have been made available to the participant on a grant basis.

(3) For refunds received by CCC under long-term credit agreements the participant's account shall be credited with the dollar amount refunded or otherwise recovered, and the participant notified accordingly.

§17.11 Recordkeeping and access to records.

Suppliers and agents of the participant or importer shall keep accurate books, records and accounts with respect to all contracts entered into hereunder, including those pertaining to ocean transportation-related services and records of all payments by suppliers to representatives of the importer or participant, if CCC finances any part of the ocean freight. Suppliers and agents shall permit authorized representatives of the U.S. Government to have access to their premises during regular hours to inspect, examine, audit and make copies of such books, records and accounts. Suppliers and agents shall retain such records until the expiration of three years after final payment under such contracts.

PART 18—EQUAL EMPLOYMENT OPPORTUNITY IN THE STATE COOPERATIVE EXTENSION SERVICES

Sec.

18.1 Definitions.
18.2 Purpose, applicability and coverage.
18.3 Development and adoption of equal employment opportunity programs.
18.4 Elements of program.
18.5 Formal complaint procedure.
18.6 [Reserved]
18.7 Reports.

18.8 Noncompliance.
18.9 Sanctions.

AUTHORITY: 5 U.S.C. 301, and secs. 1–10, 38 Stat. 372, as amended; 7 U.S.C. 341–349.

SOURCE: 33 FR 12173, Aug. 29, 1968, unless otherwise noted.

§ 18.1 Definitions.

For the purpose of this part:

(a) *Secretary* means the Secretary of Agriculture of the United States or his designee.

(b) *Cooperative Extension Service* means the Cooperative Extension Service of each Land-Grant University.

(c) *President* means the President or chief executive of each Land-Grant University or his designee.

(d) *Discrimination* includes discrimination on the basis of race, color, national origin, sex, or religion.

(e) *Employment* includes hiring, assignment, transfer, promotion, compensation, discipline, and discharge and all other conditions, terms and privileges of employment.

(f) *Program* means a comprehensive Equal Employment Opportunity plan submitted by a President in satisfaction of the requirements of § 18.3.

§ 18.2 Purpose, applicability and coverage.

(a) *Purpose*. This part provides a cooperative procedure involving the President and Secretary to assure that the Cooperative Extension Service provides equal opportunity in employment to each individual without regard to race, color, national origin, sex, or religion.

(b) *Applicability*. The regulations in this part apply to every Land-Grant University operating a Cooperative Extension Service.

(c) *Coverage*. This part applies to all positions in all units of the Cooperative Extension Service but does not apply to employees provided by county and other political subdivisions in support of Cooperative Extension Service programs.

[33 FR 12173, Aug. 29, 1968, as amended at 38 FR 14154, May 8, 1973]

§ 18.3 Development and adoption of equal employment opportunity programs.

(a) *Submission*. Within 90 days after the effective date of this part, the President shall furnish to the Secretary a positive continuing program to assure that employment is provided without discrimination.

(b) *Development*. The President and the Secretary may consult with each other at any time regarding the development and evaluation of the program in order to better effectuate the purpose of this part. The program may be a part of a general program establishing employment procedures for employees of the university and may cover other rights and privileges of employees.

(c) *Concurrence*. The Secretary may concur with the program proposed by the President. If the Secretary does not concur with the proposed program, he shall inform the President and make suggestions for improvement. The President will have 30 days thereafter to furnish a satisfactory proposal.

(d) *Amendment*. After concurrence has been obtained on the program, the President may make recommendations to amend the program to improve its effectiveness and furnish them to the Secretary for concurrence. If the Secretary, at any time finds that a program, as implemented, does not achieve the purposes described in § 18.2, he shall confer with the President concerning needed improvements and changes. The President will furnish a satisfactory amendment to the Secretary within 30 days for concurrence.

(e) *Effective date*. The program or amendments to it shall be made effective by the President not later than 30 days from the date of concurrence.

§ 18.4 Elements of program.

A satisfactory program shall include:

(a) A statement of policy prohibiting discrimination in employment;

(b) An administrative procedure enforcing that policy;

(c) A positive affirmative action plan designed to assure equal opportunity in employment;

(d) A procedure for identifying and eliminating employment practices

tending to create or continue discrimination in employment;

(e) A procedure for evaluating the success of the program;

(f) Adequate provision for publicizing the program including dissemination of information to all those covered by these regulations;

(g) A procedure for prompt processing of complaints assuring no less than minimum rights prescribed in §18.5;

(h) Adequate provisions for the protection of complainants, employees, witnesses, and representatives from interference, harassment, intimidation and reprisal;

(i) A procedure for the informal resolution of complaints; and,

(j) A procedure for recording receipt and disposition of all complaints. A report of the receipt and a report of the disposition of all formal complaints will be sent promptly to the Secretary.

§ 18.5 Formal complaint procedure.

A procedure shall be provided for the filing of a formal written complaint if a complainant is not satisfied with the result of informal procedure or if the complainant does not desire to follow the informal procedure. A complaint procedure shall contain the following minimum provisions for the processing of formal complaints.

(a) *Elements of the formal complaint.* The formal complaint shall be in writing and state the name and address of the complainant; the basis of the claim; and indicate whether the alleged discrimination was based on race, color, national origin, sex, or religion.

(b) *Time limits for processing.* The procedure will include time limits for the orderly processing of complaints.

(c) *Who may file.* A complaint may be filed by an employee, a former employee, or an applicant for employment who believes that discrimination in employment has been practiced against him or that an employment practice in the Cooperative Extension Service has or will result in discrimination in employment against him. An employee, a former employee, or an applicant for employment, or an organization may file a complaint of general discriminatory practices: *Provided, however,* That upon request of the President, the complainant shall furnish to him names of individuals who are adversely affected by those practices.

(d) *Right of representation.* A complainant may designate in writing, an individual or an organization to represent him in the processing of his complaint, and is entitled to the advice of counsel at his expense at all stages of the proceeding. If the representative designated by the complainant is an employee of the U.S. Department of Agriculture, or of a Cooperative Extension Service, such employee, as well as an employee-complainant, shall have a reasonable amount of official time with pay, if he is in a pay status, for the purpose of appearing at any hearing on the complaint or conciliation effort. The rights and privileges set forth in this paragraph shall also be available to any person whose alleged conduct is the cause of the complaint.

(e) *Where filed.* The procedure shall clearly state the persons, and their locations, with whom complaints may be filed. It shall also state that complaints may be filed with the Secretary. Complaints filed with the Secretary shall be promptly forwarded to the President or his designee for processing.

(f) *When filed.* A complaint shall be submitted within 90 days of the conduct giving rise to the complaint. The President may extend the prescribed time limit for good cause shown by the complainant.

(g) *Hearing.* A complainant or the President may request a hearing which shall be transcribed or recorded. The hearing shall be conducted promptly during regular working hours in the county where the alleged discrimination occurred or at a time and place agreed to by the President and the complainant. The President, the complainant and any person whose alleged conduct is the cause of the complaint shall have the right to call and cross-examine witnesses under oath. The hearing shall be provided by the President, and shall be conducted by an impartial board or hearing officer who shall promptly submit a proposed decision including findings of fact, conclusions, and recommendations for action to the President.

(h) *Decision by the President.* The President shall review the entire file

on the complaint, including the record of the hearing if a hearing was held, and shall promptly:

(1) Remand to the hearing board or officer for further action; or

(2) Make a decision on the complaint; or

(3) Otherwise dispose of the complaint.

The President shall notify the complainant of his decision or disposition.

[33 FR 12173, Aug. 29, 1968, as amended at 38 FR 14154, May 30, 1973]

§ 18.6 [Reserved]

§ 18.7 Reports.

Within 6 months of the program going into effect and thereafter at least annually, the President shall submit a summary report to the Secretary on implementation and operation of the program. The Secretary may request additional reports as he deems advisable.

§ 18.8 Noncompliance.

A university conducting a Cooperative Extension Service will be in violation of this part:

(a) If the President fails to file a program in which the Secretary concurs under §18.3, or fails to file an appropriate amendment in accordance with §18.3(d);

(b) If after concurrence in the President's program the Secretary finds that a university has failed to administer such program according to its terms;

(c) If the Secretary finds that any officer of the university has intimidated, coerced, or improperly pressured a complainant, employee, representative, or witness exercising the rights given him by this part or any program adopted pursuant thereto, and that corrective action has not been taken.

[33 FR 12173, Aug. 29, 1968, as amended at 38 FR 14154, May 30, 1973]

§ 18.9 Sanctions.

(a) When the Secretary finds that any noncompliance with this part has occurred, he may initiate action to refuse to authorize payment of funds for the Cooperative Extension Service, or take other appropriate action provided by law.

(b) The remedies available to the Secretary under this part, and remedies made available to any person under a program adopted pursuant to this part do not exclude any others which may be available under law.

PART 19 [RESERVED]

PART 20—EXPORT SALES REPORTING REQUIREMENTS

Sec.

20.1 General.
20.2 Administration.
20.3 Delegation of authority.
20.4 Definitions.
20.5 Announcements.
20.6 Submission of reports.
20.7 Confidentiality of reports.
20.8 Failure to report.
20.9 Records.
20.10 Place of submission of reports.
20.11 Additional reports and information.
20.12 OMB control number assigned pursuant to Paperwork Reduction Act.

APPENDIX A TO PART 20—COMMODITIES SUBJECT TO REPORTS, UNITS OF MEASURE TO BE USED IN REPORTING, AND BEGINNING AND ENDING DATES OF MARKETING YEARS

AUTHORITY: 7 U.S.C. 5712.

SOURCE: Rev. 2, 40 FR 23839, June 3, 1975, unless otherwise noted.

§ 20.1 General.

The regulations of this part 20 are issued under section 404 of the Agricultural Trade Act of 1978, as amended, to implement the export sales reporting requirements of section 602 of the Agricultural Trade Act of 1978, as amended.

[56 FR 32951, July 18, 1991]

§ 20.2 Administration.

The regulations of this part will be administered by the Foreign Agricultural Service (FAS) under the general supervision of the Administrator, FAS. Information pertaining to these regulations may be obtained from the office specified in §20.10.

[Amdt. 3, 45 FR 8562, Feb. 8, 1980]

§ 20.3 Delegation of authority.

Authority has been delegated to the Administrator to promulgate amendments and revisions to the regulations in this part.

[Amdt. 3, 45 FR 8562, Feb. 8, 1980]

§ 20.4 Definitions.

As used in these regulations and in all instructions, forms, and documents pertaining hereto, the words and phrases defined in this section shall have the meaning assigned to them as follows:

(a) *Administrator.* The Administrator, Foreign Agricultural Service, U.S. Department of Agriculture.

(b) *Buy-back contract.* A transaction under which a reporting exporter having sold a commodity for export to a foreign buyer liquidates the export sale contract by making an offsetting purchase of the same kind of commodity from the same foreign buyer.

(c) *Commodity.* Wheat and wheat flour, feed grains, oilseeds, cotton, rice, cattle hides and skins, beef and pork, and any products thereof, and any other agricultural commodity the Secretary may designate. ''Commodity'' shall also mean a commodity having identifying characteristics as described in any announcement issued pursuant to § 20.5 such as class(es) of wheat and rice, or staple length(s) of cotton. Mixed wheat shall be considered to be the predominant wheat class of the blend. This definition excludes commodities to be used for seed which have been treated in such a manner that their use is limited to seed for planting purposes or on which a certificate has been issued by a recognized seed testing laboratory setting forth variety, germination and purity.

(d) *Country of destination.* (1) Any country outside the United States or (2) any territory or possession of the United States. Country of destination shall be the ultimate destination of the export, and shall not be deemed to be the country through which any transshipment takes place.

(e) *Export.* A shipment of a commodity from the United States destined to a country specified in paragraph (d) of this section. The commodity shall be deemed to have been exported on the date of the applicable export carrier onboard bill of lading or the date the commodity is received for shipment, as specified on the bill of lading, in the case of a commodity received for shipment in a lash barge or containerized van if a through on-board bill of lading is issued for shipment to a country specified in paragraph (d) of this section.

(f) *Export carrier.* The vessel on which a commodity is exported from the United States to a country specified in paragraph (d) of this section, or if export is by railcar, truck, or airplane, ''export carrier'' means such railcar, truck, or airplane.

(g) *Exports for exporter's own account.* A transaction involving shipments made by the reporting exporter which are unsold at the time of export, shipments on consignment to selling agents of the reporting exporter for subsequent sale for the account of the reporting exporter, shipments by the reporting exporter that have not been allocated to any outstanding export sale, and shipments from the United States to any foreign country in bond for subsequent shipment to a third country.

(h) *Export sale.* A transaction entered into between a reporting exporter and a foreign buyer. The transaction must be represented by a written document evidencing that (1) the exporter agrees to export the commodity, (2) the foreign buyer agrees to receive the commodity, (3) a fixed price or an agreed upon mechanism by which such a price can be determined is established, and (4) payment will be made to or for the account of the reporting exporter by or on the behalf of the foreign buyer for delivery of the commodity. The quantity of ''outstanding export sale'' means the quantity not yet exported under an export sale. The terms of delivery specified in the written agreement, such as FAS vessel, FOB vessel, C&F, CIF, etc., do not determine whether a transaction is an export sale which must be reported. A transaction which otherwise meets this definition and is subject to the posting of an exporter performance bond or letter of credit from the foreign buyer is included in this definition and such a transaction shall be reported under

these regulations. However, a transaction which becomes operative only upon the imposition of export controls is excluded from this definition of ''export sale'' and such a transaction shall not be reported under these regulations.

(i) *Foreign buyer and foreign seller.* A person whose place of doing business with respect to the transaction is outside the United States. Foreign buyer or foreign seller includes a person who maintains a place of doing business outside the United States even though the transaction is concluded in the United States by his agent who has a place of business in the United States or by his employee who does not maintain a place of doing business in the United States. (If such employee maintains a place of doing business in the United States with respect to the transaction, the resulting contract is construed to be a domestic sale.) Notwithstanding the foregoing, all foreign governments, agencies and instrumentalities are considered foreign buyers or foreign sellers even though transactions are concluded by their employees in the United States or they maintain a place of business with respect to the transaction in the United States.

(j) *Marketing year.* The reporting period specified for a commodity in appendix A to this part.

(k) *Optional origin contracts.* A transaction involving an export sale contract between a reporting exporter and a foreign buyer under which the reporting exporter has the option of exporting the commodity from the United States or from one or more other exporting countries or an export sale contract under which no origin is specified.

(l) *Person.* An individual, partnership, corporation, association or other legal entity.

(m) *Purchases from foreign sellers.* A transaction involving the purchase of a commodity from a seller whose place of business with respect to the transaction is outside the United States.

(n) *Quantity.* The actual contract quantity (exclusive of any upward or downward tolerance) specified in the agreement between the reporting exporter and foreign buyer or seller.

(o) *Reporting exporter.* A person who enters into a transaction referred to in this section whose place of doing business with respect to such transaction is in the United States. A reporting exporter shall include any person who sells a commodity to a foreign buyer irrespective of whether or not such person may appear as the shipper on the export documentation or whether or not such person is required to file a Shipper's Export Declaration. A reporting exporter would not normally include agents of either the reporting exporter or foreign buyer, brokers, or freight forwarders unless such agents, brokers or freight forwarders are acting in the capacity of a principal. (See examples § 20.6(c).)

(p) *United States.* All of the 50 States, the District of Columbia and Puerto Rico.

[Rev. 2, 40 FR 23839, June 3, 1975, as amended by Amdt. 1, 41 FR 19950, May 14, 1976; Amdt. 3, 45 FR 8562, Feb. 8, 1980; Amdt. 4, 45 FR 24104, Apr. 9, 1980; 68 FR 62214, Nov. 3, 2003; 78 FR 16778, Mar. 19, 2013; 84 FR 64704, Nov. 25, 2019]

§ 20.5 Announcements.

Commodities for which reports are required under these regulations are set forth in appendix A to this part. Any change therein will be made by publication in the FEDERAL REGISTER of an amendment thereto, and, in addition, announcement of such change will be made through the press service. The unit of measure to be used in reporting the commodity, the beginning and ending dates of the marketing year for each commodity, and any other information deemed necessary to be included in the report will be specified in appendix A to this part and amendments thereto and in the announcements through press service.

[Rev. 2, 40 FR 23839, June 3, 1975, as amended at 68 FR 62214, Nov. 3, 2003; 84 FR 64704, Nov. 25, 2019]

§ 20.6 Submission of reports.

(a) *Weekly reports.* For each commodity for which reports are required under these regulations, the reporting exporter shall file weekly with the office specified in § 20.10 and not later than the time specified in paragraph

(k) of this section, a report by marketing year on the applicable forms contained in appendix 2 (FAS–97, ''Report of Optional Origin Sales,'' FAS–98, ''Report of Export Sales and Exports,'' and on FAS–100, ''Report of Exports for Exporter's Own Account''), setting forth the following information and that required by such forms. Information for each applicable item on the respective form shall be reported. If the reporting exporter determines that the report forms cannot be received in the office specified in ''20.10 by the time specified in paragraph (k) of this section, the exporter shall transmit the information contained in the report forms by the use of FAX, telephone, or electronic submission. The required form must be subsequently submitted in accordance with §20.6(k)(2). Exporters have the option to submit the weekly reports using an electronic reporting system (forms 97e, 98e, and 100e) which may be accessed via a secured Internet website. Reporting exporters should contact the Export Sales Reporting staff to obtain passwords and access to the Internet reporting site. Exporters also have the option of satisfying the requirements of Forms FAS–97, FAS–98, and FAS–100 by submitting ASCII comma delimited files via e-mail to the ESR mailbox at *esr@fas.usda.gov*.

(1) *United States origin sales only*. (i) Total quantity of outstanding export sales from the previous report by country of destination.

(ii) Quantity of new export sales made during the week expressed in the specified unit of measure (do not include any tolerance). Include the quantity of any optional original export sale for which an option was exercised during the week to export the commodity from the United States.

(iii) Quantity of any purchases of the same kind of commodity made from foreign sellers during the week.

(iv) Quantity of export sales cancelled and quantity of buyback contracts made during the week.

(v) Changes in destination during the week for export sales previously reported.

(vi) Changes in the marketing year during the week for export sales previously reported.

(vii) Exports made against export sales during the week.

(viii) Total outstanding balance of export sales at the close of business for the current report.

(2) *Optional origin sales* (*United States and other countries*). (i) Total quantity of outstanding export sales from the previous report by country of destination.

(ii) Quantity of new export sales made during the week expressed in the specified unit of measure (do not include any tolerance) by country of destination.

(iii) Quantity of export sales for which an option was exercised during the week which would determine the origin of the commodity to be exported with the origin indicated as the United States or other than the United States.

(iv) Quantity of optional export sales cancelled and the quantity of optional buy-back contracts made during the week.

(v) Changes in destination during the week for sales previously reported.

(vi) Changes in the marketing year during the week for sales previously reported.

(vii) Total outstanding balance of optional export sales for which an option has not been exercised at the time of compiling the report.

(3) *Exports for exporter's own account*. (i) Total outstanding balance of exports for exporter's own account that has been shipped from the United States as shown on the previous report by country where located or, if in transit, by country of intermediate destination.

(ii) Quantity of new exports for exporter's own account exported during the week.

(iii) Quantity of previously reported exports for exporter's own account that was applied to outstanding or new export sales during the week.

(iv) Quantity of previously reported exports for exporter's own account sold to other U.S. exporters during the week.

(v) Changes in destination during the week for exports previously reported.

(vi) The total outstanding balance of exports for exporter's own account at the close of business for the current report.

(b) *Monthly reports.* The information described in paragraph (a) of this section shall be reported monthly when specified by an announcement issued pursuant to § 20.5. The forms specified in paragraph (a) of this section shall be utilized to furnish the information required to be reported monthly and such information shall be filed in the manner and at the time required by § 20.6(k).

(c) *Exporters who are required to report.* The reporting exporter has the sole responsibility of reporting any and all information required by these regulations. The following are examples of who shall be considered the reporting exporter for the purpose of these regulations. (Firm A in each example is a firm whose place of doing business with respect to the transaction is in the United States, and the commodity to be delivered under the purchase contract is subject to these regulations. See § 20.4(i) for definition of a foreign buyer and foreign seller.)

(1) Firm A makes an export sale to Firm B whose place of doing business with respect to the transaction is also in the United States. Firm B has made or will make an export sale to a foreign buyer. In this case Firm A cannot report the sale to Firm B since Firm B's place of doing business with respect to the transaction is located in the United States. In this example, Firm B is required to report the sale to the foreign buyer.

(2) Firm A makes an export sale to a foreign buyer through the foreign buyer's agent and the agent's place of doing business with respect to the transaction is in the United States. In this example Firm A is required to report the export sale since the resulting contract is between Firm A and the foreign buyer.

(3) Firm A consigns an export to his agent (other than an employee of Firm A). When the agent makes a sale to a foreign buyer, Firm A is required to report the sale. If the agent makes the sale to a firm whose place of doing business with respect to the transaction is in the United States, Firm A will not report the sale.

(4) Firm A makes a purchase from a foreign seller. In this example, Firm A is required to report the purchase.

(5) Firm A makes a purchase from an agent of a foreign seller and the agent's place of doing business with respect to the transaction is in the United States. In this example, Firm A is required to report the purchase. The agent is not a principal party in interest in the contract and cannot report the sale to Firm A. The foreign seller is not a reporting exporter and is not required to make a report of the sale.

(6) Firm A, the agent of the foreign buyer, whose place of doing business with respect to the transaction is in the United States, purchases commodities domestically at interior warehouses and arranges for exportation to its principal, the foreign buyer. In this example, Firm A is required to report the sale and export.

(7) If a reporting exporter has a transaction not described in paragraphs (1) through (6) of this paragraph (c) and is in doubt whether a transaction should be reported, the exporter should request a decision from the office specified in § 20.10.

(d) *Contract terms.* Reports of contract terms shall be filed when requested in accordance with § 20.11. The report showing contract terms shall be filed on FAS–99, ''Contract Terms Supporting Export Sales and Foreign Purchases,'' and shall include the following:

(1) Reporting exporter's contract number.

(2) Date of export sale or purchase.

(3) Name of foreign buyer or foreign seller.

(4) Delivery period specified in the export sale or purchase.

(5) Delivery terms specified in the export sale or purchase (F.O.B., C. & F., etc.).

(6) Actual quantity of the export sale or purchase.

(7) Quantity not exported against the sale or foreign purchase (do not include any tolerance).

(8) Country of destination.

(9) On purchases from foreign sellers, show separately from export sales all items of this paragraph (d).

(e) *Reporting of destination.* The reporting exporters shall report the country of destination specified in the export sale contract or otherwise declared in writing by the foreign buyer.

(Where a government, or agency of such government, is the sole importer of the commodity in a country, the exporter shall report that country as the country of destination only if the exporter or foreign buyer has made a direct sale to that foreign government or agency.) If the country of destination is not so specified or declared, the exporter shall report the destination as ''unknown.'' If by the time of exportation the exporter has not so ascertained the country of destination, the name of the country reported to the Bureau of Customs of the Shipper's Export Declaration for such export shipment should be reported, even though it may be an intermediate destination. The reporting exporter is not expected to report destination changes made after reporting the export on FAS–98, ''Report of Export Sales and Exports.''

(f) *Optional class or kind of commodity.* If the export sale provides for an option as to the class or kind of commodity to be delivered under the export sale, the reporting exporter should report the particular class or kind of commodity expected to be exported.

(g) *Range in contract quantity.* If the export sale provides for a range in quantity (e.g. 10,000 metric tons to 12,000 metric tons with or without a loading tolerance) with the reporting exporter or buyer having the option to declare a firm quantity at a later date, the reporting exporter shall report the maximum export sale quantity (exclusive of any loading tolerance). If an option is exercised for a lesser quantity at a later date, the reporting exporter shall report the reduction as an amendment to an export sale previously reported.

(h) *Transfer of unexported balances* from one marketing year to the next marketing year. If exports against an export sale are not complete by the end of the marketing year in which the commodity is being reported for export, the reporting exporter shall transfer the quantity not exported against the export sale to the next marketing year on the first report submitted after the beginning of the new marketing year.

(i) *Errors on previous reports.* Whenever an exporter discovers an error or is advised by the office specified in § 20.10 of an error on a prior report, the error shall be corrected in the current weekly report to reflect the proper outstanding export sales and exports. The exporter shall also furnish a complete written explanation of such reporting error.

(j) *When reports are required.* (1) A reporting exporter shall submit reports for those commodities for which there are new export sales, outstanding export sales, exports for exporter's own account for which an offsetting export sale has not been made and reported, or purchases from foreign sellers.

(2) A reporting exporter may discontinue reporting for a commodity only when actual exports and other required reporting of changes have reduced to zero all export sales, exports for exporter's own account and purchases from foreign sellers. The reporting exporter shall report a zero balance prior to discontinuing reporting for the commodity involved.

(3) If a reporting exporter discontinues making reports because a zero balance has been reached for a particular commodity, the exporter shall be responsible to commence reporting again once a new export sale, a new export for exporter's own account, or a new purchase from a foreign seller for that commodity is made.

(k) *Manner and time of reporting*—(1) Manner. An original of all report forms, other than electronic forms and ASCII comma delimited files, must be filed with the office specified in § 20.10. Each report form shall contain the full business name, address and telephone number of the reporting exporter and the name and original signature of the person submitting the report form on behalf of the reporting exporter. Computer generated printouts may be used in lieu of standard reporting forms when approved by the office specified in § 20.10.

(2) *Time of filing reports.* Information required to be reported weekly (either via fax, telephone, or electronically) must be received in the office specified in § 20.10 no later than 11:59 p.m. eastern time, on each Monday or such

other time as may be approved in advance by that office. Such weekly report must set forth the required information as to export sales transactions made during the seven day period ending the preceding Thursday, midnight. If Friday or Monday is a national holiday, the due date shall be Tuesday. If information is transmitted by other than use of forms specified in § 20.6(a) (such as by use of telephone or electronic transmission) the required forms containing such information shall be transmitted by first class mail the next business day. It is the responsibility of the reporting exporter to arrange the most efficient and expeditious manner for the office specified in § 20.10 to receive the reported information. Information required to be reported monthly must be received in the office specified in § 20.10 no later than 5:00 p.m., Eastern time, the fourth business day following the end of the reporting month, or such other time as may be approved in advance by that office, setting forth the required information as to export sales transactions made during the reporting month ending midnight the last day of such month.

[Rev. 2, 40 FR 23839, June 3, 1975, as amended by Amdt. 3, 45 FR 8562, Feb. 8, 1980; Amdt. 4, 45 FR 24104, Apr. 9, 1980; 45 FR 24439, Apr. 10, 1980; Amdt. 5, 45 FR 24439, Apr. 10, 1980; 47 FR 746, Jan. 7, 1982; 68 FR 62214, Nov. 3, 2003]

§ 20.7 Confidentiality of reports.

A reporting exporter's individual reports shall remain confidential and subject to examination only by designatees of the Administrator. Information from reports filed by exporters on a weekly basis will be compiled and published in compilation form each week following the week of reporting. Information from daily reports filed by exporters will be made available to the public on the following business day at 9 a.m., eastern time. Information from monthly reports filed by exporters will be compiled and published in compilation form in the weekly report no later than the week following the time of filing specified in § 20.6(k).

[43 FR 5497, Feb. 9, 1978, as amended by Amdt. 3, 45 FR 8562, Feb. 8, 1980; Amdt. 5, 45 FR 24440, Apr. 10, 1980; 68 FR 62215, Nov. 3, 2003]

§ 20.8 Failure to report.

Any person who knowingly fails to report export sales pursuant to the requirements of these regulations shall be fined not more than $25,000 or imprisoned not more than one year, or both.

§ 20.9 Records.

Each reporting exporter shall establish and maintain accurate records as to all export sales of commodities subject to these regulations. Such records shall include, but shall not be limited to, export sales contracts or other agreements with the foreign buyer or foreign seller pursuant to which any export has or will be made; bills of lading or delivery documents evidencing all such exports and inspection and weight certificates relating thereto. Such records shall be available during regular business hours for inspection and audit by authorized employees of the United States Department of Agriculture and shall be preserved for three years after the date of export to which they relate.

§ 20.10 Place of submission of reports.

Weekly reports and information required to be submitted in connection therewith shall be addressed to or delivered to the following office FAX: (202) 690–3270 or (202) 690–3273:

Foreign Agricultural Service, Export Sales Reporting Division, U.S. Department of Agriculture, Washington, DC 20250.

[Amdt. 4, 45 FR 8562, Feb. 8, 1980, as amended at 68 FR 62215, Nov. 3, 2003]

§ 20.11 Additional reports and information.

(a) *Daily reports.* The reporting exporter shall report daily to the Administrator information with respect to sales of agricultural commodities as requested. Daily reports shall be made by telephone no later than 3 p.m., E.s.t., on the next business day following the calendar day of the sale.

(b) *Additional information.* The reporting exporter shall furnish such other additional reports and information, including price data, as may be requested

with respect to export sales of agricultural commodities.

[Rev. 2, 40 FR 23839, June 3, 1975, as amended by Amdt. 3, 45 FR 8562, Feb. 8, 1980]

§ 20.12 OMB control number assigned pursuant to Paperwork Reduction Act.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0551–0007.

[51 FR 30203, Aug. 25, 1986]

APPENDIX A TO PART 20—COMMODITIES SUBJECT TO REPORTING, UNITS OF MEASURE TO BE USED IN REPORTING, AND BEGINNING AND ENDING DATES OF MARKETING YEARS

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
Wheat—hard red winter	Metric Tons	June 1	May 31.
Wheat—soft red winter	Metric Tons	June 1	May 31.
Wheat—hard red spring	Metric Tons	June 1	May 31.
Wheat—white (incl. hard and soft white)	Metric Tons	June 1	May 31.
Wheat—durum	Metric Tons	June 1	May 31.
Wheat—Products—All wheat flours (including clears) bulgur, semolina, farina, and rolled, cracked and crushed wheat.	Metric Tons	June 1	May 31.
Barley—Unmilled (including feed and hull-less waxy barley)	Metric Tons	June 1	May 31.
Corn—Unmilled (including waxy, cracked—if 50% whole kernels).	Metric Tons	Sept. 1	Aug. 31.
Rye—Unmilled	Metric Tons	June 1	May 31.
Oats—Unmilled	Metric Tons	June 1	May 31.
Grain Sorghum—Unmilled	Metric Tons	Sept. 1	Aug. 31.
Soybeans	Metric Tons	Sept. 1	Aug. 31.
Soybean Cake and Meal	Metric Tons	Oct. 1	Sept. 30.
Soybean Oil—including: Crude (including degummed), once refined, soybean salad oil (including refined and further processed by bleaching, deodorizing or winterizing), hydrogenated, packaged oil.	Metric Tons	Oct. 1	Sept. 30.
Flaxseed	Metric Tons	June 1	May 31.
Linseed Oil—including raw, boiled	Metric Tons	June 1	May 31.
Cottonseed	Metric Tons	Aug. 1	July 31.
Cottonseed Cake and Meal	Metric Tons	Oct. 1	Sept. 30.
Cottonseed Oil—including crude, once refined, cottonseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated.	Metric Tons	Oct. 1	Sept. 30.
Sunflowerseed Oil crude, once refined, sunflowerseed salad oil (refined and further processed by bleaching, deodorizing or winterizing), hydrogenated.	Metric Tons	Oct. 1	Sept. 30.
Cotton—American Pima—Raw, extra-long staple	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length 1 1/16 inches and over	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length 1 inch up to 1 1/16 inches	Running Bales	Aug. 1	July 31.
Cotton—Upland—Raw, staple length under 1 inch	Running Bales	Aug. 1	July 31.
Rice—long grain, rough (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—medium, short and other classes, rough (including parboiled).	Metric Tons	Aug. 1	July 31.
Rice—long grain, brown (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—medium, short and other classes, brown (including parboiled).	Metric Tons	Aug. 1	July 31.
Rice—long grain, milled (including parboiled)	Metric Tons	Aug. 1	July 31.
Rice—medium, short and other classes, milled (including parboiled, brewer's rice).	Metric Tons	Aug. 1	July 31.
Cattle Hides and Skins—Whole cattle hides (excluding wet blues).	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Whole calf skins (excluding wet blues).	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Whole kip skins (excluding wet blues).	Pieces	Jan. 1	Dec. 31.
Cattle Hides and Skins—Cattle, calf, and kip cut into croupons, crops, dossets, sides, butts and butt bend (hide equivalent) (excluding wet blues).	Number	Jan. 1	Dec. 31.

Commodity to be reported	Unit of measure to be used in reporting	Beginning of marketing year	End of marketing year
Cattle Hides and Skins—Cattle, calf and kip, in cuts not otherwise specified; pickled/limed (excluding wet blues).	Pounds	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—unsplit (whole or sided) hide equivalent.	Number	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—grain splits (whole or sided) hide equivalent.	Number	Jan. 1	Dec. 31.
Cattle, calf and kip, Wet blues—splits, (excluding grain splits)	Pounds	Jan. 1	Dec. 31.
Beef—fresh, chilled or frozen muscle cuts/whether or not boxed [1].	Metric Tons	Jan. 1	Dec. 31.
Pork—fresh, chilled or frozen muscle cuts/whether or not boxed [1].	Metric Tons	Jan. 1	Dec. 31.

[1] For greater clarity, ''muscle cuts'' includes carcasses, whether whole, divided in half or further sub-divided into individual primals, sub-primals, or fabricated cuts, with or without bone. Carcasses which are broken down, boxed, and sold as a complete unit are muscle cuts. Total weight of carcasses reported may include minor non-reportable items attached to carcasses (*e.g.,* hooves attached to carcasses). Meats removed during the conversion of an animal to a carcass (*e.g.,* variety meats such as beef/pork hearts, beef tongues, etc.) are not muscle cuts nor are items sold as bones practically free of meat (*e.g.,* beef femur bones) or fat practically free of meat (*e.g.,* pork clear plate) removed from a carcass.

[84 FR 64704, Nov. 25, 2019]

PART 21—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

AUTHORITY: Sec. 231, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 21.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C 4601 note) are set forth in 49 CFR part 24.

[52 FR 48017, Dec. 17, 1987, and 54 FR 8912, 8913, Mar. 2, 1989]

PART 22—RURAL DEVELOPMENT COORDINATION

Subpart A—General

Sec.

22.101 The Rural Development Act of 1972 (Pub. L. 92–419).
22.102 Summary of authorities.
22.103 Purpose.
22.104 General policy.

Subpart B—Roles and Responsibilities of Federal Government

22.201 Coordination.
22.202 Federal unit responsibilities.
22.203 Major responsibilities under title VI, Sec. 603.
22.204 Rural development committees.
22.205 Allocation of loan and grant funds.

Subpart C—Roles and Responsibilities of State Governments

22.301 Selection and designation.
22.302 Area eligibility.
22.303 Cooperation with Federal Regional Councils.
22.304 Multiyear planning and programming.
22.305 Conformance with OMB Circular No. A–95.
22.306 Financing rural development planning.
22.307 Program evaluation.
22.308 Project approval.
22.309 Seeking Federal review.

AUTHORITY: Sec. 301, 80 Stat. 379, 5 U.S.C. 301 and delegations of authority by the Secretary of Agriculture, 38 FR 14944–14948, 7 CFR 2.23, as amended by 38 FR 24633.

SOURCE: 38 FR 29020, Oct. 18, 1973, unless otherwise noted.

Subpart A—General

§ 22.101 The Rural Development Act of 1972 (Pub. L. 92–419).

The Rural Development Act of 1972 (Pub. L. 92–419), herein called the Act

consists of six titles designed to facilitate the development of rural communities through a series of authorizations including grants, loans, and administrative provisions. This Act adds new statutory rural development coordination responsibilities to certain Federal departments and agencies to be carried out under the leadership of the Secretary of Agriculture.

§ 22.102 Summary of authorities.

The purpose of this section is to give notice that certain authorities have been delegated by the Secretary of USDA agencies for implementation. New Secretarial delegations covering the Rural Development Act were effective May 31, 1973, and were published in the FEDERAL REGISTER June 7, 1973 (38 FR 14944–14953). These are as follows:

(a) Title I (38 FR 14948). Responsibility delegated to theAssistant Secretary for Rural Development. The responsibility for administering loan and grant authorities is redelegated to the Farmers Home Administration, except the responsibility for administering loan authorities with respect to rural electrification and telephone facilities and service which has been redelegated to the Rural Electrification Administration.

(b) Titles II (38 FR 14945–14948), III (38 FR 14945–14948), and V (38 FR 14945–14948. Responsibility delegated to the Assistant Secretary for Conservation, Research and Education and redelegated as follows:

(1) Titles II (38 FR 14951–14952) and III (38 FR 14951–14952) to the Administrator, Soil Conservation Service.

(2) Title V (38 FR 14949–14950) to the Administrators, Cooperative State Research Service and the Extension Service respectively.

(c) Title IV (38 FR 14945–14948). Responsibility delegated to the Assistant Secretary for Conservation, Research and Education and redelegated (38 FR 14950–14951) to the Chief of the Forest Service.

(d) Title VI, section 603 (38 FR 14948). Responsibility delegated to and redelegated (38 FR 14953) to the Administrator, Rural Development Service.

The Rural Development Act recognizes that many Federal departments and agencies of the executive branch of government administer programs and provide services which are applicable to the needs of rural communities. Section 603 of the Rural Development Act charges the Secretary of Agriculture with providing governmentwide leadership for, and with coordinating a nationwide rural development program. In such coordination, the Secretary shall seek measures that will achieve effective integration of relevant Federal services in rural areas as provided by Agriculture agencies and other Departments and agencies. This section also requires that the Secretary shall establish goals and report to the Congress on progress in complying with specified purposes of the Act. The Federal Regional Council will play a major role in coordination at the field level. An organic Act of the Department (7 U.S.C. 2201) has been amended to require the Secretary to add Rural Development to those purposes for which he is authorized to acquire and diffuse useful information.

§ 22.103 Purpose.

The purpose of these regulations is to establish the policies, procedures, and responsibilities required by section 603 of the Rural Development Act.

§ 22.104 General policy.

Federal implementation of the Act will be consistent with the President's policy of decentralized decisionmaking and administrative responsibility which gives fullest possible consideration to State and local rural development goals and priorities. As a result of section 817(4) of the Agriculture and Consumer Protection Act of 1973 (Pub. L. 93–86) which prohibits prior approval by any State officials of any loan or grant under any program authorized by title I of the Rural Development Act of 1972 (Pub. L. 92–419), it has been necessary to substantially modify the planned administration of programs under section 603 of the Rural Development Act.

Subpart B—Roles and Responsibilities of Federal Government

§ 22.201 Coordination.

The following identifies types and levels of coordination:

(a) Washington level interdepartmental and interagency coordination for purposes of the Act.

(b) Coordination for purposes of the Act among agencies within the U.S. Department of Agriculture.

(c) Coordination among and between the field operations of Federal agencies for purposes of the Act.

(d) Coordination for purposes of the Act between levels of field operations of the Federal government and State governments.

§ 22.202 Federal unit responsibilities.

The following Federal units have major responsibilities in implementing the Act.

(a) Rural Development policy questions requiring resolution by the Committee on Community Development of the President's Domestic Council may be so referred by the Secretary of Agriculture, who will sit as a member and as Chairman of the Rural Development Committee.

(b) The Under Secretary of Agriculture will represent the Secretary in matters pertaining to rural development policy when such matters are of mutual concern to the Under Secretaries' Group for Regional Operations (Executive Order 11647 as amended by E.O. 11731) and the Federal Regional Councils, or at such other times that he or the Secretary may deem appropriate.

(c) The Assistant Secretary of Agriculture for Rural Development will chair an Assistant Secretaries' Working Group consisting of interdepartmental and interagency members from Agriculture, Health, Education, and Welfare, Housing and Urban Development, Defense, Labor, Commerce, Transportation, Environmental Protection Agency, Small Business Administration and others as appropriate. This working group will operate under the aegis of the Rural Development Committee of the Domestic Council. The purpose of this working group is:

(1) To develop and recommend rural development policy applicable to more than one executive department or agency.

(2) To develop cooperative procedures between and among executive departments and agencies in matters pertaining to rural development.

(3) To devise effective rural development strategies and to bring Federal resources and services to bear toward their realization.

(4) To advise the Under Secretaries' Group on involvement of Federal Regional Councils in rural development activities.

The Secretary of Agriculture may utilize the services of the Assistant Secretaries' Working Group in performing his rural development functions for the Rural Development Committee of the Domestic Council.

(d) The Administrator, Rural Development Service, under the policy direction of the Under Secretary for Rural Development shall coordinate rural development activities under section 603 of the Rural Development Act as directed by the Secretary. In the fulfillment of such responsibilities, he is authorized to communicate directly with other Federal department and agency officials of corresponding levels of authority and with State and Federal Regional Council officials.

(e) The Federal Regional Councils shall have primary responsibility for interagency program coordination at the field level and will provide assistance to and liaison with States in promoting rural development. Federal attention to this type of cooperation and coordination will be emphasized. In addition, the Federal Regional Councils, operating within policy determined at the Washington level, shall be responsible for performing an oversight function to assess how well the machinery is working in carrying out the Rural Development Act authorities. Each Federal Regional Council shall create an appropriate management structure to accomplish the foregoing. This may include the creation of a Rural Development Committee. The Department of Agriculture will chair such Rural Development Committees or otherwise assume the lead in managing rural development activities of the Federal Regional Councils.

(1) Procedures for the coordination of rural development activities will be consistent with the policies expressed herein and with any specific Federal guideline based on these regulations or

on Executive Order 11647, as amended by Executive Order 11731.

(2) Councils shall exercise authority under Executive Order 11647, as amended by Executive Order 11731, to promote in rural areas integrated program and funding plans involving several Federal agencies.

§ 22.203 Major responsibilities under title VI, Sec. 603.

(a) *Title VI, section 603(b).* (1) Section 603(b) of the Rural Development Act charges the Secretary of Agriculture with providing leadership in the development of a nationwide rural development program. Included in this program would be pertinent Federal departments and agencies which might contribute to this rural development mission. In carrying out his responsibilities, the Secretary shall report annually, prior to September 1, to the Congress on rural development goals for employment, income, population, housing, and quality of community services and facilities. To carry out the provisions of the Act specified above, the following major responsibilities are identified:

(i) The Rural Development Committee of the Domestic Council will assume responsibility for interdepartmental policy formulation and resolution of issues pertaining to this section of the Act as determined by the Secretary of Agriculture. This committee consists of members of the Community Development Committee of the Domestic Council, to wit: The Secretary of Agriculture, Chairman of the Rural Development Committee; the Secretary of HUD, Chairman of the Urban Development Committee; the Secretary of Transportation, Chairman of the Transportation Policy Development Committee; the Secretaries of Treasury, Commerce, and Labor and the Director of OMB.

(ii) The Secretary of Agriculture shall be responsible for Washington level coordination pursuant to this section of the Act.

(iii) At the regional level, the Federal Regional Councils shall develop and implement procedures designed to identify and facilitate access to Federal resources appropriate for rural development purposes within States. Such procedures will be consistent with policies expressed or endorsed by the Under Secretaries' Group. The Councils shall also be responsible for monitoring the effectiveness with which the Rural Development Act is implemented within their respective regions.

(2) The Secretary of Agriculture is also authorized to initiate or expand research and development efforts related to solution of rural development problems including problems of rural water supply, rural sewage and solid waste management, and rural industrialization.

(3) The Rural Development Service will operate a rural development research program and may also participate in rural development research in cooperation with Federal, State, and private research units.

(b) *Title VI, section 603(c) of the Rural Development Act.* (1) Under guidance by the Under Secretaries' Group, and under the leadership of the U.S. Department of Agriculture member on each of the Federal Regional Councils, the Rural Development Committees of the Federal Regional Councils or other Federal Regional Council mechanisms assigned to work with rural development, shall be responsible for proposing to the appropriate Federal and State agencies actions in such areas as:

(i) Adjustment, where appropriate, of administrative boundaries used by field staffs of Federal and federally supported agencies to conform with boundaries of multicounty jurisdictions. ''Multicounty jurisdictions'' as used means substate planning districts or other combinations of county jurisdictions as designated by States for State planning purposes.

(ii) Co-location of field units of Federal agencies and consolidation of offices in the vicinity of principal centers of local government administration (including multicounty jurisdictional administration), to encourage increased cooperation within and among different governmental levels.

(iii) Exchange of personnel between Federal and State agencies under the Intergovernmental Personnel Act (Pub. L. 91–648), to supplement and broaden staffs administering rural development

programs, and provide specific technical expertise for certain projects.

(iv) Interchange of personnel among Federal agencies for the purposes expressed in paragraph (b)(1)(ii) of this section.

(2) In addition, the U.S. Department of Agriculture member on the Federal Regional Councils shall, by July 31, of each year, report to the Assistant Secretary for Rural Development who shall in turn report to the Under Secretaries' Group and the Congress on progress made in carrying out the programs outlined in paragraphs (b)(1)(ii) through (iv) of this section and plans for programs to be implemented during the following fiscal year. The first report will be due to the Assistant Secretary by July 31, 1974.

§ 22.204 Rural development committees.

State rural development committees, consisting of USDA agency members and, in most instances, State governments and other Federal agency representatives are available to assist States in accomplishing their rural development objectives. Such assistance if requested by the State can take the form of technical assistance and cooperative services to States in carrying out their rural development priorities.

§ 22.205 Allocation of loan and grant funds.

(a) Title I grant funds and approved loan funding levels will be allocated among States by a formula designed to ensure equitable treatment. This applies to amounts made available for business and industrial loans, water, sewer and other community facilities except electrical and telephone facilities provided by or through the Rural Electrification Administration.

(b) During the second half of the fiscal year, the Secretary of Agriculture shall review State and multicounty jurisdictional rural development programs and projects so that unused allocations may be shifted from one State to another so as to enable the obligation of all available funds prior to the end of the fiscal year.

(c) The formula used for fund allocation will ensure that a minimum loan and grant level is established so that no State receives an amount too small to serve the purposes of the Act. A percentage of total loan and grant authority will be withheld from initial allocation to allow subsequent appropriate technical adjustments in amounts allocated to individual States.

(d) Title V funds shall be distributed by the Secretary under the formula specified in the Act. Title V activities will be consistent with the principle that States and multicounty jurisdictions have responsibility for the rural development planning and priority setting functions.

Subpart C—Roles and Responsibilities of State Governments

§ 22.301 Selection and designation.

Procedures for implementing the Act are designed to give the fullest possible consideration to planning and development goals and strategies at the State and multicounty jurisdictional levels. The governing bodies of multicounty organizations should include representatives of local governments contained within the respective multicounty jurisdictions. State development strategies and priorities shall be fully considered in the Federal administration of Rural Development Act authorities.

§ 22.302 Area eligibility.

Eligibility for programs under the Act will be based on the criteria of community size and location of population as specified in the Act. State designations of eligible areas will be duly considered by the Federal government in the determination of eligibility for loan and grant assistance.

§ 22.303 Cooperation with Federal Regional Councils.

States are urged to establish and maintain close and cooperative relationships with the Federal Regional Councils which will be in a position to assist the States and multicounty jurisdictions in the identification and application of available resources. States may authorize direct communications and liaison between the Regional Councils and multicounty jurisdictions within States.

§ 22.304 Multiyear planning and programming.

State and multicounty jurisdictions are encouraged to adopt multiyear planning and development programs. As administrative procedures for implementing the Act support the feasibility of such a process, these programs should consider joint State, Federal, and local budget planning factors and be refined to conform to the actual fund availability as annual budgets are finalized and allocated. Such programs, once initiated, will be extended by the annual addition of a new planning year until programs are completed or terminated.

§ 22.305 Conformance with OMB Circular No. A–95.

The State and multicounty jurisdictional rural development planning process must conform to the review requirements expressed in OMB Circular No. A–95 under parts I, III, and IV as appropriate.

§ 22.306 Financing rural development planning.

States will be required to finance rural development planning through their own resources, revenue-sharing allocations, or the Department of Housing and Urban Development planning and management assistance program or other available Federal planning programs.

§ 22.307 Program evaluation.

The Department of Agriculture is responsible for continuous program evaluation to determine if individual projects and the entire program is cost effective in terms of reaching rural development goals. As a result, USDA is responsible for conducting and reporting an annual evaluation of selected rural development projects and the overall rural development program. USDA shall include as a part of its evaluation Federal Regional Council assessment of the effectiveness of interagency coordination and delivery of services within the overall rural development program. States and multicounty districts are encouraged to participate in the joint preparation of such program evaluations. Copies of such evaluations should be supplied to the Administrator, Rural Development Service, Department of Agriculture and to the Federal Regional Councils, in sufficient time so as to arrive not later than July 1. The initial evaluation, due July 1, 1974, in addition to the requirements listed below, should include a background statement and should summarize first year program efforts and results. Annual evaluation should:

(a) Describe the process used in planning, project selection and priority setting, and the criteria and process used in evaluating program effectiveness.

(b) Describe the specific objectives of the programs.

(c) Describe and assess the cost and effectiveness of projects being pursued within individual multicounty jurisdictions.

(d) Express observations, conclusions and recommendations based on such evaluations which may contribute to the development of better management, coordination and planning procedures.

§ 22.308 Project approval.

State and multicounty jurisdictional planning is a State and local prerogative. Federal agencies will be responsive to State rural development strategies and priorities. However, determination of eligibility and feasibility and final approval of individual projects involving Federal funds must remain with the Federal government consistent with the Act and implementing regulations.

§ 22.309 Seeking Federal review.

States may, if they elect, submit multicounty development plans and proposals to the Federal Regional Councils and to the Rural Development Service, USDA, for review and comment. Such review will neither obligate the Federal government with respect to such programs nor require States to conform with suggestions supplied by the USDA or the Federal Regional Council.

PART 23—STATE AND REGIONAL ANNUAL PLANS OF WORK

Subpart A—State Program

Sec.
23.1 General.
23.2 Administration.
23.3 Coordination.
23.4 State Rural Development Advisory Council.
23.5 Availability of funds.
23.6 Plan of Work.

Subpart B—Regional Program

23.9 General.
23.10 Administration.
23.11 Board of Directors.
23.12 Availability of funds.
23.13 Plan of Work.

AUTHORITY: Sec. 508, 86 Stat. 674 (7 U.S.C. 2668).

SOURCE: 38 FR 29023, Oct. 18, 1973, unless otherwise noted.

Subpart A—State Program

§ 23.1 General.

(a) Title V of the Rural Development Act of 1972 (Pub. L. 92–419) hereafter referred to as ''Title V'' is the Research and Education component of the Rural Development Act of 1972. Title V provides the opportunity to utilize and build upon the research, extension, and community service capability of public and private institutions of higher education in each State to expand scientific inquiry and education backup for rural development. The higher educational and research institutions in each State, including the Land Grant Institutions of 1890, are authorized to assist in developing and disseminating through the most appropriate manner, scientific information, technical assistance, and feasibility studies required to improve the rural development capability of local citizens, agencies, and governments. Programs authorized under title V shall be organized and conducted by one or more colleges or universities in each State to provide a coordinated program in each State which will have the greatest impact on accomplishing the objectives of rural development in both the short and longer term and the use of these studies to support the State's comprehensive program to be supported under title V.

(b) Title V operations will be consonant with the purpose that all Federal rural development activities be coordinated with other federally assisted rural development activities and with the State's ongoing rural development program. To effectuate such purpose, the Assistant Secretary for Conservation, Research and Education will implement title V plans and activities in close coordination with the Assistant Secretary for Rural Development.

§ 23.2 Administration.

(a) Title V will be administered by the Director of the National Institute of Food and Agriculture in cooperation with the chief administrative officer of the State Land Grant University who will administer the program within his respective State. To assure national and State coordination with programs under the Smith-Lever Act of 1914 and the Hatch Act (as amended), August 11, 1955, the administration of the programs shall be in association with the programs conducted under the Smith-Lever Act and the Hatch Act as required by section 504(b) of the Act.

(b) Programs authorized under title V shall be conducted as mutually agreed upon by the Secretary and the chief administrative officer of the State Land Grant University responsible for administering said programs in a memorandum of understanding which shall provide for the coordination of the programs, coordination of these programs with other rural development programs of Federal, State, and local government, and such other matters as the Secretary shall determine.

[38 FR 29023, Oct. 18, 1973, as amended at 76 FR 4804, Jan. 27, 2011]

§ 23.3 Coordination.

The chief administrative officer of the administratively responsible State Land Grant University will designate an official who will be responsible for the overall coordination of the authorized programs for the State. The designated official will be responsible for the overall coordination of planning, organizing, funding, conducting and evaluating programs in association

with the person responsible for the administration of research programs, the person responsible for the administration of the extension programs, and the administrative head of agriculture of the University (chairman of the State Rural Development Advisory Council).

§ 23.4 State Rural Development Advisory Council.

(a) The chief administrative officer of the administratively responsible State Land Grant University will appoint a State Rural Development Advisory Council with membership as set forth in section 504(e) of title V. The function of the Council shall be to review and approve annual program plans conducted under title V. The Council will also advise the chief administrative officer on all matters pertaining to the authorized programs.

(b) The Chairman of the State Rural Development Advisory Council will insure that programs proposed under title V including regional programs applicable within the State are not inconsistent with and are, to a maximum extent practicable, in consonance with other rural development programs and activities approved in that State.

(c) Those elements of the research and extension plan which would impact directly on rural development activities being developed or pursued by States will be considered jointly by the State Rural Development Advisory Council and appropriate State agencies to assure a constructive reinforcement of those State activities.

§ 23.5 Availability of funds.

Funds available under title V for extension and research programs shall be allocated to, and following approval of a State Annual Plan of Work, paid to the official of the State Land Grant University designated to receive funds under the Smith-Lever and Hatch Acts respectively. Funds will be available for State programs for expenditures authorized by section 503(c) of title V, in the fiscal year for which the funds were appropriated and the next fiscal year.

§ 23.6 Plan of Work.

(a) A State Annual Plan of Work for carrying out the programs authorized under title V shall be prepared. The Plan of Work should include:

(1) Identification of major problems and needs which can be met by each related extension and research program in the geographic or problem area.

(2) The relationship of this program to ongoing planning and development efforts.

(3) The organizational structure for planning, conducting, and evaluating each pilot program, including the names and title of the members of the Rural Development Advisory Council and the composition of major committees and work groups.

(4) A separate concise statement describing specific extension projects to be funded under each program. The statement should contain the following elements: Title, objectives, organization and operational procedures, probable duration, personnel, institutions involved, and relation to the research effort. In addition, a brief description of each regular or special extension project which is complementary and supports the title V pilot program, but which is funded from other sources shall be included.

(5) A separate concise statement describing specific research projects to be funded under each program. The statement should contain the following elements: Title, objectives, organization, and operational procedures, probable duration, personnel, institutions involved, and relation to the extension effort. In addition, a brief description of each regular or special research project which is complementary and supports the title V program, but which is funded from other sources, shall be included.

(6) A plan for evaluating the impact of each program on the development of the area, including the effectiveness of the extension and research program techniques, and organizational structure for planning and conducting each program. Appraisals by community leaders in the area should be included in the evaluation.

(7) Provisions for making an annual progress report to the Assistant Secretary for Conservation, Research, and Education which will document achievements pertaining to the goals

and objectives as stated in the Plan of Work.

(8) A budget statement for each program to be submitted on forms provided by the Assistant Secretary for Conservation, Research, and Education.

(b) The Plan of Work shall include plans for all programs to be conducted with funds authorized under section 503(b)(3) and (4) of title V. The Plan of Work shall include plans for the programs to be conducted by each cooperating and participating university or college and such other information as included in these guidelines. Each State program must include research and extension activities directed toward identification of programs which are likely to have the greatest impact upon accomplishing the objectives of rural development in both the short and longer terms and the use of these studies to support the State's comprehensive program to be supported under section 505(b) of title V. In addition, all other rural development extension and research efforts funded from other sources that contribute directly to the proposed programs shall be described in the Plan of Work.

(c) Since the appropriation authorization for title V is limited to a three-year period the Plan of Work should be developed to demonstrate extension and research program techniques and organizational structures for providing essential knowledge to assist and support rural development efforts within that time.

(1) In accordance with the above criteria, the Plan of Work should:

(i) Concentrate on limited geographic or problem areas where title V efforts would be expected to have high impact within the three-year authorization.

(ii) Give emphasis to rural areas, including towns and cities with populations of less than 50,000.

(iii) Involve the administratively responsible Land Grant University and other public or private colleges and universities, as appropriate, in meeting with high priority extension and research needs of the area(s).

(iv) Give priority to education and research assistance leading to increasing job and income opportunities, improving quality of life, improving essential community services and facilities, improving housing and home improvements, and enhancing those social processes necessary to achieve these goals.

(v) Be consistent with Statewide comprehensive planning and development efforts and objectives. Procedures set forth under § 23.4(c) are designed to achieve attainment of this requirement.

(d) Four copies of the Plan of Work approved by the State Rural Development Advisory Council shall be submitted by the person responsible for the overall coordination of the title V programs in the State to the Assistant Secretary for Conservation, Research and Education, U.S. Department of Agriculture, Washington, DC 20250, within 60 days after enactment of the annual Appropriation Act for the Department of Agriculture.

(e) Plans of Work not meeting the above criteria will not be approved by the Assistant Secretary for Conservation, Research and Education.

Subpart B—Regional Program

§ 23.9 General.

(a) Section 503(b)(2), title V, of the Rural Development Act of 1972 (Pub. L. 92–419) hereafter referred to as ''Title V'' authorizes funds to finance work authorized under title V which serve two or more States; in which universities in two or more States cooperate; or which is conducted by one University serving two or more States. The authorized funding under section 503(b)(2) is hereafter referred to as the ''Regional Programs.''

(b) The Regional Programs shall develop and provide knowledge essential to assist and support rural development in the region, and shall provide for technical consultation and personnel development for the research and extension staff in the several States of the region to help them to be more responsive to rural development needs and activities.

(c) The Regional Programs will concentrate on the high priority knowledge, training, and personnel needs required for the research and extension staff in the several States to conduct effective rural development research

and extension to carry out the provisions of title V. These efforts may include personnel development and consultation; synthesis of existing research knowledge and the interpretation of this knowledge for rural development program and policy purposes; the development of strategies and procedures on high priority rural development problems of regional significance; as funds permit, the conduct of research on one of two high priority problems for which information is lacking but is urgently needed for rural development, and the evaluation of rural development programs and policies.

(d) Regional Programs will be consonant with all rural development activities under the Act and other pertinent Federal development programs. To effectuate such purpose, the Assistant Secretary for Conservation, Research and Education will implement title V plans and activities in close cooperation with the Assistant Secretary for Rural Development. In order to insure such consonance, the Director of each Regional Center will insure that regional programs having an impact within one or more States are brought to the attention of the appropriate State overall coordinator for consideration pursuant to procedures in §23.4(c).

§ 23.10 Administration.

(a) The Regional Programs will be administered through four Regional Rural Development Centers hereafter referred to as ''Regional Centers'' in cooperation with the National Institute of Food and Agriculture. The Director of each Regional Center shall be responsible for compliance with all appropriate provisions of title V and the regulations of this subpart. Regions as delineated for purposes under section 503(b)(2) will be coterminous with the regional delineation by the National Association of State Universities and Land Grant Colleges. Each Regional Center will be established by the regional association of State Agricultural Experiment Station Directors and the regional organization of Cooperative Extension Directors in the region to be served by the Regional Center. These associations and organizations will designate the location of the Regional Center.

(b) Although the Regional Center will administer the program, it is also expected that it will draw on expertise from outside the Regional Center. The Director of each Regional Center shall seek advice and assistance from regional and subregional committees, groups or persons who can contribute to the Regional Center's program.

[38 FR 29023, Oct. 18, 1973, as amended at 76 FR 4804, Jan. 27, 2011]

§ 23.11 Board of Directors.

(a) For each Regional Center there shall be a Board of Directors selected by the Regional Association of Agricultural Experiment Station Directors and the Regional Organization of Cooperative State Extension Directors. Membership on the Board of Directors shall include representatives from State Cooperative Extension Services and State Agricultural Experiment Stations from the States in the region and/or other State administrators of programs carried out under title V in the region.

(b) The Director of each Regional Center will be responsible to the Board of Directors for the Regional Program conducted at that Regional Center. The Regional Annual Plan of Work will be developed by the Director and reviewed and approved by the Board of Directors.

§ 23.12 Availability of funds.

Available funds will be allocated equally and following approval of a Regional Annual Plan of Work paid to the Directors of the four Regional Centers. Funds will be available for Regional Programs for expenditures authorized by section 503(c) of title V, in the fiscal year for which the funds were appropriated and the next fiscal year.

§ 23.13 Plan of Work.

(a) A Regional Plan of Work for carrying out the programs authorized to be funded under section 503(b)(2) of title V shall be prepared. The Plan of Work should include:

(1) A brief narrative statement including identification of high priority knowledge, skill, and organization needs for rural development program

and policy purposes in the region and identification of technical consultation, training, and personnel needs of research and extension workers in support of rural development programs.

(2) A statement indicating:

(i) The types of personnel to be trained, technical consultation to be conducted, the estimated number of participants, the location or locations where the program will be conducted, and the staff who will conduct the work;

(ii) The types of topical areas of rural development for which the synthesis of available research knowledge for rural development purposes is planned;

(iii) The type of high priority rural development research which will be undertaken as funds permit and the staff which would do the research;

(iv) The type of evaluation studies which will be made and the staff which will do the evaluation; and

(v) The relationship of the Plan of Work to priorities activated under subpart A of this part, which in turn support State development strategies.

(3) A concise statement of the organization structure for planning and conducting the program funded under section 503(b)(2).

(4) A plan for evaluating the usefulness of the program and the effectiveness of the organizational structure.

(5) Provision for making an annual progress report to the Assistant Secretary for Conservation, Research and Education which will document achievements pertaining to the goals and objectives as stated in the Plan of Work.

(6) A budget statement to be submitted on forms provided by the Assistant Secretary for Conservation, Research and Education.

(b) The Plan of Work shall be coordinated with the work program of other pertinent multi-State organizations or bodies for those activities of the Regional Rural Development Centers which go beyond direct assistance to individual State programs conducted under title V.

(c) The Director of the Center will forward four copies of the Plan of Work to the Assistant Secretary for Conservation, Research and Education, U.S. Department of Agriculture, Washington, D.C. 20250, by a time to be specified by the Assistant Secretary for Conservation, Research and Education.

(d) Regional Annual Plans of Work not meeting the above criteria will not be approved by the Assistant Secretary for Conservation, Research and Education.

PART 24 [RESERVED]

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Subpart A—General Provisions

Sec.

25.1 Applicability and scope.
25.2 Objective and purpose.
25.3 Definitions.
25.4 Secretarial review and designation.
25.5 Waivers.
25.6–25.9 [Reserved]

Subpart B—Area Requirements

25.100 Eligibility requirements.
25.101 Data utilized for eligibility determinations.
25.102 Pervasive poverty, unemployment and general distress.
25.103 Area size and boundary requirements.
25.104 Poverty rate.
25.105–25.199 [Reserved]

Subpart C—Nomination Procedure

25.200 Nominations by State and local governments.
25.201 Application.
25.202 Strategic plan.
25.203 Submission of applications.
25.204 Evaluation of the strategic plan.
25.205–25.299 [Reserved]

Subpart D—Designation Process

25.300 USDA action and review of nominations for designation.
25.301 Selection factors for designation of nominated rural areas.
25.302–25.399 [Reserved]

Subpart E—Post-Designation Requirements

25.400 Reporting.
25.401 Responsibility of lead managing entity.
25.402 Periodic performance reviews.
25.403 Ongoing 2-year work plan requirement.
25.404 Validation of designation.
25.405 Revocation of designation.
25.406–25.499 [Reserved]

Subpart F—Special Rules

25.500 Indian reservations.
25.501 Governments.
25.502 Nominations by State-chartered economic development corporations.
25.503 Rural areas.
25.504–25.999 [Reserved]

Subpart G—Round II and Round IIS Grants

25.600 Purpose.
25.601 Delegation of authority.
25.602 Eligible recipients.
25.603 Grant approval and obligation of funds.
25.604 Disbursement of grant funds.
25.605 Grant program reporting requirements.
25.606 Financial management and records.
25.607 Suspension or termination of grant funds.
25.608–25.619 [Reserved]
25.620 Eligible grant purposes.
25.621 Ineligible grant purposes.
25.622 Other considerations.
25.623 Programmatic changes.
25.624–25.999 [Reserved]

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SOURCE: 63 FR 19114, Apr. 16, 1998, unless otherwise noted.

Subpart A—General Provisions

§ 25.1 Applicability and scope.

(a) Applicability. This part contains policies and procedures applicable to rural empowerment zones and enterprise communities, authorized under the Omnibus Budget Reconciliation Act of 1993, title XIII, subchapter C, part I (Round I), the Taxpayer Relief Act of 1997, title IX, subtitle F (Round II), the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law 105–277) (Round IIS), and the Community Renewal Tax Relief Act of 2000 (Public Law 106–554) (Round III).

(b) *Scope.* This part contains provisions relating to area requirements, the nomination process for rural Empowerment Zones and rural Enterprise Communities, and the designation of these Zones and Communities by the Secretary of the U.S. Department of Agriculture (Secretary) (USDA). Provisions dealing with the nominations and designation of urban Empowerment Zones and Enterprise Communities are promulgated by the U.S. Department of Housing and Urban Development (HUD). This part also contains provisions relating to granting certain nominated areas status as Champion communities.

[63 FR 19114, Apr. 16, 1998, as amended at 67 FR 13556, Apr. 24, 2002]

§ 25.2 Objective and purpose.

The purpose of this part is to provide for the establishment of Empowerment Zones and Enterprise Communities in rural areas in order to facilitate the empowerment of the disadvantaged and long-term unemployed such that they may become economically self-sufficient, and to promote revitalization of economically distressed areas, primarily by facilitating:

(a) Coordination of economic, human services, health, transportation, education, community, and physical development plans, and other plans and related activities at the local level;

(b) Local partnerships fully involving affected communities and local institutions and organizations in developing and implementing a comprehensive multi-sectoral strategic plan for any nominated rural Empowerment Zone or Enterprise Community;

(c) Tax incentives and credits; and

(d) Distribution of other federal resources including grants from USDA and other federal departments, including Empowerment Zone and Enterprise Community Social Services Block Grant (EZ/EC SSBG) funds as may be available from the U.S. Department of Health and Human Services (HHS).

§ 25.3 Definitions.

As used in this part—

Annual report means the report submitted to USDA by all rural Empowerment Zones and Enterprise Communities pursuant to § 25.400.

Applicant means the entity that is submitting the community's strategic plan for accomplishing comprehensive economic, human community, and physical development within the area; such an entity may include, but is not limited to, State governments, local

governments, tribal governments, regional planning agencies, non-profit organizations, community-based organizations, or a partnership of community members and other entities. The applicant may be the same as or different from the lead managing entity.

Baseline condition means a measurable condition or problem at the time of designation for which benchmark goals have been established for improvement.

Benchmark activity means a program, project, task or combination thereof which is designed to achieve a benchmark goal.

Benchmark goal means a measurable goal targeted for achievement in the strategic plan.

Brownfield means a ''qualified contaminated site'' meeting the requirements of section 941 of the Taxpayer Relief Act of 1997, (26 U.S.C. 198(c)), where the site is located in an empowerment zone or enterprise community.

Census tract means a population census tract, or, if census tracts are not defined for the area, a block numbering area (BNA) as established by the Bureau of the Census, U.S. Department of Commerce. BNAs are areas delineated by state officials or (lacking state participation) by the Census Bureau, following Census Bureau guidelines, for the purpose of grouping and numbering decennial census blocks in counties or statistically equivalent entities in which census tracts have not been established. A BNA is equivalent to a census tract in the Census Bureau's geographic hierarchy.

Champion Community means a rural area granted such status by the Secretary pursuant to this part from among those communities which applied for designation as either a rural Empowerment Zone or Enterprise Community and which were not so designated.

Designation means the process by which the Secretary designates rural areas as empowerment zones or enterprise communities pursuant to eligibility criteria established by subchapter U of the Internal Revenue Code (26 U.S.C. 1391 *et seq.*).

Designation date means December 21, 1994, in the case of Round I designations, December 24, 1998, in the case of Round II and Round IIS designations and January 11, 2002, in the case of Round III designations

Designation period means, in the case of empowerment zones, the lesser of such time as has elapsed from the designation date to December 31, 2009 or from the designation date to the effective date of an applicable notice of revocation pursuant to 7 CFR 25.405(e) and, in the case of enterprise communities, the lesser of ten years or such time as has elapsed from the designation date to the effective date of an applicable notice of revocation pursuant to 7 CFR 25.405(e).

Developable site means a parcel of land in a nominated area which may be developed for commercial or industrial purposes.

Empowerment Zone means a rural area so designated by the Secretary pursuant to this part.

Enterprise Community means a rural area so designated by the Secretary pursuant to this part.

EZ/EC SSBG funds or *EZ/EC Social Services Block Grant funds* means any funds that may be provided to states or tribal governments by HHS in accordance with section 2007(a) of the Social Security Act (42 U.S.C. 1397f), for use by designated Empowerment Zones or Enterprise Communities.

Funding official means the state director in the state where the designated rural area is located, or if the designated rural area is located in more than one state, the state where the headquarters office of the lead managing entity is located.

HHS means the U.S. Department of Health and Human Services.

HUD means the U.S. Department of Housing and Urban Development.

Indian reservation means a reservation as defined in section 168(j)(6) of the Internal Revenue Code, 26 U.S.C. 168(j)(6).

Lead managing entity means the entity that will administer and be responsible for the implementation of the strategic plan.

Local government means any county, city, town, township, parish, village, or other general purpose political subdivision of a state, and any combination of

these political subdivisions that is recognized by the Secretary.

Nominated area means an area which is nominated by one or more local governments and the state or states in which it is located for designation in accordance with this part.

Office of Community Development or *OCD* means the office of the Deputy Administrator, Community Development, as identified in 7 CFR 2003.26(b)(4).

Outmigration means the negative percentage change reported by the Bureau of the Census, U.S. Department of Commerce, for the sum of:

(1) Net Domestic Migration;

(2) Net Federal Movement; and

(3) Net International Migration, as such terms are defined for purposes of the 1990 Census.

Poverty rate means, for a given Census tract, the poverty rate reported in Table 19 of the Bureau of the Census CPH–3 series of publications from the 1990 Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas.

Revocation of designation means the process by which the Secretary may revoke the designation of an area as an Empowerment Zone or Enterprise Community pursuant to § 25.405.

Round I identifies designations of rural Empowerment Zones and Enterprise Communities pursuant to subchapter C, part I (Empowerment Zones, Enterprise Communities and Rural Development Investment Areas) of Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66).

Round II identifies designations of rural Empowerment Zones pursuant to subtitle F (Empowerment Zones, Enterprise Communities, Brownfields, and Community Development Financial Institutions) of Title IX of the Taxpayer Relief Act of 1997 (Pub. L. 105–34).

Round IIS identifies designations of rural enterprise communities pursuant to section 766 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law 105–277).

Round III identifies designations of empowerment zones pursuant to section 111 of the Community Renewal Tax Relief Act of 2000 (Public Law 106–554).

Rural area means any area defined pursuant to § 25.503.

Secretary means the Secretary of the U.S. Department of Agriculture.

State means any state in the United States.

State director means the state director for the Rural Development mission area within USDA, as identified in 7 CFR 2003.10.

Strategic plan means a plan for achieving benchmark goals evidencing improvement over identified baseline conditions, developed with the participation and commitment of local governments, tribal governments, state governments, private sector, community members and others, pursuant to the provisions of § 25.202.

USDA means the U.S. Department of Agriculture.

USDA EZ/EC grant program means the grant program authorized by section 766 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Public Law 105–277).

[63 FR 19114, Apr. 16, 1998, as amended at 67 FR 13556, Apr. 24, 2002; 68 FR 16170, Apr. 3, 2003]

§ 25.4 Secretarial review and designation.

(a) *Designation.* The Secretary will review applications for the designation of nominated rural areas to determine the effectiveness of the strategic plans submitted by applicants; such designations of rural empowerment zones and enterprise communities as are made shall be from the applications submitted in response to the notice inviting applications or other applicable notice published in the FEDERAL REGISTER. The Secretary may elect to designate as champion communities those nominated areas which are not designated as either a rural empowerment zone or enterprise community and whose applications meet the criteria contained in § 25.301.

(b) *Number of rural empowerment zones, enterprise communities and champion communities*—(1) *Round I.* The Secretary may designate up to three rural Empowerment Zones and up to thirty

rural Enterprise Communities prior to December 31, 1996.

(2) *Round II.* The Secretary may, prior to January 1, 1999, designate up to five rural empowerment zones in addition to those designated in Round I.

(3) *Round IIS.* The Secretary may designate up to 20 rural enterprise communities in addition to those designated in Round I.

(4) *Round III.* The Secretary may, prior to January 1, 2002, designate up to two rural empowerment zones in addition to those designated in Round I and Round II.

(5) *Champion communities.* The number of champion communities is limited to the number of applicants which are not designated empowerment zones or enterprise communities.

(c) *Period of designation.* The designation of a rural area as an Empowerment Zone or Enterprise Community shall remain in effect during the period beginning on the designation date and ending on the earliest of the:

(1) End of the tenth calendar year beginning on or after the designation date;

(2) Termination date designated by the state and local governments in their application for nomination;

(3) Date the Secretary revokes the designation; or

(4) Date the Empowerment Zone or Enterprise Community modifies its boundary without first obtaining the written approval of the Secretary.

[63 FR 19114, Apr. 16, 1998, as amended at 67 FR 13556, Apr. 24, 2002]

§ 25.5 Waivers.

The Secretary may waive any provision of this part in any particular case for good cause, where it is determined that application of the requirement would produce a result adverse to the purpose and objectives of this part.

§§ 25.6–25.99 [Reserved]

Subpart B—Area Requirements

§ 25.100 Eligibility requirements.

A nominated rural area may be eligible for designation pursuant to this part only if the area:

(a) Has a maximum population of 30,000;

(b) Is one of pervasive poverty, unemployment, and general distress, as described in § 25.102;

(c) Meets the area size and boundary requirements of § 25.103;

(d) Is located entirely within the jurisdiction of the general local government making the nomination; and

(e) Meets the poverty rate criteria contained in § 25.104.

(f) Provision for Alaska and Hawaii. A nominated area in Alaska or Hawaii shall be presumed to meet the criteria of paragraphs (b), (c), and (e) of this section if, for each Census tract or block group in the area, at least 20 percent of the families in such tract have an income which is 50 percent or less of the statewide median family income.

§ 25.101 Data utilized for eligibility determinations.

(a) *Source of data.* The data to be employed in determining eligibility pursuant to this part shall be based on the 1990 Census, and from information published by the Bureau of Census and the Bureau of Labor Statistics, provided, however, that for purposes of demonstrating outmigration pursuant to § 25.104(b)(2)(iii), data from the 1980 Census and interim data collected by the Bureau of Census for the 1990–1994 period may be used. The data shall be comparable in point or period of time and methodology employed.

(b) *Use of statistics on boundaries.* The boundary of a rural area nominated for designation as an Empowerment Zone or Enterprise Community must coincide with the boundaries of Census tracts, or, where tracts are not defined, with block numbering areas, except:

(1) Nominated areas in Alaska and Hawaii shall coincide with the boundaries of census tracts or block groups as such term is used for purposes of the 1990 Census;

(2) Developable sites are not required to coincide with the boundaries of Census tracts; and

(3) Nominated areas wholly within an Indian reservation are not required to adhere to census tract boundaries if sufficient credible data are available to

show compliance with other requirements of this part. The requirements of § 25.103 are otherwise applicable.

[63 FR 19114, Apr. 16, 1998, as amended at 63 FR 53780, Oct. 7, 1998]

§ 25.102 Pervasive poverty, unemployment and general distress.

(a) *Pervasive poverty.* Conditions of poverty must be reasonably distributed throughout the entire nominated area. The degree of poverty shall be demonstrated by citing available statistics on low-income population, levels of public assistance, numbers of persons or families in poverty or similar data.

(b) *Unemployment.* The degree of unemployment shall be demonstrated by the provision of information on the number of persons unemployed, underemployed (those with only a seasonal or part-time job) or discouraged workers (those capable of working but who have dropped out of the labor market—hence are not counted as unemployed), increase in unemployment rate, job loss, plant or military base closing, or other relevant unemployment indicators having a direct effect on the nominated area.

(c) *General distress.* General distress shall be evidenced by describing adverse conditions within the nominated area other than those of pervasive poverty and unemployment. Below average or decline in per capita income, earnings per worker, per capita property tax base, average years of school completed; outmigration and population decline, a high or rising incidence of crime, narcotics use, abandoned housing, deteriorated infrastructure, school dropouts, teen pregnancy, incidents of domestic violence, incidence of certain health conditions and illiteracy are examples of appropriate indicators of general distress. The data and methods used to produce such indicators that are used to describe general distress must all be stated.

§ 25.103 Area size and boundary requirements.

(a) General eligibility requirements. A nominated area:

(1) May not exceed one thousand square miles in total land area;

(2) Must have one continuous boundary if located in more than one State or may consist of not more than three noncontiguous parcels if located in only one State;

(3) If located in more than one State, must be located within no more than three contiguous States;

(4) May not include any portion of a central business district (as such term is used for purposes of the most recent Census of Retail Trade) unless the poverty rate for each Census tract in such district is not less than 35 percent for an Empowerment Zone (30 percent in the case of an Enterprise Community);

(5) Subject to paragraph (b)(4) of this section, may not include any portion of an area already included in an Empowerment Zone or Enterprise Community or included in an area otherwise nominated to be designated under this section;

(b) Eligibility requirements specific to different rounds.

(1) For purposes of Round I designations only, a nominated area may not include any area within an Indian reservation;

(2) For purposes of applying paragraph (a)(1) of this section to Round II, Round IIS and Round III designations:

(i) A Census tract larger than 1,000 square miles shall be reduced to a 1,000 square mile area with a continuous boundary, if necessary, after application of §§ 25.103(b)(2) (ii) and (iii);

(ii) Land owned by the Federal, State or local government may (and in the event the Census tract exceeds 1,000 square miles, will) be excluded in determining the square mileage of a nominated area; and

(iii) Developable sites, in the aggregate not exceeding 2,000 acres, may (and in the event the Census tract exceeds 1,000 square miles, will) be excluded in determining the square mileage of the nominated area;

(3) For purposes of applying paragraph (a)(2) of this section to Round II, Round IIS and Round III designations, the following shall not be treated as violating the continuous boundary requirement nor the limit on the number of noncontiguous parcels:

(i) Exclusion of excess area pursuant to paragraph (b)(2)(i) of this section;

(ii) Exclusion of government owned land pursuant to paragraph (b)(2)(ii) of this section; or

(iii) Exclusion of developable sites pursuant to paragraph (b)(2)(iii) of this section; and

(4) Paragraph (a)(5) of this section shall not apply where a Round I Enterprise Community is applying either in its entirety or together with an additional area for a Round II Empowerment Zone designation.

[63 FR 19114, Apr. 16, 1998, as amended at 63 FR 53780, Oct. 7, 1998; 67 FR 13557, Mar. 25, 2002]

§ 25.104 Poverty rate.

(a) *General.* Eligibility of an area on the basis of poverty shall be established in accordance with the following poverty rate criteria specific to Round I, Round II, Round IIS and Round III nominated areas:

(1) *Round I*—(i) In each Census tract, the poverty rate may not be less than 20 percent;

(ii) For at least 90 percent of the Census tracts within the nominated area, the poverty rate may not be less than 25 percent; and

(iii) For at least 50 percent of the Census tracts within the nominated area, the poverty rate may not be less than 35 percent.

(2) *Round II, Round IIS and Round III*—(i) In each Census tract, the poverty rate may not be less than 20 percent;

(ii) For at least 90 percent of the Census tracts within the nominated area, the poverty rate may not be less than 25 percent;

(iii) Up to three noncontiguous developable sites, in the aggregate not exceeding 2,000 acres, may be excluded in determining whether the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section are met; and

(iv) The Secretary may designate not more than one rural Empowerment Zone without regard to paragraphs (a)(2)(i) and (a)(2)(ii) of this section if such nominated area satisfies the emigration criteria specified in paragraph (b)(2)(iii) of this section.

(b) *Special rules.* The following special rules apply to the determination of poverty rate for Round I, Round II, Round IIS and Round III nominated areas:

(1) *Round I*—(i) *Census tracts with no population.* Census tracts with no population shall be treated as having a poverty rate that meets the requirements of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, but shall be treated as having a zero poverty rate for purposes of applying paragraph (a)(1)(iii) of this section;

(ii) *Census tracts with populations of less than 2,000.* A Census tract with a population of less than 2,000 shall be treated as having a poverty rate which meets the requirements of paragraphs (a)(1) (i) and (ii) of this section if more than 75 percent of the tract is zoned for commercial or industrial use;

(iii) *Adjustment of poverty rates for Round I Enterprise Communities.* For Round I Enterprise Communities only, the Secretary may, where necessary to carry out the purposes of this part, apply one of the following alternatives:

(A) Reduce by 5 percentage points one of the following thresholds for not more than 10 percent of the Census tracts (or, if fewer, five Census tracts) in the nominated area:

(*1*) The 20 percent threshold in paragraph (a)(1)(i) of this section;

(*2*) The 25 percent threshold in paragraph (a)(1)(ii) of this section;

(*3*) The 35 percent threshold in paragraph (a)(1)(iii) of this section; or

(B) Reduce the 35 percent threshold in paragraph (a)(1)(iii) of this section by 10 percentage points for three Census tracts.

(2) *Round II, Round IIS and Round III*—(i) *Census tracts with no population.* Census tracts with no population shall be treated the same as those Census tracts having a population of less than 2,000;

(ii) *Census tracts with populations of less than 2,000.* A Census tract with a population of less than 2,000 shall be treated as having a poverty rate of not less than 25 percent if:

(A) More than 75 percent of such tract is zoned for commercial or industrial use; and

(B) Such tract is contiguous to 1 or more other Census tracts which have a poverty rate of 25 percent or more, where such determination is made without applying § 25.104(b)(2)(ii).

(iii) *Emigration criteria.* For purposes of the discretion as may be exercised

by the Secretary pursuant to paragraph (a)(2)(iv) of this section, a nominated area must demonstrate outmigration of not less than 15 percent over the period 1980–1994 for each census tract. The outmigration for each census tract in the nominated area shall be as reported for the county in which the census tract is located: *Provided, however*, That the nominated area may include not more than one census tract where the reported outmigration is less than 15 percent, which tract shall be contiguous to at least one other census tract in the nominated area.

(c) *General rules.* The following general rules apply to the determination of poverty rate for Round I, Round II, Round IIS and Round III nominated areas.

(1) *Rounding up of percentages.* In making the calculations required by this section, the Secretary shall round all fractional percentages of one-half percentage point or more up to the next highest whole percentage point figure.

(2) *Noncontiguous parcels.* Each such parcel (excluding, in the case of Round II, Round IIS and Round III, up to three noncontiguous developable sites not exceeding 2,000 acres in the aggregate) must separately meet the poverty criteria contained in this section.

(3) *Areas not within census tracts.* In the case of an area which is not tracted for Census tracts, the block numbering area shall be used for purposes of determining poverty rates. Block groups may be used for Alaska and Hawaii.

[63 FR 19114, Apr. 16, 1998, as amended at 67 FR 13557, Apr. 24, 2002]

§§ 25.105–25.199 [Reserved]

Subpart C—Nomination Procedure

§ 25.200 Nominations by State and local governments.

(a) *Nomination criteria.* One or more local governments and the States in which an area is located must nominate such area for designation as an Empowerment Zone or Enterprise Community. Nominated areas can be considered for designation only if:

(1) The rural area meets the applicable requirements for eligibility identified in § 25.100;

(2) The Secretary determines such governments have the authority to nominate the area for designation and to provide the assurances described in paragraph (b) of this section; and

(3) The Secretary determines all information furnished by the nominating States and local governments is reasonably accurate.

(b) *Required certifications and assurances.* The State and local governments nominating an area for designation must:

(1) Submit the following certifications:

(i) Each nominating governmental entity has the authority to:

(A) Nominate the rural area for designation as an Empowerment Zone or Enterprise Community and make the assurances required under this part;

(B) Make the State and local commitments contained in the strategic plan or otherwise required under this part; and

(C) Provide written assurances satisfactory to the Secretary that these commitments will be met; and

(ii) The nominated area satisfies the eligibility criteria referenced in § 25.100, inclusive of the requirement that either;

(A) No portion of the area nominated is already included in a designated Empowerment Zone or Enterprise Community or in an area otherwise nominated to be designated under this section; or

(B) Where an existing Round I Enterprise Community is seeking to be designated as a Round II Empowerment Zone, that the nominated area includes the entirety of the applicable Round I Enterprise Community and that any other areas as may be included in the application do not comprise any portion of a designated Empowerment Zone or Enterprise Community or part of an area otherwise nominated to be designated under this section; and

(2) Provide written assurance that:

(i) The strategic plan will be implemented;

(ii) The nominating governments will make available, or cause to be made available, all information requested by USDA to aid in the evaluation of

progress in implementing the strategic plan; and

(iii) EZ/EC SSBG funds, as applicable, will be used to supplement, not supplant, other Federal or non-Federal funds available for financing services or activities which promote the purposes of section 2007 of the Social Security Act.

§ 25.201 Application.

No rural area may be considered for designation pursuant to this part unless the application:

(a) Demonstrates that the nominated rural area satisfies the eligibility criteria contained in § 25.100;

(b) Includes a strategic plan, which meets the requirements contained in § 25.202;

(c) Includes the written commitment of the applicant, as applicable, that EZ/EC SSBG funds will be used to supplement, not replace, other Federal and non-Federal funds available for financing services or activities that promote the purposes of section 2007 of the Social Security Act; and

(d) Includes such other information as may be required by USDA.

§ 25.202 Strategic plan.

(a) *Principles of strategic plan.* The strategic plan included in the application must be developed in accordance with the following four key principles:

(1) Strategic vision for change, which identifies what the community will become and a strategic map for revitalization. The vision should build on assets and coordinate a response to community needs in a comprehensive fashion. It should also set goals and performance benchmarks for measuring progress and establish a framework for evaluating and adjusting the revitalization plan.

(2) Community-based partnerships, involving the participation of all segments of the community, including the political and governmental leadership, community groups, local public health and social service departments and nonprofit groups providing similar services, environmental groups, local transportation planning entities, public and private schools, religious organizations, the private and nonprofit sectors, centers of learning, and other community institutions and individual citizens.

(3) Economic opportunity, including job creation within the community and throughout the region, entrepreneurial initiatives, small business expansion, job training and other important services such as affordable childcare and transportation services that may enable residents to be employed in jobs that offer upward mobility.

(4) Sustainable community development, to advance the creation of livable and vibrant communities through comprehensive approaches that coordinate economic, physical, environmental, community, and human development. These approaches should preserve the environment and historic landmarks—they may include ''brownfields'' clean-up and redevelopment, and promote transportation, education, and public safety.

(b) *Minimum requirements.* The strategic plan must:

(1) Describe the coordinated economic, human, community, and physical development plan and related activities proposed for the nominated area;

(2) Describe the process by which the affected community is a full partner in the process of developing and implementing the plan and the extent to which local institutions and organizations have contributed to the planning process;

(3) Identify the amount of State, local, and private resources that will be available in the nominated area and the private and public partnerships to be used, which may include participation by, and cooperation with, universities, medical centers, and other private and public entities;

(4) Identify the funding requested under any Federal program in support of the proposed economic, human, community, and physical development and related activities, including details about proposed uses of EZ/EC SSBG funds that may be available from HHS;

(5) Identify the baselines, methods, and benchmarks for measuring the success of carrying out the strategic plan, including the extent to which poor persons and families will be empowered to become economically self-sufficient;

(6) Must not include any action to assist any establishment in relocating from one area outside the nominated area to the nominated area, except that assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary is permitted if:

(i) The establishment of the new branch, affiliate, or subsidiary will not result in a decrease in employment in the area of original location or in any other area where the existing business entity conducts business operations; and

(ii) There is no reason to believe that the new branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where the existing business entity conducts business operation; and

(7) Include such other information as required by USDA in the notice inviting applications or other applicable notice.

(c) *Implementation of strategic plan.* The strategic plan may be implemented by State governments, tribal governments, local governments, regional planning agencies, non-profit organizations, community-based organizations, or other nongovernmental entities. Activities included in the strategic plan may be funded from any source, Federal, State, local, or private, which agrees to provide assistance to the nominated area.

(d) *Public access to materials and proceedings.* The applicant or the lead managing entity, as applicable, must make available to the public copies of the strategic plan and supporting documentation and must conduct its meetings in accordance with the applicable open meetings acts.

[63 FR 19114, Apr. 16, 1998, as amended at 67 FR 13557, Apr. 24, 2002]

§ 25.203 Submission of applications.

General. A separate application for designation as an empowerment zone or enterprise community must be submitted for each rural area for which such designation is requested. The application shall be submitted in a form to be prescribed by USDA in the notice inviting applications or other applicable notice as published in the FEDERAL REGISTER and must contain complete and accurate information.

[67 FR 13557, Apr. 24, 2002]

§ 25.204 Evaluation of the strategic plan.

The strategic plan will be evaluated for effectiveness as part of the designation process for nominated rural areas described in subpart D of this part. On the basis of this evaluation, USDA may request additional information pertaining to the plan and the proposed area and may, as part of that request, suggest modifications to the plan, proposed area, or term that would enhance its effectiveness. The effectiveness of the strategic plan will be determined in accordance with the four key principles contained in § 25.202(a). USDA will review each plan submitted in terms of the four equally weighted principal objectives, and of such other elements of these principal objectives as are appropriate to address the opportunities and problems of each nominated area, which may include:

(a) *Strategic vision for change*—(1) *Goals and coordinated strategy.* The extent to which the strategic plan reflects a projection for the community's revitalization which links economic, human, physical, community development and other activities in a mutually reinforcing, synergistic way to achieve ultimate goals;

(2) *Creativity and innovation.* The extent to which the activities proposed in the plan are creative, innovative and promising and will promote the civic spirit necessary to revitalize the nominated area;

(3) *Building on assets.* The extent to which the vision for revitalization realistically addresses the needs of the nominated area in a way that takes advantage of its assets; and

(4) *Benchmarks and learning.* The extent to which the plan includes performance benchmarks for measuring progress in its implementation, including an on-going process for adjustments, corrections and building on what works.

(b) *Community-based partnerships*—(1) *Community partners.* The extent to which residents of the community participated in developing the strategic

plan and their commitment to implementing it, the extent to which community-based organizations in the nominated area have participated in the development of the nominated area, and their record of success measured by their achievements and support for undertakings within the nominated area;

(2) *Private and nonprofit organizations as partners.* The extent to which partnership arrangements include commitments from private and nonprofit organizations, including corporations, utilities, banks and other financial institutions, human services organizations, health care providers, and educational institutions supporting implementation of the strategic plan;

(3) *State and local government partners.* The extent to which States and local governments are committed to providing support to the strategic plan, including their commitment to ''reinventing'' their roles and coordinating programs to implement the strategic plan; and

(4) *Permanent implementation and evaluation structure.* The extent to which a responsible and accountable implementation structure or process has been created to ensure that the plan is successfully carried out and that improvements are made throughout the period of the zone or community's designation.

(c) *Economic opportunity.* (1) The extent to which businesses, jobs, and entrepreneurship will increase within the zone or community;

(2) The extent to which residents will achieve a real economic stake in the zone or community;

(3) The extent to which residents will be employed in the process of implementing the plan and in all phases of economic, community and human development;

(4) The extent to which residents will be linked with employers and jobs throughout the entire area and the way in which residents will receive training, assistance, and family support to become economically self-sufficient;

(5) The extent to which economic revitalization in the zone or community interrelates with the broader regional economies; and

(6) The extent to which lending and investment opportunities will increase within the zone or community through the establishment of mechanisms to encourage community investment and to create new economic growth.

(d) *Sustainable community development*—(1) *Consolidated planning.* The extent to which the plan is part of a larger strategic community development plan for the nominating localities and is consistent with broader regional development strategies;

(2) *Public safety.* The extent to which strategies such as community policing will be used to guarantee the basic safety and security of persons and property within the zone or community;

(3) *Amenities and design.* The extent to which the plan considers issues of design and amenities that will foster a sustainable community, such as open spaces, recreational areas, cultural institutions, transportation, energy, land and water uses, waste management, environmental protection and the vitality of life of the community;

(4) *Sustainable development.* The extent to which economic development will be achieved in a manner consistent that protects public health and the environment;

(5) *Supporting families.* The extent to which the strengths of families will be supported so that parents can succeed at work, provide nurture in the home, and contribute to the life of the community;

(6) *Youth development.* The extent to which the development of children, youth, and young adults into economically productive and socially responsible adults will be promoted and the extent to which young people will be:

(i) Provided with the opportunity to take responsibility for learning the skills, discipline, attitude, and initiative to make work rewarding;

(ii) Invited to take part as resources in the rebuilding of their community; and

(iii) Provided the opportunity to develop a sense of industry and competency and a belief they might exercise some control over the course of their lives.

(7) *Education goals.* The extent to which schools, religious organizations,

non-profit organizations, for-profit enterprises, local governments and families will work cooperatively to provide all individuals with the fundamental skills and knowledge they need to become active participants and contributors to their community, and to succeed in an increasingly competitive global economy;

(8) *Affordable housing*. The extent to which a housing component, providing for adequate safe housing and ensuring that all residents will have equal access to that housing is contained in the strategic plan;

(9) *Drug abuse*. The extent to which the plan addresses levels of drug abuse and drug-related activity through the expansion of drug treatment services, drug law enforcement initiatives, and community-based drug abuse education programs;

(10) *Health care*. The extent to which the plan promotes a community-based system of health care that facilitates access to comprehensive, high quality care, particularly for the residents of EZ/EC neighborhoods;

(11) *Equal opportunity*. The extent to which the plan offers an opportunity for diverse residents to participate in the rewards and responsibilities of work and service. The extent to which the plan ensures that no business within a nominated zone or community will directly or through contractual or other arrangements subject a person to discrimination on the basis of race, color, creed, national origin, gender, handicap or age in its employment practices, including recruitment, recruitment advertising, employment, layoff, termination, upgrading, demotion, transfer, rates of pay or the forms of compensation, or use of facilities. Applicants must comply with the provisions of Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

§§ 25.205–25.299 [Reserved]

Subpart D—Designation Process

§ 25.300 USDA action and review of nominations for designation.

(a) *Establishment of submission procedures*. USDA will establish a time period and procedure for the submission of applications for designation as empowerment zones or enterprise communities, including submission deadlines and addresses, in a notice inviting applications or other applicable notice, to be published in the FEDERAL REGISTER.

(b) *Acceptance for processing*. USDA will accept for processing those applications as empowerment zones and enterprise communities which USDA determines have met the criteria required under this part. USDA will notify the states and local governments whether or not the nomination has been accepted for processing. The application must be received by USDA on or before the close of business on the date established by the notice inviting applications or other applicable notice published in the FEDERAL REGISTER. The applications must be complete, inclusive of the strategic plan, as required by § 25.202, and the certifications and written assurances required by § 25.200(b).

(c) *Site visits*. In the process of reviewing each application accepted for processing, USDA may undertake site visits to any nominated area to aid in the process of evaluation.

(d) *Modification of the strategic plan, boundaries of nominated rural areas, or period during the application review period*. Subject to the limitations imposed by § 25.100.

(1) USDA may request additional information pertaining to the strategic plan and proposed area and may, as a part of that request, suggest modifications to the strategic plan or nominated area that would enhance the effectiveness of the strategic plan;

(2) Enlargement of a nominated area will not be allowed if the inclusion of the additional area will result in an average poverty rate less than the average poverty rate at the time of initial application; and

(3) An applicant may modify the nominated area or strategic plan during the application review period with USDA approval.

(e) *Designations*. Final determination of the boundaries of areas and the term

for which the designations will remain in effect will be made by the Secretary.

[63 FR 19114, Apr. 16, 1998, as amended at 67 FR 13557, Apr. 24, 2002]

§ 25.301 Selection factors for designation of nominated rural areas.

In choosing among nominated rural areas eligible for designation as Empowerment Zone, Enterprise Community or Champion Community, the Secretary shall consider:

(a) The potential effectiveness of the strategic plan, in accordance with the key principles in § 25.202(a);

(b) The strength of the assurances made pursuant to § 25.200(b) that the strategic plan will be implemented;

(c) The extent to which an application proposes activities that are creative and innovative;

(d) The extent to which areas consisting of noncontiguous parcels are not so widely separated as to compromise achievement by the nominated area of a cohesive community or regional identity; and

(e) Such other factors as established by the Secretary, which include the degree of need demonstrated by the nominated area for assistance under this part and the diversity within and among the nominated areas. If other factors are established by USDA, a FEDERAL REGISTER Notice will be published identifying such factors, along with an extension of the application due date if necessary.

§§ 25.302–25.399 [Reserved]

Subpart E—Post-Designation Requirements

§ 25.400 Reporting.

(a) *Periodic reports.* Empowerment Zones, Enterprise Communities and Champion Communities shall submit to USDA periodic reports which identify the community, local government and State actions which have been taken in accordance with the strategic plan. In addition to these reports, such other information relating to designated Empowerment Zones, Enterprise Communities and Champion communities as USDA may request from time to time shall be submitted promptly. On the basis of this information and of on-site reviews, USDA will prepare and issue periodic reports on the effectiveness of the Empowerment Zones/Enterprise Communities Program.

(b) *Annual report.* All rural Empowerment Zones and Enterprise Communities shall submit an annual report to USDA for each calendar year which includes an executive summary and benchmark progress report as follows:

(1) *Executive summary.* The executive summary shall identify the progress and setbacks experienced in efforts to achieve benchmark goals. Activities other than those expressly included in the strategic plan should also be noted in order to provide an understanding of where the community stands with respect to implementation of the strategic plan. Furthermore, the executive summary should address the following:

(i) Identify the most significant accomplishments to date.

(ii) Describe the level of community participation and overall support for the EZ/EC initiative.

(iii) List and describe new partnerships or alliances formed.

(iv) Identify problems or obstacles not otherwise anticipated in the strategic plan.

(v) Describe solutions developed or efforts to address the problems and obstacles.

(vi) Identify practices or concepts which were found especially effective in implementing the strategic plan.

(2) *Benchmark progress report.* For each benchmark goal the community will provide a current measure of the baseline condition which is the subject of targeted improvement and whether the current measure represents an improvement from the baseline condition as initially stated in the strategic plan. For each benchmark activity the community will provide a status report in form and substance acceptable to USDA.

(c) *Timely State data.* Where not prevented by State law, nominating State governments must provide the timely release of data requested by USDA for the purposes of monitoring and assisting the success of Empowerment Zones and Enterprise Communities.

§ 25.401 Responsibility of lead managing entity.

(a) *Financial.* The lead managing entity will be responsible for strategic plan program activities and monitoring the fiscal management of the funds of the Empowerment Zone or Enterprise Community.

(b) *Reporting.* The lead managing entity will be responsible for developing the reports required under this subpart.

(c) *Cooperation.* All entities with significant involvement in implementing the strategic plan shall cooperate with the lead managing entity in its compliance with paragraphs (a) and (b) of this section.

§ 25.402 Periodic performance reviews.

USDA will regularly evaluate the progress in implementing the strategic plan in each designated Empowerment Zone and Enterprise Community on the basis of performance reviews to be conducted on site and using other information submitted. USDA may also commission evaluations of the Empowerment Zone program as a whole by an impartial third party. Evidence of continual involvement of all segments of the community, including low income and disadvantaged residents, must be evidenced in the implementation of the strategic plan.

§ 25.403 Ongoing 2-year work plan requirement.

(a) Each Empowerment Zone and Enterprise Community shall prepare and submit annually, work plans for the subsequent 2-year interval of the designation period.

(b) The 2-year work plan shall be submitted to USDA 45 days prior to the start of the applicable 2-year period.

(c) The 2-year work plan must include the following sections and content:

(1) *Section 1—Work Plan.* Identify the benchmark goals to be achieved in the applicable 2 years of the strategic plan, together with the benchmark activities to be undertaken during the applicable 2 years of implementation. Include references to the applicable baseline conditions and performance indicators to be used in assessing performance.

(2) *Section 2—Operational Budget.* For each benchmark activity to be undertaken in the applicable 2 years of the strategic plan, set forth the following information:

(i) Expected implementation costs;

(ii) Proposed sources of funding and whether actual commitments have been obtained;

(iii) Technical assistance resources and other forms of support pledged by Federal, State and local governments, non-profit organizations, foundations, private businesses, and any other entity to assist in implementation of the community's strategic plan, and whether this support is conditional upon the designation of the community as an Empowerment Zone; and

(iv) Documentation of applications for assistance and commitments identified as proposed funding and other resources.

§ 25.404 Validation of designation.

(a) *Maintaining the principles of the program.* The empowerment zone, enterprise community or champion community (the designated community) must maintain a process for ensuring ongoing broad-based participation by community residents consistent with the approved application and planning process outlined in the strategic plan.

(1) *Continuous improvement.* The designated community must maintain a process for evaluating and learning from its experiences. It must detail the methods by which the community will assess its own performance in implementing its benchmarks, the process it will use for reviewing goals and benchmarks and revising its strategic plan.

(2) *Participation.* The designated community must develop as part of its strategic plan a written plan for assuring continuous broad-based community participation in the implementation of the strategic plan and the means by which the strategic plan is implemented, including board membership in the lead entity and other key partnership entities.

(b) *Administration of the strategic plan.* The strategic plan must be administered in a manner consistent with the principles of the program contained in § 25.202(a).

(1) *Lead entity*. The lead entity must have legal status and authority to receive and administer funds pursuant to Federal, state and other government or nonprofit programs.

(2) *Capacity*. The lead entity must have the capacity to implement the strategic plan, as demonstrated by audited financial statements as of the most recent fiscal year or other documentation that may be requested by USDA.

(3) *Board membership*. The membership of the board must be representative of the entire socio-economic spectrum in the designated community including business, social service agencies, health and education entities, low income and minority residents. Board membership may be determined by either broad-based election or by appointment to meet this diversity requirement; however, not more than 45 percent of board members may be selected by appointment. Elections of community residents to the board may be done by any locally acceptable process; however, at least one board member from each of the designated community's census tracts must be elected and representative of the low income residents in their census tract. The Deputy Administrator, Office of Community Development, may waive the 45 percent maximum appointment limit only for Tribal Governmental Organizations where the Deputy Administrator determines, in writing, that a more representative board would be obtained through the appointment process.

(4) *Partnerships*. The relationship between the designated community's lead entity board and local governments and other major regional and community organizations operating in the same geographic area is critical to the community's success in implementing its strategic plan. Every effort should be made to identify and maintain relationships with local partners. Documentation including, but not limited to, minutes of meetings, benchmark activity reports and annual reports of the lead entity must reflect the contributions of local partnership entities.

(5) *Public information*. The designated community must have written procedures in place describing the means by which citizens of the community and partnership organizations will be kept informed of the community's activities and progress in implementing the strategic plan, consistent with the principal objective of community based partnerships pursuant to § 25.202(a)(2). These procedures must be kept current and compliance with them documented on an ongoing basis.

(c) *Reevaluation of designations*. On the basis of the performance reviews described in § 25.402, and subject to the provisions relating to the revocation of designation appearing at § 25.405, USDA will make findings as to the continuing eligibility for and the validity of the designation of any Empowerment Zone, Enterprise Community, or Champion Community.

(d) *Modification of designation*. Based on a rural zone or community's success in carrying out its strategic plan, and subject to the provisions relating to revocation of designation in accordance with § 25.405 and the requirements as to the number, maximum population and other characteristics of rural Empowerment Zones referenced in § 25.100, the Secretary may modify designations by reclassifying rural Empowerment Zones as Enterprise Communities or Enterprise Communities as Empowerment Zones.

[63 FR 19114, Apr. 16, 1998, as amended at 67 FR 13557, Apr. 24, 2002]

§ 25.405 Revocation of designation.

(a) *Basis for revocation*. The Secretary may revoke the designation of a rural area as an Empowerment Zone or Enterprise Community, or withdraw status as a Champion Community, if the Secretary determines, on the basis of the periodic monitoring and assessments described in § 25.402, that the applicant, lead managing entity, or the States or local governments in which the rural area is located have:

(1) Modified the boundaries of the area without written approval from USDA;

(2) Failed to make progress in implementing the strategic plan; or

(3) Not complied substantially with the strategic plan (which may include failing to apply funds as contained in the strategic plan without advance written approval from USDA).

(b) *Letter of Warning.* Before revoking the designation of a rural area as an Empowerment Zone or Enterprise Community, the Secretary will issue a letter of warning to the applicant, the lead managing entity (if different from the applicant) and the nominating States and local governments, with a copy to all affected Federal agencies of which USDA is aware:

(1) Advising that the Secretary has determined that the applicant and/or lead managing entity and/or the nominating local governments and State:

(i) Have modified the boundaries of the area without written approval from USDA; or

(ii) Are not complying substantially with, or have failed to make satisfactory progress in implementing the strategic plan; and

(2) Requesting a reply from all involved parties within 90 days of the receipt of this letter of warning.

(c) *Notice of revocation.* To revoke the designation, the Secretary must issue a final notice of revocation of the designation of the rural area as an Empowerment Zone or Enterprise Community, after:

(1) Allowing 90 days from the date of receipt of the letter of warning for response; and

(2) Making a determination pursuant to paragraph (a) of this section.

(d) *Notice to affected Federal agencies.* USDA will notify all affected Federal agencies of which it is aware of its determination to revoke any designation pursuant to this section or to modify a designation pursuant to §25.404(b).

(e) *Effective date.* The final notice of revocation of designation will be published in the FEDERAL REGISTER, and the revocation will be effective on the date of publication.

§§ 25.406–25.499 [Reserved]

Subpart F—Special Rules

§ 25.500 Indian reservations.

(a) An area in an Indian reservation shall be treated as nominated by a State and a local government if it is nominated by the reservation governing body.

(b) For purposes of paragraph (a) of this section, a reservation governing body must be the governing body of an Indian entity recognized and eligible to receive services from the United States Bureau of Indian Affairs, U.S. Department of Interior.

(c) Where two or more governing bodies have joint jurisdiction over an Indian reservation, the nomination of a reservation area must be a joint nomination.

§ 25.501 Governments.

If more than one State or local government seeks to nominate an area under this part, any reference to or requirement of this part shall apply to all such governments.

§ 25.502 Nominations by State-chartered economic development corporations.

Any rural area nominated by an economic development corporation chartered by a State and qualified to do business in the State in which it is located shall be treated as nominated by a State and local government.

§ 25.503 Rural areas.

(a) *What constitutes ''rural''.* A rural area may consist of any area that lies outside the boundaries of a Metropolitan Area, as designated by the Office of Management and Budget, or, is an area that has a population density less than or equal to 1,000 persons per square mile, the land use of which is primarily agricultural.

(b) *Exceptions to the definition.* On a case by case basis, the Secretary may grant requests for waiver from the definition of ''rural'' stated in paragraph (a) of this section upon a showing of good cause. Applicants seeking to apply for a rural designation who do not satisfy the definition in paragraph (a) of this section must submit a request for waiver in writing to the Deputy Administrator, USDA Office of Community Development, Reporters Building, Room 701, STOP 3203, 300 7th Street, SW., Washington, DC 20024–3202. Requests must include:

(1) The name, address and daytime phone number of the contact person for the applicant seeking the waiver; and

(2) Sufficient information regarding the area that would support the infrequent exception from the definition.

(c) *Waiver process.* The Secretary, in consultation with the Department of Commerce, will have discretion to permit rural applications for communities that do not meet the above rural criteria.

§§ 25.504–25.999 [Reserved]

Subpart G—Round II and Round IIS Grants

SOURCE: 67 FR 13558, Mar. 25, 2002, unless otherwise noted.

§ 25.600 Purpose.

This subpart outlines USDA policies and authorizations and contains procedures for the USDA EZ/EC grant program.

§ 25.601 Delegation of authority.

(a) *Program administration.* The Deputy Administrator, Office of Community Development, shall be responsible for the overall development of policy and administration of the USDA EZ/EC grant program.

(b) *Funding official.* Unless otherwise provided, the state director is responsible for implementing the authorities in this subpart, consistent with the guidance issued by the Office of Community Development. Except for grant approval and environmental determination authorities, state directors may re-delegate their duties to qualified staff members.

(c) *Environmental review determinations.* The funding official is responsible for making environmental review determinations.

(d) *Authority to issue regulations.* The Under Secretary, Rural Development, may promulgate regulations under this part.

§ 25.602 Eligible recipients.

(a) *General.* The grants made under this subpart shall be made to the lead managing entities on behalf of the Round II rural empowerment zones and Round IIS rural enterprise communities, respectively, in accordance with an approved strategic plan. Such grants shall be available to successor entities approved in writing by USDA.

(b) *Exception.* The funding official, with the approval of the Office of Community Development, may elect to award all or part of the available grant funds to an alternate grantee.

(c) *Subrecipients.* The grantee shall relay funds to subrecipients, as provided in the approved strategic plan, as soon as practicable.

§ 25.603 Grant approval and obligation of funds.

Grants may be made at such time as the nominated area has been designated and such other prerequisites as USDA shall determine have been met, including but not limited to:

(a) The empowerment zone or enterprise community has entered into a memorandum of agreement satisfactory to USDA;

(b) The empowerment zone or enterprise community has conformed its strategic plan to be consistent with the level of federal grant aid available and such conforming amendments (if any) have met with the approval of the Office of Community Development and the funding official;

(c) Completion of the environmental review process, including all appropriate public notices;

(d) The proposed grantee has agreed, in form and substance satisfactory to the Office of Community Development, to any funding conditions imposed by USDA;

(e) The grantee has submitted a request for obligation of funds, in form and substance satisfactory to the Office of Community Development, inclusive of the following certification:

''The grantee certifies that it and all direct or substantial subrecipients are in compliance and will continue to comply with all applicable laws, regulations, executive orders and other generally applicable requirements, including those contained in 7 CFR part 25, 2 CFR part 200, and 2 CFR chapter IV and any agreement to meet funding conditions, in effect at the time of the grant or as subsequently amended.''

[67 FR 13558, Mar. 25, 2002, as amended at 85 FR 31938, May 28, 2020]

§ 25.604 Disbursement of grant funds.

(a) The funding official will determine, based on 7 CFR parts 3015, 3016 and 3019, as applicable, whether disbursement of a grant will be by advance or reimbursement.

(b) A ''request for advance or reimbursement,'' in form and substance satisfactory to USDA, must be completed by the grantee on behalf of itself and all applicable subrecipients and submitted to the funding official.

(c) Requests for advance or reimbursement must identify:

(1) The amount requested for each benchmark activity;

(2) The cumulative amount advanced to date (not inclusive of the current amount requested) for each benchmark activity;

(3) The total USDA EZ/EC grant obligated for each benchmark activity;

(4) The total approved budget for the applicable project or program (inclusive of non USDA EZ/EC grant program sources);

(5) An estimated percentage of completion or progress made in accomplishing the benchmark goal associated with each benchmark activity;

(6) Certification that the lead managing entity and the subrecipients (where applicable) are in compliance with all applicable laws and regulatory requirements; and

(7) Such other information as the funding official may require.

(d) Requests for advance or reimbursement may include only activities or projects which are identified in an approved strategic plan.

§ 25.605 Grant program reporting requirements.

Grantees may incorporate grant reporting requirements in the reports submitted pursuant to § 25.400, or submit them separately. In complying with the requirements of 7 CFR parts 3015, 3016, or 3019, as applicable, grantees must submit, in lieu of the forms prescribed therein, the equivalent of such forms prescribed by the Office of Community Development pursuant to this subpart as such may be adapted to the USDA EZ/EC grant program and which may be submitted and retained in electronic form.

§ 25.606 Financial management and records.

(a) In complying with the requirements of 7 CFR parts 3015, 3016, or 3019, as applicable, grantees must submit, in lieu of the forms prescribed therein, the equivalent of such forms prescribed by the Office of Community Development pursuant to this subpart as such may be adapted to the USDA EZ/EC grant program and which may be submitted and retained in electronic form.

(b) Grantees must retain financial records, supporting documents, statistical records and all other records pertinent to the grant for a period of at least 3 years after the end of the designation period, except that the records shall be retained beyond the 3 year period if audit findings have not been resolved or if directed by the United States. Records may be retained and submitted in electronic form if allowed by Generally Accepted Government Accounting Principles.

§ 25.607 Suspension or termination of grant funds.

(a) Grants under this subpart may be suspended or terminated by the funding official, in all or in part, in accordance with this subpart and the applicable provisions of 7 CFR parts 3015, 3016 and 3019, as applicable.

(b) The funding official may elect to suspend or terminate the entirety of a grant, or funding of a particular benchmark activity, but nevertheless fund the remainder of a request for advance or reimbursement, where the funding official has determined:

(1) That grantee or subrecipient of the grant funds has demonstrated insufficient progress toward achieving the related benchmark goal or in any other way failed to comply with the strategic plan;

(2) There is reason to believe that other sources of joint funding have not been or will not be forthcoming on a timely basis;

(3) The strategic plan calls for a revised use of the grant funds; or

(4) Such other cause as the funding official identifies in writing to the grantee (including but not limited to the use of federal grant funds for ineligible purposes).

§§ 25.608–25.619 [Reserved]

§ 25.620 Eligible grant purposes.

Eligible grant purposes are:

(a) Services directed at the goals of—

(1) Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) Achieving or maintaining self sufficiency, including reduction or prevention of dependency;

(3) Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;

(b) Projects and activities identified in the strategic plan for the area; and

(c) Activities that benefit residents of the area for which the grant is made.

§ 25.621 Ineligible grant purposes.

Grant funds may not be used:

(a) As a source of local matching funds required for other federal grants;

(b) To fund political activities;

(c) To duplicate current services or replace or substitute for financial support provided from other sources. If the current service is inadequate, however, grant funds may be used to augment financial support or service levels beyond what is currently provided;

(d) To pay costs of preparing the application package for designation under this program;

(e) To pay costs of a project which were incurred prior to the execution date of the applicable memorandum of agreement;

(f) To pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or reside in the United States after being legally admitted for permanent residence;

(g) To pay any judgment or debt owed to the United States;

(h) To assist in the relocation of businesses;

(i) To support or promote gambling; or

(j) For political lobbying.

§ 25.622 Other considerations.

(a) *Civil rights compliance requirements.* All grants made under this subpart are subject to Title VI of the Civil Rights Act of 1964 and 7 CFR part 1901, subpart E.

(b) *Environmental review requirements.* Grants made under this subpart must comply with environmental review requirements in accordance with 7 CFR part 1970.

(c) *Other USDA regulations.* This program is subject to the provisions of the following regulations, as applicable:

(1) 2 CFR part 400, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;

(2) 2 CFR part 415, General Program Administrative Regulations;

(3) 2 CFR part 416, General Program Administrative Regulations for Grants and Cooperative Agreements to State and Local Governments;

(4) 2 CFR part 417, Nonprocurement Debarment and Suspension;

(5) 2 CFR part 418, New Restrictions on Lobbying;

(6) 2 CFR part 421, Requirements for Drug-Free Workplace (Financial Assistance); and

(7) 2 CFR part 422, Research Institutions Conducting USDA-Funded Extramural Research; Research Misconducts.

[67 FR 13558, Mar. 25, 2002, as amended at 81 FR 11025, Mar. 2, 2016; 85 FR 31938, May 28, 2020]

§ 25.623 Programmatic changes.

Prior approval from USDA is required for all changes to the scope or objectives of an approved strategic plan or benchmark activity. Failure to obtain prior approval of changes to the strategic plan or benchmarks, including changes to the scope of work or a project budget may result in suspension, termination, and recovery of USDA EZ/EC grant funds.

§§ 25.624–25.999 [Reserved]

PART 26 [RESERVED]

FINDING AIDS

The List of CFR Sections Affected can be found at the end of this volume. Other finding aids are available at *www.ecfr.gov*.

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations (CFR) that were made by documents published in the FEDERAL REGISTER since January 1, 2021 are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to FEDERAL REGISTER pages. The user should consult the entries for chapters, parts and subparts as well as sections for revisions.

For changes to this volume of the CFR prior to this listing, consult the annual edition of the monthly List of CFR Sections Affected (LSA). The LSA is available at *www.govinfo.gov*. For changes to this volume of the CFR prior to 2001, see the ''List of CFR Sections Affected, 1949–1963, 1964–1972, 1973–1985, and 1986–2000'' published in 11 separate volumes. The ''List of CFR Sections Affected 1986–2000'' is available at *www.govinfo.gov*.

2021

7 CFR

86 FR Page

Subtitle A

3.91 (a)(2) and (b) revised 24699
3.91 Correction: (b)(2)(xiv) amended 30535
9 Authority citation revised 4881
9.1 (a)(1) and (2) revised 4881
9.4 (a)(1) and (d) amended; (a)(2) revised; (a)(3) added 4882
9.4 (a)(1) and (2) revised; (a)(3) removed 48017
9.7 (a) revised; (b) amended 48017
9.102 (d) introductory text, (1), and (2) amended; (d)(3) added 4882
9.201 Amended 4882, 48017
9.202 Redesignated as 9.203; new section added 4882
9.202 (b)(1) through (3) revised; (b)(4) and (d) added 48017
9.203 Redesignated from 9.202 4882
9.203 (i) and (l) revised; (j) Table 2 amended; (m) through (o) added 48017
9.203 (a)(3) and (i)(1) revised; (a)(4) and (l) added; (c), (i)(2), and (j) Table 2 amended 4883

2022

7 CFR

87 FR Page

Subtitle A

1.130—1.151 (Subpart H) Authority citation revised 44266
1.131 (a) amended 44266
1.210—1.224 (Subpart K) Revised 10927
1.210—1.224 (Subpart K) Regulation at 87 FR 10927 eff. date 4-29-22 24399
1.217 (a)(1) amended 25571
2 Nomenclature change 44266
2.14 Redesignated from 2.15 44266
2.15 Redesignated as 2.14; new section redesignated from 2.26; (a)(1)(iv) revised; (a)(1)(vii)(F) removed 44266
2.16 (a)(1)(xxviii)(B) and (12) revised 44267
2.16 Correction: (a)(1)(xxviii)(B) revised; (a)(12) added 54609
2.20 (a)(2)(xxiv)(A) introductory text and (lv) revised; (a)(2)(lvi) added 44267
2.22 Nomenclature change 44267
2.24 (a)(8) and (11) revised; (a)(9)(iii) and (10) removed 44267
2.26 Redesignated as 2.15 44266
2.26 New section added 44269
2.30 (a)(9) added 44269
2.31 (d) added 44269
2.38 (a)(2) removed 44269

7 CFR—Continued

87 FR Page

Subtitle A—Continued
2.39 Added 44269
2.42 (a)(42) removed; (a)(50)(ii) revised 44269
2.60 (a)(3) and (64) revised; (a)(65) added; (b)(6) removed 44270
2.65 (a)(10) added 44270
2.67 (a)(3) added 44270
2.68 (a)(15) added 44270
2.94 (a) introductory text revised 44270
2.95 Revised 44270
2.97 Removed 44272
2.600 Revised 44272
2.601 (a) introductory text and (2) revised 44272
2.602 (a) introductory text revised 44272
2.701 Removed 44273
3.91 (a)(2) and (b) revised 8395
6.25 (b) revised; interim 52852

2023

7 CFR

88 FR Page

Subtitle A
1.900—1.911 (Subpart Q) Removed 28381
2.20 (a)(2)(xliii) added 70579
2.23 (a)(2)(v) added 70579
2.32 (a)(14) added 70580
2.38 (a)(1)(xii) and (4) removed 70580
2.39 (a)(9) added 70580
2.60 (a)(45) added 70580
2.95 (b)(11) removed 70580
2.700 Removed 70580
3.1 (c)(3) revised 89276
3.60 (b) Amended 89276
3.91 (a)(2) and (b) revised 30029
9 Heading revised 1876
9.1—9.8 (Subpart A) Heading revised 1876
9.1 (a) introductory text, (c), and (d) amended 1876
9.2 Introductory text and section amended 1876

7 CFR—Continued

88 FR Page

Subtitle A—Continued
9.3 (a) and (b)(2) amended 1876
9.4 (e) added 1876
9.7 (b) through (d), (e)(2)(ii), (iii), and (h) amended; (i) added 1876
9.101 Amended 1876
9.102 (c) introductory text, (1) through (3), (d) introductory text, (1), and (2) amended; (d)(3) removed 1876
9.201 Amended 1877
9.202 (a), (b)(4), and (d)(2) amended 1877
9.203 (a)(5) and (p) added; (b), (f)(2), and (h)(2) amended 1877
9.301—9.310 (Subpart D) Added 1877

2024

7 CFR

89 FR Page

Subtitle A
1.900—1.903 (Subpart Q) Added; interim 91531
2.16 (a)(1)(xxviii) removed; (a)(13) added 80074
2.31 (a)(21) added 80074
2.39 (a)(10) added 80074
2.41 (a)(7) added 80075
2.42 (a)(31) added 80075
2.43 (a)(5) added 80075
2.44 (a)(10) added 80075
2.60 (a)(58) revised 80075
3.91 (a)(2) and (b) revised 48495
16 Authority citation revised 15707
16.1 Revised 15707
16.2 Amended 15707
16.3 Heading, (a), (c), (d), and (f) revised; (b) introductory text amended; (h) added 15707
16.4 (c) redesignated as (e); new (c) and (d) added; (a) and new (e) revised 15708
16.6 Added 15709
16 Appendix A and Appendix B revised; Appendix C added 15709

List of CFR Sections Affected

2025

7 CFR

90 FR Page

Subtitle A

1b Revised; interim 29646
1b Technical correction 34165
1b.4 Correction: Second (c)(30)(xiv) redesignated as (c)(30)(xix) 33871

7 CFR—Continued

90 FR Page

Subtitle A—Continued

1.123 Amended 1848
1.123 Regulation at 90 FR 1848 eff. date delayed 9283
3.91 (a)(2) and (b) revised 22607
9.203 (p) revised 30558
9.306 (a)(1)(iii)(A) and (b)(1)(iii)(A) revised 30558