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Code of Federal Regulations

# 7

**Parts 1 to 26**
Revised as of January 1, 2002

# Agriculture

Containing a codification of documents of general applicability and future effect

As of January 1, 2002

*With Ancillaries*

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*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.*

# Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
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

The appropriate revision date is printed on the cover of each volume.

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The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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EFFECTIVE AND EXPIRATION DATES

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The Paperwork Reduction Act of 1980 (Pub. L. 96–511) requires Federal agencies to display an OMB control number with their information collection request.

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*What is incorporation by reference?* Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

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(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

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An index to the text of ''Title 3—The President'' is carried within that volume.

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RAYMOND A. MOSLEY,
*Director,*
*Office of the Federal Register.*

*January 1, 2002.*

## 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, 1600–1899, 1900–1939, 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, 2002.

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. Part 900—General Regulations is carried as a note in the volume containing parts 1000–1199, as a convenience to the user.

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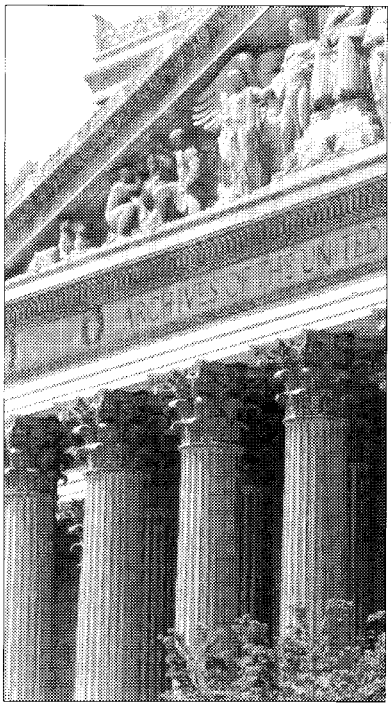

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# Title 7—Agriculture

(This book contains parts 1 to 26)

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*Part*

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE .. 1

CROSS REFERENCES: Animal and Plant Health Inspection Service, Department of Agriculture, see 7 CFR chapter III; 9 CFR chapter I.

Commodity Futures Trading Commission, see 17 CFR chapter I.

Commodity Credit Corporation, Department of Agriculture, see 7 CFR chapter XIV.

Customs Service, Department of the Treasury, see 19 CFR chapter I.

Farm Credit Administration, see 12 CFR chapter VI.

Federal Crop Insurance Corporation, Department of Agriculture, see 7 CFR chapter IV.

Fish and Wildlife Service, Department of the Interior, see 50 CFR chapters I and IV.

Food and Drug Administration, Department of Health and Human Services, see 21 CFR chapter I.

Food Safety and Inspection Service, Meat and Poultry Inspection, Department of Agriculture, see 9 CFR chapter III.

Forest Service, Department of Agriculture, see 36 CFR chapter II.

United States International Trade Commission, see 19 CFR chapter II.

NOTE: Other regulations issued by the Department of Agriculture appear in chapters I to XLII of title 7, and chapter 4 of title 48.

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

## Subpart A—Official Records

AUTHORITY: 5 U.S.C. 301, 552; 7 U.S.C. 3125a; 31 U.S.C. 9701; and 7 CFR 2.28(b)(7)(viii).

### § 1.1 Purpose and scope.

This subpart establishes policy, procedures, requirements, and responsibilities for administration and coordination of the Freedom of Information Act (''FOIA''), 5 U.S.C. 552, pursuant to which any person may obtain official records. It also provides rules pertaining to the disclosure of records pursuant to compulsory process. This subpart also serves as the implementing regulations (referred to in §1.3, ''Agency implementing regulations'') for the Office of the Secretary (the immediate offices of the Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) and for the Office of Communications. The Office of Communications has the primary responsibility for implementation of the FOIA in the Department of Agriculture (''USDA'' or ''Department''). The term ''agency'' or ''agencies'' is used throughout this subpart to include both USDA program agencies and staff offices.

[65 FR 46336, July 28, 2000]

### § 1.2 Policy.

(a) Agencies of USDA shall comply with the time limits set forth in the FOIA and in this subpart for responding to and processing requests and appeals for agency records, unless there are unusual circumstances within the meaning of 5 U.S.C. 552(a)(6)(B) and §1.16(b). An agency shall notify a requester in writing whenever it is unable to respond to or process a request or appeal within the time limits established by the FOIA.

(b) All agencies of the Department shall comply with the fee schedule provided as appendix A to this subpart, with regard to the charging of fees for providing copies of records and related services to requesters.

[65 FR 46337, July 28, 2000]

### § 1.3 Agency implementing regulations.

Each agency of the Department shall promulgate regulations setting forth the following:

(a) The location and hours of operation of the agency office or offices where members of the public may gain access to those materials required by 5 U.S.C. 552(a)(2) and §1.4 to be made available for public inspection and copying.

(b) Information regarding the publication and distribution (by sale or otherwise) of indexes and supplements to

indexes that are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and §1.4(c);

(c) The title and mailing address of the official or officials of the agency authorized to receive requests for records submitted in accordance with §1.5(a), and to make determinations regarding whether to grant or deny such requests. Authority to make such determinations includes authority to:

(1) Extend the 20 working day administrative deadline for reply pursuant to §1.16;

(2) Make discretionary releases pursuant to §1.19(b);

(3) Make determinations regarding the charging of fees pursuant to appendix A to this subpart;

(d) The title and mailing address of the agency official who is authorized to receive appeals submitted in accordance with §1.14 and to make determinations regarding whether to grant or deny such appeals. Authority to determine appeals includes authority to:

(1) Extend the 20 working day administrative deadline for reply pursuant to §1.16 (to the extent the maximum extension authorized by §1.16(c) was not used with regard to the initial request;

(2) Make discretionary releases pursuant to §1.19(b);

(3) Make determinations regarding the charging of fees pursuant to appendix A to this subpart; and

(e) Other information which would be of concern to a person wishing to request records from that agency in accordance with this subpart.

[65 FR 46337, July 28, 2000]

### §1.4 Public access to certain materials.

(a) In accordance with 5 U.S.C. 552(a)(2), each agency 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 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. Agencies shall decide on a case by case basis whether records fall into this category, 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.

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) Records encompassed within paragraphs (a)(1) through (a)(5) of this section created on or after November 1, 1996, shall be made available to the public by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means.

(c) Each agency of the Department shall maintain and make available for public inspection and copying current indexes providing identifying information regarding any matter issued, adopted or promulgated after July 4, 1967, and required by paragraph (a) of this section to be make available or published. Each agency shall publish and make available for distribution copies of such indexes and supplements to such indexes at least quarterly, unless it determines by notice published in the FEDERAL REGISTER that publication would be unnecessary and impracticable. After issuance of such notice, each agency shall provide copies of any index upon request at a cost not to exceed the direct cost of duplication.

(d) Each agency is responsible for preparing reference material or a guide for requesting records or information

from that agency. This guide shall also include an index of all major information systems, and a description of major information and record locator systems.

(e) Each agency shall also prepare a handbook for obtaining information from that agency. The handbook should be a short, simple explanation to the public of what the FOIA is designed to do, and how a member of the public can use it to access government records. The handbook should be available on paper and through electronic means, and it should identify how a requester can access agency Freedom of Information Act annual reports. Similarly, the annual reports should refer to the handbook and how to obtain it.

(f) It is appropriate to make frequently requested records available in accordance with paragraph (a)(4) of this section in situations where public access in a timely manner is important, and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. Agencies may remove a record from this access medium when the appropriate official determines that it is unlikely there will be substantial further requests for that document.

[65 FR 46337, July 28, 2000]

### § 1.5 Requests for records.

(a) Any person who wishes to inspect or obtain copies of any record of any agency of the Department shall submit a request in writing and address the request to the official designated in regulations promulgated by that agency. The requester may ask for a fee waiver. All such requests for records shall be deemed to have been made pursuant to the Freedom of Information Act, regardless of whether the request specifically mentions the Freedom of Information Act. To facilitate processing of a request, the requester should place the phrase ''FOIA REQUEST'' in capital letters on the front of the envelope or on the cover sheet of the facsimile transmittal.

(b) A request must reasonably describe the records to enable agency personnel to locate them with reasonable effort. Where possible, a requester should supply specific information regarding dates, titles, names of individuals, names of offices, and names of agencies or other organizations that may help identify the records. If the request relates to a matter in pending litigation, the requester should identify the court and its location.

(c) If an agency determines that a request does not reasonably describe the records, the agency shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable agency personnel to attempt to identify the records the requester is seeking. The ''date of receipt'' in such instances, for purposes of §1.13, shall be the date of receipt of the amended or clarified request.

(d) If a request for records or a fee waiver made under this subpart is denied, the requester shall have the right to appeal the denial. Requesters also may appeal agency determinations of a requester's status for purposes of fee levels under sec. 5 of appendix A to this subpart. All appeals must be in writing and addressed to the official designated in regulations promulgated by the agency which denied the request. To facilitate processing of an appeal, the requester should place the phrase ''FOIA APPEAL'' in capital letters on the front of the envelope or on the cover sheet of the fax transmittal.

(e) Requests that are not addressed to a specific agency in USDA, or which pertain to more than one USDA agency, or which are sent to the wrong agency of USDA, should be forwarded to the Department's FOIA Officer in the Office of Communications, U.S. Department of Agriculture, Washington, DC 20250.

(f) The Department FOIA Officer will determine which agency or agencies should process the request, and, where necessary, refer the request to the appropriate agency or agencies. The Department FOIA Officer will also notify the requester of the referral and of the name of each agency to which the request has been referred.

(g) A request will be properly received when it is in the possession of the component agency that has responsibility for maintaining the requested records.

(h) Each agency shall develop and maintain a record of all written requests and appeals received in that agency. The record shall include the names of the requester; a brief summary of the information requested; whether the request or appeal was granted, denied, or partially denied; the exemption from mandatory disclosure under 5 U.S.C. 552(b) upon which any denial was based; and the amount of any fees associated with the request or appeal.

[65 FR 46337, July 28, 2000]

### § 1.6 Aggregating requests.

When an agency reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element that may be considered in determining whether such a belief would be reasonable is the brevity of the time period during which the requests have been made.

[65 FR 46338, July 28, 2000]

### § 1.7 Agency response to requests for records.

(a) 5 U.S.C. 552(a)(6)(A)(i) provides that each agency of the Department to which a request for records is submitted in accordance with §1.5(a) shall inform the requester of its determination concerning that request within 20 working days of its date of receipt (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized under §1.16. If the agency determines to grant the request, it shall inform the requester of any conditions surrounding the granting of the request (*e.g.*, payment of fees) and the approximate date upon which the agency will provide the requested records. If the agency grants only a portion of the request, it shall treat the portion not granted as a denial, and make a reasonable effort to estimate the volume of the records denied and provide this estimate to the requester, unless providing such an estimate would harm an interest protected by an exemption of the FOIA. If the agency determines to deny the request in part or in whole, it shall immediately inform the requester of that decision and provide the following:

(1) The reasons for the denial;

(2) The name and title or position of each person responsible for denial of the request;

(3) The requester's right to appeal such denial and the title and address of the official to whom such appeal is to be addressed; and

(4) The requirement that such appeal be made within 45 days of the date of the denial.

(b) If the reason for not fulfilling a request is that the records requested are in the custody of another agency outside USDA, other than in the permanent custody of the National Archives and Records Administration (''NARA''), the agency shall inform the requester of this fact and shall forward the request to that agency or Department for processing in accordance with its regulations. If the records are in the permanent custody of NARA, the agency shall so inform the requester. Information about obtaining access to records at NARA may be obtained through the NARA Archival Information Locator (NAIL) Database at http://www/nara.gov/nara.nail.html, or by calling NARA at (301) 713–6800. If the agency has no knowledge of requested records or if no records exist, the agency shall notify the requester of that fact.

[65 FR 46338, July 28, 2000]

### § 1.8 Multitrack processing.

(a) When an agency has a significant number of requests, the nature of which precludes a determination within 20 working days, the requests may be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the request, and whether the request qualifies for expedited processing.

(b) Agencies may establish as many processing tracks as appropriate; processing within each track shall be based on a first-in, first-out concept, and rank-ordered by the date of receipt of the request.

(c) Agencies may provide a requester whose request does not qualify for the fastest track an opportunity to limit

the scope of the request in order to qualify for a faster track. This multitrack processing system does not lessen agency responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(d) Agencies shall process requests in each track on a ''first-in, first-out'' basis, unless there are unusual circumstances as set forth in §1.16, or the requester is entitled to expedited processing as set forth in §1.9.

[65 FR 46338, July 28, 2000]

### §1.9 Expedited processing.

(a) A requester may apply for expedited processing at the time of the initial request for records. Within ten calendar days of its receipt of a request for expedited processing, an agency shall decide whether to grant it, and shall notify the requester of the decision. Once the determination has been made to grant expedited processing, an agency shall process the request as soon as practicable. If a request for expedited processing is denied, the agency shall act expeditiously on any appeal of that decision.

(b) A request or appeal will be taken out of order and given expedited treatment whenever the agency determines that the requester has established either of the following criteria:

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

(2) An urgency to inform the public about an actual or alleged federal government activity, if made by an individual primarily engaged in disseminating information. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information; however, other requesters must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public as a whole, and not just a particular segment or group. ''Urgency'' contemplates that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only or information sought for litigation or commercial activities would not meet the test of urgency, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(c) A requester who seeks expedited processing must provide a written statement that the requester has certified to be true and correct to the best of the requester's knowledge, explaining in detail the basis for requesting expedited processing. The agency will not consider the request to have been received unless accompanied by a written, certified statement, and will be under no obligation to consider the request for expedited processing until it receives such a written, certified statement.

(d) the same procedures apply to requests for expedited processing of administrative appeals.

[65 FR 46338, July 28, 2000]

### §1.10 Search services.

Search services are services of agency personnel—clerical or professional—used in trying to find the records, that are responsive to a request. Search services includes both manual and electronic searches and time spent examining records for the purpose of finding information that is within the scope of the request. Search services also include services to transport personnel to places of record storage, or records to the location of personnel for the purpose of the search, if such services are reasonably necessary.

[65 FR 46339, July 28, 2000]

### §1.11 Review services.

(a) Review services are services of agency personnel—clerical or professional—in examining records, both paper and electronic, located in response to a request that is for a commercial use (as specified in sec. 6 of appendix A to this subpart) to determine whether any portion of any record located is exempt from mandatory disclosure.

(b) Review services include processing any records for disclosure *e.g.*, doing all that is necessary to redact exempt portions and otherwise prepare records for release.

(c) Review services do not include the time spent resolving general legal or policy issues regarding the application of exemptions.

[65 FR 46339, July 28, 2000]

### § 1.12 Handling information from a private business.

Each USDA agency is responsible for making the final determination with regard to the disclosure or nondisclosure of information in agency records that has been submitted by a business. When, in the course of responding to an FOIA request, an agency cannot readily determine whether the information obtained from a person is privileged or confidential business information, the policy of USDA is to obtain and consider the views of the submitter of the information and to provide the submitter an opportunity to object to any decision to disclose the information. If a request (including a subpoena duces tecum as described in §1.215) is received in USDA for information that has been submitted by a business, the agency shall:

(a) Provide the business information submitter with prompt notification of a request for that information (unless it is readily determined by the agency that the information requested should not be disclosed or, on the other hand, that the information is not exempt by law from disclosure). Afford business information submitter reasonable time in which to object to the disclosure of any specified portion of the information. The submitter must explain fully all grounds upon which disclosure is opposed. For example, if the submitter maintains that disclosure is likely to cause substantial harm to it competitive position, the submitter must explain item-by-item why disclosure would cause such harm. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under FOIA;

(b) Notify the requester of the need to inform the submitter of a request for submitted business information;

(c) Determine whether the requested records are exempt from disclosure or must be released;

(d) Provide business information submitters with notice of any determination to disclose such records prior to the disclosure date, in order that the matter may be considered for possible judicial intervention; and

(e) Notify business information submitters promptly of all instances in which FOIA requesters bring suit seeking to compel disclosure of submitted information.

[65 FR 46339, July 28, 2000]

### § 1.13 Date of receipt of requests or appeals.

The date of receipt of a request or appeal shall be the date it is received in the agency and office responsible for the administrative processing of FOIA requests or appeals.

[65 FR 46339, July 28, 2000]

### § 1.14 Appeals.

(a) Requesters seeking administrative appeal of a denial of a request for records or denial of a fee waiver must ensure that the appeal is received by the agency within 45 days of the date of the denial letter.

(b) Each agency shall provide for review of appeals by an official different from the official or officials designated to make initial denials.

(c) 5 U.S.C. 552(a)(6)(A)(ii) provides that each agency in the Department to which an appeal of a denial is submitted shall inform the requester of its determination concerning that appeal within 20 working days (excepting Saturdays, Sundays, and legal public holidays), plus any extension authorized by §1.16, of its date of receipt. If the agency determines to grant the appeal, it shall inform the requester of any conditions surrounding the granting of the request (e.g., payment of fees) and the approximate date upon which compliance will be effected. If the agency grants only a portion of the appeal, it shall treat the portion not granted as a denial. If it determines to deny the appeal either in part or in whole, it shall inform the requester of that decision and of the following:

(1) The reasons for denial;

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

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

(d) Each agency, upon a determination that it wishes to deny an appeal, shall send a copy of the records requested and of all correspondence relating to the request to the Assistant General Counsel, General Law Division, Office of the General Counsel (''Assistant General Counsel''). When the volume of records is so large as to make sending a copy impracticable, the agency shall enclose an informative summary of those records. The agency shall not deny an appeal until it receives concurrence from the Assistant General Counsel

(e) The Assistant General Counsel shall promptly review the matter (including necessary coordination with the agency) and render all necessary assistance to enable the agency to respond to the appeal within the administrative deadline or any extension of the administrative deadline.

[65 FR 46339, July 28, 2000]

### § 1.15 General provisions respecting release of records.

(a) When releasing documents, agencies shall provide the record in any form or format the requester specifies, if the record is readily reproducible in that form of format. Agencies shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, agencies shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of an agency's automated information system. Such determinations shall be made on a case-by-case basis.

(b) In the event a requested record contains some portions that are exempt from mandatory disclosure and others that are not, the official responding to the request shall ensure that all reasonably segregable nonexempt portions are disclosed, and that all exempt portions are identified according to the specific exemption or exemptions which are applicable. The amount of deleted information shall be indicated on the released portion of paper records. Deletions may be marked by use of brackets or darkened areas indicating removal of information, or by any other method that would reasonable demonstrate the extent of the deletion. In the case of electronic deletion, or deletion in audiovisual or microfiche records, if technically feasible, the amount of redacted information shall be indicated at the place in the records, if technically feasible, the amount of redacted information shall be indicated at the place in the record where such deletion was made. This may be done by use of brackets, shaded areas, or some other identifiable technique which will clearly show the limits of the deleted information.

(c) If, in connection with a request or an appeal, a charge is to be made in accordance with sec. 8 of appendix A to this subpart, agencies shall inform the requester of the fee amount and of the basis for the charge. Each agency, in accordance with sec. 8 of appendix A to this subpart, may require payment of the entire fee, or a portion of the fee, before it provides the requested records. An agency shall require full payment of any delinquent fee owed by the requester plus any applicable interest prior to releasing records on a subsequent request or appeal. If a requester refuses to remit payment in advance, an agency may refuse to process the request or appeal with written notice to that effect forwarded to the requester. The ''date of receipt'' appeal for which advance payment has been required shall be the date that payment is received.

(d) In the event compliance with the request or appeal involves inspection of records by the requester rather than providing copies of the records, the agency response shall include the name, mailing address, and telephone number of the person to be contacted to arrange a mutually convenient time for such inspection.

(e) Whenever duplication fees, or search fees for unsuccessful searches (see sec. 4(f) of appendix A to this subpart), are anticipated to exceed $25.00, and the requester has not indicated, in advance, a willingness to pay fees as high as those anticipated, agencies shall notify the requester of the amount of the anticipated fee. If an extensive and therefore costly successful search is anticipated, agencies also

should notify requesters of the anticipated fees. The notification shall offer the requester the opportunity to confer with agency personnel to reform the request to meet the requester's needs at a lower fee. In appropriate cases, an advance deposit in accordance with sec. 8 of appendix A to this subpart may be required.

[65 FR 46340, July 28, 2000]

### § 1.16 Extension of administrative deadlines.

(a) In unusual circumstances as specified in this section, when additional time is needed to respond to the initial request or to an appeal, agencies shall acknowledge the request or the appeal in writing within the 20 working day time period, describe the unusual circumstances requiring the delay, and indicate the anticipated date for a substantive response that may not exceed 10 additional working days, except as provided in the following:

(1) In instances in which the agency, with respect to a particular request, has extended the response date by 10 additional working days, if the agency finds that it cannot make a response determination within the additional 10 working day period, the agency shall notify the requester and provide the requester an opportunity to limit the scope of the request to allow the agency to process the request within the extended time limit, or an alternative time frame for processing the request or a modified request.

(2) If the requester refuses to reasonably modify the request or arrange for an alternative time frame for processing the request, the FOIA provides that such refusal shall be considered as a factor in determining whether there are exceptional circumstances that warrant granting additional time for the agency to complete its review of the records, as set forth in 5 U.S.C. 552(a)(6)(C)(iii). The term ''exceptional circumstances'' does not include a delay that results from a predictable agency backlog, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(b) As used in this section, ''unusual circumstances'' that may justify delay are:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another Department or agency having a substantial interest in the determination of the request or among two or more components of agency having substantial subject-matter interest in the request.

NOTE TO PARAGRAPH (B): Consultation regarding policy or legal issues between an agency and the Office of the General Counsel, Office of Communications, or the Department of Justice is not a basis for extension under this section.

(c) The 10-day extension authorized by this section may be divided between the initial and appellate reviews, but in no event shall the total extension exceed 10 working days.

(d) Nothing in this section shall preclude the agency and the requester from agreeing to an extension of time. Any such agreement should be confirmed in writing and should specify clearly the total time agreed upon.

[65 FR 46340, July 28, 2000]

### § 1.17 Failure to meet administrative deadlines.

In the event an agency fails to meet the administrative deadlines set forth in §§ 1.7 or 1.14, plus any extension authorized by § 1.16, it shall notify the requester, state the reasons for the delay, and the date by which it expects to dispatch a determination. Although the requester may be deemed to have exhausted his or her administrative remedies under 5 U.S.C. 552(a)(6)(C), the agency shall continue processing the request as expeditiously as possible and dispatch the determination when it is reached in the same manner and form as if it had been reached within the applicable deadline.

[65 FR 46341, July 28, 2000]

### § 1.18 Fee schedule.

Pursuant to § 2.28 of this title, the Chief Financial Officer is delegated authority to promulgate regulations providing for a uniform fee schedule applicable to all agencies of the Department regarding requests for records under this subpart. The regulations providing for a uniform fee schedule are found in appendix A to this subpart.

[65 FR 46341, July 28, 2000]

### § 1.19 Exemptions and discretionary release.

(a) All agency records, except those specifically exempted from mandatory disclosure by one or more provisions of 5 U.S.C. 552(b), shall be made promptly available to any person submitting a request under this subpart.

(b) Agencies are authorized, in their sole discretion, to make discretionary releases when such release is not otherwise specifically prohibited by Executive Order, statute, or regulation.

[65 FR 46341, July 28, 2000]

### § 1.20 Annual report.

(a) Each agency of the Department shall compile the following Freedom of Information Act statistics on a fiscal year basis beginning October 1, 1997, and report the following information to the Office of Communications no later than November 30 following the fiscal year's close:

(1) The number of requests for records received and the number of requests which were processed;

(2) The number of determinations made not to comply with initial requests for records made to it under § 1.5(a), and the reasons for each such determinations;

(3) The number of appeals made by persons under § 1.14(b), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information.

(4) A complete list of all statutes that the agency relies upon to authorize the agency to withhold information under 5 U.S.C. 552(b)(3), a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(5) The number of requests for records pending before the agency as of September 30 of the preceding year, and the median number of days that such requests had been pending before the agency as of that date:

(6) The median number of days taken by the agency to process different types of requests;

(7) The total amount of fees collected by the agency for processing requests;

(8) The number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests.

(b) Each agency shall compile the information required by paragraph (a) of this section for the preceding fiscal year into a report and submit this report to the Director of Communications, Office of Communications, no later than November 30 following the fiscal year's close.

(c) The Director of Communications, Office of Communications, shall combine the reports from all the agencies within USDA into a Departmental report, and shall submit to the Attorney General on or before February 1 of each year in accordance with 5 U.S.C. 552(e).

(d) Each agency shall make the report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means.

[65 FR 46341, July 28, 2000]

### § 1.21 Compilation of new records.

Nothing in 5 U.S.C. 552 or this subpart requires that any agency create a new record in order to fulfill a request for records. However, an agency is required to provide a record in a form or format specified by a requester, if the record is readily reproducible by the agency in the form or format requested. Creation of records may be undertaken voluntarily if the agency determines this action to be in the public interest or the interest of USDA.

[65 FR 46341, July 28, 2000]

### § 1.22 Authentication.

When a request is received for an authenticated copy of a document which

the agency determines to make available to the requesting party, the agency shall cause a correct copy to be prepared and sent to the Office of the General Counsel which shall certify the same and cause the seal of the Department to be affixed, except that the Hearing Clerk in the Office of Administrative Law Judges may authenticate copies of documents in the records of the Hearing Clerk and that the Director of the National Appeals Division may authenticate copies of documents in the records of the National Appeals Division.

[65 FR 46341, July 28, 2000]

### § 1.23 Records in formal adjudication proceedings.

Records in formal adjudication proceedings are on file in the Hearing Clerk's office, Office of Administrative Law Judges, U.S. Department of Agriculture, Washington, DC 20250, and shall be made available to the public.

[65 FR 46341, July 28, 2000]

### § 1.24 Preservation of records.

Agencies shall preserve all correspondence relating to the requests it receives under this subpart, and all records processed pursuant to such requests, until such time as the destruction of such correspondence and records is authorized pursuant to Title 44 of the United States Code, and appropriate records disposition authority granted by NARA. Under no circumstances shall records be sent to a Federal Records Center, transferred to the permanent custody of NARA, or destroyed while they are the subject of a pending request, appeal, or civil action under the FOIA.

[65 FR 46341, July 28, 2000]

### § 1.25 Implementing regulations for the Office of the Secretary and the Office of Communications.

(a) For the Office of the Secretary and for the Office of Communications, the regulations required by §1.3 are as follows:

(1) Records available for public inspection and copying may be obtained in Room 536–A, Jamie L. Whitten Federal Building, USDA, Washington, DC 20250 during the hours of 9 a.m. to 5 p.m. by prior appointment;

(2) Any indexes and supplements which are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and §1.5(b) will also be available in Room 536–A, Jamie L. Whitten Federal Building, USDA, Washington, DC 20250 during the hours of 9 a.m. to 5 p.m.;

(3) The person authorized to receive Freedom of Information Act requests and to determine whether to grant or deny such requests is the FOIA Officer, Office of Communications, USDA, Washington, DC 20250;

(4) The official authorized to receive appeals from denial of FOIA requests and to determine whether to grant or deny such appeals is the Director of Communications, Office of Communications, USDA, Washington, DC 20250.

(b) The organization and functions of the Office of the Secretary and the Office of Communications is as follows:

(1) The Office of the Secretary provides the overall policy guidance and direction of the activities of the Department of Agriculture. Department-wide policy statements and announcements are made from this office.

(2) The Office of the Secretary consists of the Secretary, Deputy Secretary, Under Secretaries, Assistant Secretaries, and other staff members.

(3) In the absence of the Secretary and the Deputy Secretary, responsibility for the operation of the Department of Agriculture is as delegated at part 2, subpart A, of this title.

(4) The Office of Communications provides policy direction, review, and coordination of public information programs of the Department of Agriculture. The Office of Communications has responsibility for maintaining the flow of information to the mass communications media, various constituency groups, and the general public.

(5) The Office of Communications is headed by the Director of Communications. In the Director's absence, the Office of Communications is headed by the Deputy Director.

[65 FR 46341, July 28, 2000]

## APPENDIX A TO SUBPART A—FEE SCHEDULE

*Section 1. General.*

This schedule sets forth fees to be charged for providing copies of records—including photographic reproductions, microfilm, maps and mosaics, and related services—under the Freedom of Information Act (FOIA). Records and related services are available at the locations specified by agencies in their FOIA implementing regulations. The fees set forth in this schedule are applicable to all agencies of the Department of Agriculture, and are based upon guidelines prescribed by the Office of Management and Budget (OMB) issued at 52 FR 10012 (March 27, 1987). No higher fees or charges in addition to those provided for in this schedule may be charged a party requesting services under the Freedom of Information Act.

*Section 2. Types of services for which fees may be charged.*

Subject to the criteria set forth in section 5 of this appendix, fees may be assessed under the Freedom of Information Act on all requests involving such services as record search, duplication, and review. Fees may also be charged in situations involving special service to a request, such as certifying that records requested are true copies, or sending records by special methods such as express mail, etc. For services not covered by the FOIA or by this appendix, agencies may set their own fees in accordance with applicable law, or costs incurred will be assessed the requester at the actual cost to the Government. For example, where records are required to be shipped from one office to another by commercial carrier in order to timely answer a request, the actual freight charge will be assessed the requester.

*Section 3. Instances in which fees will not be charged.*

(a) Except for requests seeking records for a commercial use (as specified in section 5 of this appendix), no charge shall be made for either: (1) The first 100 pages of duplicated records (8½″×14″ or smaller-size paper); or (2) The first two hours of manual search time, or the equivalent value of computer search time as defined in section 4(e) of this appendix.

(b) No charge shall be made—even to commercial use requesters—if the cost of collecting a fee would be equal to or greater than the fee itself. For USDA, this figure has been calculated to be $25.00.

(c) Fees may not be charged for time spent by an agency employee in resolving legal or policy issues, or in monitoring a requester's inspection of agency records. No charge shall be made for normal postage costs.

(d) Records shall also be furnished without charge under the following conditions:

(1) When filling requests from other Departments or Government agencies for official use, provided quantities requested are reasonable in number;

(2) When members of the public provide their own copying equipment, in which case no copying fee will be charged (although search and review fees may still be assessed); or

(3) When any notices, decisions, orders, or other materials are required by law to be served on a party in any proceeding or matter before any Department agency.

*Section 4. Fees for records and related services.*

(a) The fee for photocopies of pages 8½″×14″ or smaller shall be $0.20 per page (per individual side of sheet).

(b) The fee for photocopies larger than 8½″×14″ shall be $0.50 per linear foot of the longest side of the copy.

(c) The fee for other forms of duplicated records, such as microform, audio-visual materials, or machine-readable documentation (i.e., magnetic tape or disk), shall be the actual direct cost of producing the records.

(d) Manual searches shall be charged for in one of the two following manners in the given order:

(1) When feasible, at the salary rate of the employee conducting the search, plus 16 percent of the employee's basic pay; or

(2) Where a homogeneous class of personnel is used exclusively, at the rate of $10.00 per hour for clerical time, and $20.00 per hour for supervisory or professional time. Charges should be computed to the nearest quarter hour required for the search. A homogeneous class of personnel, for purposes of conducting manual searches and where more than one individual is involved, is a group of employees of like rank, grade, pay or position. A heterogeneous class of personnel is a group of employees of unlike rank, grade, pay, or position. If a heterogeneous class of personnel is involved in a search then the search shall be charged for at the salary rate of the individuals.

(e) Mainframe computer searches and services shall be charged for at the rates established in the Users Manual or Handbook published by the computer center at which the work will be performed. Where the rate has not been established, the rate shall be $27.00 per minute. Searches using computers other than mainframes shall be charged for at the manual search rate.

(1) Other rates are published and may be examined at the following places:

Fort Collins Computer Center Users Manual
Fort Collins Computer Center, U.S. Department of Agriculture, 3825 East Mulberry Street (P.O. Box 1206), Fort Collins, Colo. 80521.

National Finance Center, Cost, Productivity & Analysis Section, U.S. Department of Agriculture, 13800 Old Gentilly Road, New Orleans, La. 70129.

Kansas City Computer Center Users Manual Kansas City Computer Center, U.S. Department of Agriculture, 8930 Ward Parkway (P.O. Box 205), Kansas City, MO. 64141.

Washington Computer Center Users Handbook: Washington Computer Center, U.S. Department of Agriculture, Room S–100, South Building, 12th Street and Independence Avenue, SW., Washington, DC 20250.

St. Louis Computer Center, U.S. Department of Agriculture, 1520 Market Street, St. Louis, MO. 63103.

(f) Charges for unsuccessful searches, or searches which fail to locate records or which locate records which are exempt from disclosure, shall be assessed at the same fee rate as searches which result in disclosure of records.

(g) The fee for providing review services shall be the hourly salary rate (i.e., basic pay plus 16 percent) of the employee conducting the review to determine whether any information is exempt from mandatory disclosure.

(h) The fee for Certifications shall be $5.00 each; Authentications under Department Seal (including aerial photographs), $10.00 each.

(i) All other costs incurred by USDA agencies will be assessed the requester at the actual cost to the Government.

(j) The fees specified in paragraphs (a) through (g) of this section apply to all requests for services under the FOIA, unless no fee is to be charged, or the agency has determined to waive or reduce those fees pursuant to section 6 of this appendix. No higher fees or charges in addition to those provided for in this appendix may be charged for services under the FOIA.

(k) The fees specified in paragraphs (h) and (i) of this section and in section 17 of this appendix apply to requests for services other than those subject to the FOIA. The authority for establishment of these fees is at 31 U.S.C. 9701 and other applicable laws.

(l) Except as provided in section 11 of this appendix, for services not subject to the FOIA, and not covered by paragraph (h) of this section, agencies may set their own fees in accordance with applicable law.

*Section 5. Levels of fees for each category of requesters.*

Under the FOIA, there are four categories of FOIA requesters: Commercial use requesters, educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. FOIA prescribes specific levels of fees for each category:

(a) Commercial use requesters—For commercial use requesters, agencies shall assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial use requesters are not entitled to the free search time or duplication referenced in section 3(a) of this appendix. Agencies may recover the cost of searching for and reviewing records for commercial use requesters even if there is ultimately no disclosure of records.

(1) A commercial use requester is defined as one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(2) In determining whether a requester properly belongs in this category, agencies must determine whether the requester will put the records to a commercial use. Where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency may seek additional clarification from the requester.

(b) Educational and non-commercial scientific institution requesters—Fees for this category of requesters shall be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for search or review services. To qualify for this category, requesters must show that the request is being made as authorized by and under the auspices of an eligible institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly research (if the request is from an educational institution) or scientific research (if the request is from a non-commercial scientific institution).

(1) The term *educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(2) The term *non-commercial scientific institution* refers to institution that is not operated on a ''commercial'' (see section 5(a)(1)) of this appendix basis, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(c) Requesters who are representatives of the news media—Fees for this category of requesters shall also be limited to the cost of providing duplication service alone, minus the charge for the first 100 reproduced pages. No charge shall be made for providing search or review services. Requests in this category must not be made for a commercial use.

(1) The term *representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.

(2) The term *news* means information that is about current events or that would be of current interest to the public.

(3) Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals which disseminate news and who make their products available for purchase or subscription by the general public.

(4) *Freelance* journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(d) All other requesters—Fees for requesters who do not fit into the categories described in paragraphs (a), (b), or (c) of this section shall be assessed for the full reasonable direct cost of searching for and duplicating records that are responsive to a request. No charge, however, shall be made to requesters in this category for: (1) The first 100 duplicated pages; or (2) the first two hours of manual search time, or the equivalent value of computer search time as defined in section 4(e) of this appendix.

*Section 6. Fee waivers and reductions.*

(a) Agencies shall waive or reduce fees on request for records if disclosure of the information in the records is deemed to be in the public interest. A request is in the public interest if it is likely to contribute significantly to public understanding of the operations or activities of the government, and is not primarily in the commercial interest of the requester.

(1) In determining when fees shall be waived or reduced, agencies should consider the following six factors:

(i) The subject of the request, i.e., whether the subject of the requested records concerns ''the operations or activities of the government'';

(ii) The informative value of the information to be disclosed, i.e., whether the disclosure is ''likely to contribute'' to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure, i.e., whether disclosure of the requested information will contribute to ''public understanding'';

(iv) The significance of the contribution to public understanding, i.e., whether the disclosure is likely to contribute ''significantly'' to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest, i.e., whether the requester has a commercial interest that would be furthered by the requested disclosure; and,

(vi) The primary interest in disclosure, i.e., whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is ''primarily in the commercial interest of the requester.''

(2) An agency may, in its discretion, waive or reduce fees associated with a request for disclosure, regardless of whether a waiver or reduction has been requested, if the agency determines that disclosure will primarily benefit the general public.

(3) Agencies may also waive or reduce fees under the following conditions:

(i) Where the furnishings of records or a service without charge or at a reduced rate is an appropriate courtesy to a foreign country or international organization, or where comparable fees are set on a reciprocal basis with a foreign country or an international organization;

(ii) Where the requester is engaged in a nonprofit activity designed for the public safety, health, or welfare; or

(iii) Where it is determined that payment of the full fee by a State or local government or nonprofit group would not be in the interest of the program involved.

(4) Fees shall be waived, however, without discretion in all circumstances where the amount of the fee is $25.00 or less.

*Section 7. Restrictions regarding copies.*

(a) Agencies may restrict numbers of photocopies and directives furnished the public to one copy of each page. Copies of forms provided the public shall also be held to the minimum practical. Persons requiring any large quantities should be encouraged to take single copies to commercial sources for further appropriate reproduction.

(b) Single or multiple copies of transcripts, provided to the Department under a reporting service contract, may be obtained by the public from the contractor at a cost not to exceed the cost per page charged to the Department for extra copies. The contractor may add a postage charge when mailing orders to the public, but no other charge may be added.

*Section 8. Payments of fees and charges.*

(a) Payments should be billed for to the fullest extent possible at the time the requested materials are furnished. Payments should be made by requesters within 30 days of the date of the billing.

(b) Payments shall be made by check, draft, or money order made payable to the Treasury of the United States, although payments may be made in cash, particularly where services are performed in response to a visit to a Department office. All payments should be sent to the address indicated by the agency responding to the request.

(c) Where the estimated fees to be charged exceed $250.00, agencies may require an advance payment of an amount up to the full estimated charges (but not less than 50 percent) from the requester before any of the requested materials are reproduced.

(d) In instances where a requester has previously failed to pay a fee, an agency may require the requester to pay the full amount owed, plus any applicable interest as provided in section 9 of this appendix, as well as the full estimated fee associated with any new request before the agency begins to process that new or subsequent request.

*Section 9. Interest charges.*

On requests that result in fees being assessed, agencies may begin levying interest charges on an upaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717, and will accrue from the date of the billing.

*Section 10. Effect of the Debt Collection Act on fees.*

In attempting to collect fees levied under the FOIA, agencies shall abide by the provisions of 31 U.S.C. 3701, 3711–3720A, in disclosing information to consumer reporting agencies and in the use of collection agencies, where appropriate, to encourage payment.

*Section 11. Photographic and digital reproductions of microfilm, aerial imagery, and maps.*

Microfilm, aerial imagery, and maps that have been obtained in connection with the authorized work of this Department may be sold at the estimated cost of furnishing reproductions of these records, using photographic, digital, or other methods of reproduction as prescribed in this appendix.

*Section 12. Agencies which furnish photographic reproductions.*

(a) *Aerial Photographic reproductions.* The following agency of the Department furnishes aerial photographic reproductions:

Farm Service Agency (FSA), Aerial Photography Field Office (APFO), USDA, 2222 West 2300 South, Salt Lake City, Utah 84119–2020.

(b) *Other photographic reproductions.* Other types of reproductions may be obtained from the following agency of the Department:

National Agricultural Library, Agricultural Research Service, USDA, Office of the Deputy Director, Technical Information Systems, Room 200, NAL Building, Beltsville, MD 20705.

*Section 13. Circumstances under which reproductions may be provided free.*

Reproductions may be furnished free at the discretion of the agency, if it determines that furnishing free reproductions is in the public interest, to:

(a) Representatives of the news media for dissemination to the general public.

(b) Agencies of State and local governments carrying on a function related to that of the Department when it will help to accomplish an objective of the Department.

(c) Cooperators and others furthering agricultural programs. Generally, only one print of each photograph should be provided free.

*Section 14. Loans.*

Aerial photographic film negatives or reproductions may not be loaned outside the Federal Government.

*Section 15. Sales of positive prints under government contracts.*

The annual contract for furnishing single and double frame slide film negatives and positive prints to agencies of the Department, County Extension Agents, and others cooperating with the Department, carries a stipulation that the successful bidder must agree to furnish slide film positive prints to such persons, organizations, and associations as may be authorized by the Department to purchase them.

*Section 16. Procedure for handling orders.*

In order to expedite handling, all orders should contain adequate identifying information. Agencies furnishing aerial photographic reproductions require that all such orders identify the photographs. Each agency has its own procedure and order forms.

*Section 17. Reproduction prices.*

The prices for reproductions listed in this section are for the most generally requested items.

(a) *National Agricultural Library.* The following prices are applicable to National Agricultural Library items only: Reproduction of electrostatic, microfilm, and microfiche copy—$5.00 for the first 10 pages or fraction thereof, and $3.00 for each additional 10 pages or fraction thereof. Duplication of NAL-owned microfilm—$10.00 per reel. Duplication of NAL-owned microfiche—$5.00 for the first fiche, and $0.50 for each additional fiche. Charges for manual and automated data base searches for bibliographic or other research information will be made in accordance with section 4, paragraphs (c)-(e) of this appendix. The contract rate charged by the commercial source to the National Agricultrual Library for computer services is available at the National Agricultural Library, Agricultural Research Service, USDA, Document Delivery Services Branch, 10301 Baltimore Boulevard, Beltsville, Maryland 20705–2351 (301–504–6503).

(b) *General photographic reproductions.* Minimum charge $1 per order. An extra charge

may be necessary for excessive laboratory time caused by any special instructions from the purchaser.

| Class of work and unit | Price |
|---|---|
| 1. Black and white line negatives: | |
| 4 by 5 (each | $6.00 |
| 8 by 10 (each) | 8.50 |
| 11 by 14 (each) | 11.00 |
| 2. Black and white continuous tone negatives: | |
| 4 by 5 (each) | 8.50 |
| 8 by 10 (each) | 11.00 |
| 3. Black and white enlargements: 8 by 10 and smaller (each) | 6.50 |
| 11 by 14 (each) | 11.00 |
| Larger sizes and quantities | (1) |
| 4. Black and white slides: | |
| 2 x 2 cardboard mounted (from copy negative) (each) | 4.00 |
| Blue ozalid slides (each) | 5.00 |
| 5. Color slides: (2 x 2 cardboard mounted): | |
| Duplicate color slides: | |
| Display quality (each) (Display color slides are slides copied from 35mm color slides only) | .65 |
| Repro quality (each) | (1) |
| Original color slides (from flat copy) (each) | 6.50 |
| 6. Color enlargements and transparencies: 4 by 5 and larger | (1) |
| 7. Slide sets: | |
| 1 to 50 frames | 14.50 |
| 51 to 60 frames | 16.50 |
| 61 to 75 frames | 18.50 |
| 76 to 95 frames | 21.50 |
| 96 to 105 frames | 23.00 |
| 106 to 130 frames (Prices include printed narrative guide) | 26.50 |
| 8. Cassettes: (for the corresponding slide sets above) | 3.00 |

[1] By quotation.

(c) *General aerial photographic reproductions.* The prices for various types of aerial photographic reproductions are set forth in this paragraph. Size measurements refer to the approximate size in inches of the paper required to produce the reproduction.

| Size | Price |
|---|---|
| **Black and White Reproductions** | |
| 10×10 Paper | $5.00 |
| 10×10 Film Positive | 10.00 |
| 10×10 Film Positive AT | 10.00 |
| 10×10 Film Positive Scan | 15.00 |
| 10×10 Film Duplicate Negative | 3.00 |
| 10×10 Film Internegative | 4.50 |
| 12×12 Paper | 12.00 |
| 17×17 Paper | 13.00 |
| 17×17 Film Positive | 25.00 |
| 24×24 Paper | 16.00 |
| 24×24 Film Positive | 40.00 |
| 38×38 Paper | 50.00 |
| 38×38 Film Positive | 55.00 |
| 20×24 Paper Photo Index | 20.00 |
| Paper Line Index | 15.00 |
| Mylar Line Index | 35.00 |
| Microfilm (Photo Indexes): Aperture Cards | 10.00 |
| Microfilm (Photo Indexes): Microfiche | 10.00 |
| **Color Negative Reproductions** | |
| 10×10 Paper Quantities: | |
| 1–50 | $7.00 |
| 51–1000 | 5.00 |
| 1001 & Over | 2.50 |
| 10×10 Film Positive | 33.00 |
| 20×20 Paper | 40.00 |
| 24×24 Paper | 55.00 |
| 38×38 Paper | 70.00 |
| **Color Infrared Positive Reproductions** | |
| 10×10 Paper | $12.00 |
| 10×10 Film Positive | 15.00 |
| 10×10 Film Positive AT | 15.00 |
| 10×10 Film Positive Scan | 20.00 |
| 20×20 Paper | 32.00 |
| 24×24 Paper | 40.00 |
| 38×38 Paper | 70.00 |

(d) [Reserved]

(e) *Special needs.* For special needs not covered elsewhere in this section, persons desiring aerial photographic reproductions should contact the aerial photography coordinator,

Farm Service Agency (FSA), Aerial Photography Field Office, USDA–FSA, 2222 West 2300 South, P.O. Box 30010, Salt Lake City, Utah 84125.

(f) *Audio and videotape reproductions.* For reproductions of audio-videotapes, requesters must supply their own recording tape, and will be assessed a fee of $25.00 an hour for copying work requested. There is a one-hour minimum charge. Payment is required at the time video or audiotapes are accepted by the requester.

[52 FR 49386, Dec. 31, 1987, as amended at 62 FR 33980, June 24, 1997; 64 FR 3395, Jan. 22, 1999]

## 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–233, 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 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]

## 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 here 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

Plant Protection and Quarantine Program—Regulatory Actions, USDA/APHIS–1.
Veterinary Services Programs—Records of Accredited Veterinarians, USDA/APHIS–2.
Veterinary Services Programs—Animal Quarantine Regulatory Actions, USDA/APHIS–3.
Veterinary Services Programs—Animal Welfare and Horse Protection Regulatory Actions, USDA/APHIS–4.

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]

## APPENDIX A TO SUBPART G—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, 149, 150gg, 162, 163, 164, 228, 268, 499o, 608c(14), 1592, 1624(b), 2151, 2279e, 2621, 2714, 2908, 3812, 4610, 4815, 4910, 6009, 6107, 6207, 6307, 6411, 6808, 7107, 7734; 15 U.S.C. 1828; 16 U.S.C. 620d, 1540(f), 3373; 21 U.S.C. 104, 111, 117, 120, 122, 127, 134e, 134f, 135a, 154, 463(b), 621, 1043; 43 U.S.C. 1740; 7 CFR 2.35, 2.41.

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.

Act of May 29, 1884, commonly known as the Animal Industry Act, section 7, as amended (21 U.S.C. 117).

Act of August 30, 1890, section 6, as amended (21 U.S.C. 104).

Act of February 2, 1903, commonly known as the Cattle Contagious Diseases Act of 1903, section 3, as amended (21 U.S.C. 122).

Act of March 3, 1905, section 6, as amended (21 U.S.C. 127).

Act of August 20, 1912, commonly known as the Plant Quarantine Act, section 10, as amended (7 U.S.C. 163, 164).

Act of January 31, 1942, as amended (7 U.S.C. 149).

Act of July 2, 1962, section 6(a), as amended (21 U.S.C. 134e).

Act of May 6, 1970, section 2, as amended (21 U.S.C. 135a).

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

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 Plant Pest Act, section 108, as amended (7 U.S.C. 150gg).

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)

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).

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

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]
Mushroom Promotion, Research, and Consumer Information Act of 1990, section 1928 [7 U.S.C. 6107]
Packers and Stockyards Act, 1921, as supplemented, sections 203, 312, 401, 502(b), and 505 of the Act, and section 1, 57 Stat. 422, as amended by section 4, 90 Stat. 1249 (7 U.S.C. 193, 204, 213, 218a, 218d, 221).
Pecan Promotion and Research Act of 1990, section 1914 [7 U.S.C. 6009]
Perishable Agricultural Commodities Act, 1930, sections 1(9), 3(c), 4(d), 6(c), 8(a), 8(b), 8(c), 9 and 13(a), (7 U.S.C. 499c(c), 499d (d), 499f(c), 499h(a), 499h(b), 499h(c), 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,[2] 10, and 17A(d) (7 U.S.C. 79(g)(3), 85, 86).
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 Quarantine and Related Laws (21 U.S.C. 111 *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; and

(4) 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, as amended at 42 FR 15406, Mar. 22, 1977; 45 FR 68381, Oct. 15, 1980; 47 FR 15559, Apr. 12, 1982; 47 FR 30451, July 14, 1982; 48 FR 28189, June 21, 1983; 49 FR 21293, May 21, 1984; 49 FR 37727, Sept. 26, 1984; 53 FR 1001, Jan. 15, 1988; 53 FR 35296, Sept. 13, 1988; 56 FR 22106, May 14, 1991; 60 FR 8455, Feb. 14, 1995; 60 FR 33329, June 28, 1995; 61 FR 11503, Mar. 21, 1996; 66 FR 36908, July 16, 2001]

### §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 rules of practice in this subpart are applicable to formal proceedings under section 9 of the United States Grain Standards Act for refusal to renew, or for suspension or revocation of a license if the respondent requests that such proceeding be subject to the administrative procedure provisions in 5 U.S.C. 554, 556, and 557. If such a request is not made, the Rules of Practice in 7 CFR part 26, subpart C shall apply.

(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(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]

### § 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 7 CFR 47.47–47.68 to have been responsibly connected within the meaning of 7 U.S.C. 499a(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]

### § 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 §1.136(a) 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]

### §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(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]

### §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.[3] 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 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

[3] 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.z

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(9), having been duly notified, fails to appear at the hearing without good cause, such petitioner shall be deemed to have waived his right to a hearing and to have voluntarily withdrawn his 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]

### § 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 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]

**§ 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 their 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]

**§ 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 elsewhere in this part, 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;

(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]

### § 1.145 Appeal to 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 §1.141(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 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.

(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]

### § 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 extened 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]

### §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 leat 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]

### § 1.149 Subpoenas.[4]

(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]

### § 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 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.

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

(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

AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: 53 FR 36949, Sept. 23, 1988, unless otherwise noted.

### GENERAL PROVISIONS

### § 1.180 Definitions.

(a) The definitions contained in Subpart H—Rules of Practice Governing Formal Adjudicatory Proceedings (§ 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 the Act.

(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 *the Act* 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. 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 this Department will use to make awards.

### § 1.182 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before this Department on or after August 5, 1985, except with respect to a proceeding covered under § 1.183(a)(1)(iii) of this part, which shall be effective on or after October 21, 1986. It also applies to any adversary adjudication commenced on or after October 1, 1984, and disposed of finally before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the agency within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

### § 1.183 Proceedings covered.

(a)(1) These rules apply to adversary adjudications. These are:

(i) Adjudications required by statute to be conducted by this Department under 5 U.S.C. 554 in which the position of this 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 this Department may prescribe a lawful present or future rate is not covered by the Act. 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 are adversary adjudications under the statutory provisions listed below.

Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c(15)(A))
Animal Quarantine Act (21 U.S.C. 104)
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 Quarantine Act (7 U.S.C. 163)
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))
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 this 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 the Act; 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 the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

### § 1.184 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a prevailing party to the adversary adjudication for which it seeks an award. The term *party* is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligiblity set out in §§1.181 through 1.186 and in §§1.190 through 1.193 of this subpart.

(b) The types of eligible applicants are as follows:

(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 (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding 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) 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.

(e) The employees of an applicant include all persons who regularly perform services for renumeration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) 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 the Act 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.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

### § 1.185 Standards for awards.

(a) 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 counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

### § 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) No award for the fee of an attorney or agent under these rules may exceed $75.00 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.

### § 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), this Department may adopt regulations providing that attorney fees may be awarded at a rate higher than $75 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 this 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.

### § 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.

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. With respect to proceedings covered under §1.183(a)(1)(ii) of this part, the Board of Contract Appeals is authorized by statute (41 U.S.C. 607) to take final action.

INFORMATION REQUIRED FROM APPLICANTS

### § 1.190 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of this Department that the applicant alleges was not substantially justified and shall briefly state the basis for such allegation. Unless the applicant is an individual, the application also shall state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application also shall include 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 organizatiion 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 this 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 sereved 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 this 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 in 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 rule, 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. 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.

(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—Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings

SOURCE: 55 FR 42347, Oct. 19, 1990, unless otherwise noted.

### § 1.210 Purpose.

This subpart sets forth procedures governing the appearance of USDA employees as witnesses in order to testify or produce official documents in judicial or administrative proceedings when such appearance is in their official capacity or arises out of or is related to their employment with USDA. These regulations do not apply to appearances by USDA employees as witnesses in judicial or administrative proceedings which are purely personal or do not arise out of or relate to their employment with USDA. This subpart also does not apply to Congressional requests or subpoenas for testimony or documents.

### § 1.211 Definitions.

(a) *Administrative proceeding* means any proceeding pending before any federal, state, or local agency and undertaken for the purpose of the issuance of any regulations, orders, licenses, permits, or other rulings, or the adjudication of any matter, dispute, or controversy.

(b) *Appearance* means testimony or production of documents the request for which arises out of an employee's official duties with USDA or relates to his or her employment with USDA. For

the purpose of this subpart, an appearance also includes an affidavit, deposition, interrogatory, or other required written submission.

(c) *Judicial proceeding* means any case or controversy pending before any federal, state, or local court.

(d) *Travel expenses* means the amount of money paid to a witness for reimbursement for transportation, lodging, meals, and other miscellaneous expenses in connection with attendance at a judicial or administrative proceeding.

(e) *USDA* means the United States Department of Agriculture.

(f) *USDA agency* means an organizational unit of USDA whose head reports to an official within the Office of the Secretary of Agriculture.

(g) *Valid summons, subpoena, or other compulsory process* means an order that is served properly and within the legal authority and the jurisdictional boundaries of the court or administrative agency or official that has issued it.

(h) *Witness fees* means the amount of money paid to a witness as compensation for attendance at a judicial or administrative proceeding.

### § 1.212 General.

No USDA employee may provide testimony or produce documents in a judicial or administrative proceeding unless authorized in accordance with this subpart.

### § 1.213 Appearance as a witness on behalf of the United States.

An employee of USDA may appear as a witness on behalf of the United States in any judicial or administrative proceeding without the issuance of a summons, subpoena, or other compulsory process. Employees should obtain permission for such an appearance from their immediate supervisor unless the USDA agency or General Counsel has issued instructions providing otherwise.

### § 1.214 Appearance as a witness on behalf of a party other than the United States where the United States is not a party.

(a) An employee of USDA served with a valid summons, subpoena, or other compulsory process demanding his or her appearance, or otherwise requested to appear on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, shall promptly notify the head of his or her USDA agency of the existence and nature of the order compelling his or her appearance, or of the document requesting his or her attendance. He or she shall also specify, if that is known, the nature of the judicial or administrative proceeding and the nature of the testimony or documents requested.

(b)(1) An employee of USDA served with a valid summons, subpoena, or other compulsory process, or requested to appear as a witness on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, may appear only if such appearance has been authorized by the head of his or her USDA agency, with the concurrence of the General Counsel, based upon a determination that such an appearance is in the interest of USDA.

(2) An employee of USDA requested to appear as a witness on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, without the service of a valid summons, subpoena, or other compulsory process, may appear only if such appearance has been authorized by the head of his or her USDA agency and approved by the appropriate Assistant Secretary, Under Secretary or other general officer, and by the General Counsel, based upon a determination that such an appearance is in the interest of USDA.

(c) Unless an appearance is authorized as provided in paragraphs (b)(1) or (b)(2) of this section, the employee shall appear at the stated time and place (unless advised by the General Counsel or his or her designee that the summons, subpoena, or other process was not validly issued or served), produce a copy of these regulations and respectfully decline to provide any testimony. As appropriate, the General Counsel or his or her designee will request the assistance of the Department

of Justice or of a United States Attorney, in the case of a judicial proceeding; or of the official or attorney representing the United States, in the case of an administrative proceeding, to represent the interests of the employee and USDA.

(d) If there is any question regarding the validity of a summons, subpoena, or other compulsory process, an employee shall contact the Office of the General Counsel for advice.

(e)(1) In determining whether the employee's appearance is in the interest of USDA, authorizing officials should consider the following:

(i) what interest of USDA would be promoted by the employee's testimony;

(ii) whether an appearance would result in an unnecessary interference with the duties of the USDA employee;

(iii) whether an employee's testimony would result in the appearance of improperly favoring one litigant over another.

(2) The considerations listed in paragraph (e)(1) of this section are illustrative and not exhaustive.

### § 1.215 Subpoenas duces tecum for USDA records in judicial or administrative proceedings in which the United States is not a party.

(a) Subpoenas duces tecum for USDA records in judicial or administrative proceedings in which the United States is not a party shall be deemed to be requests for records under the Freedom of Information Act and shall be handled pursuant to the rules governing public disclosure under subpart A of this part.

(b) Whenever a subpoena duces tecum compelling the production of records is served on a USDA employee in a judicial or administrative proceeding in which the United States is not a party, the employee, after consultation with the General Counsel or his or her designee, shall appear in response thereto, respectfully decline to produce the records on the grounds that it is prohibited by this section and state that the production of the records involved will be handled in accordance with subpart A of this part.

### § 1.216 Appearance as a witness or production of documents on behalf of a party other than the United States where the United States is a party.

(a) An employee of USDA served with a valid summons, subpoena, or other compulsory process demanding his or her appearance, or otherwise requested to appear or produce documents on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is a party, shall promptly notify the head of his or her USDA agency and the General Counsel or his or her designee of the existence and nature of the order compelling his or her appearance, or of the document requesting his or her appearance. He or she shall also specify, if that is known, the nature of the judicial or administrative proceeding and the nature of the testimony or documents requested.

(b)(1) Except as provided in paragraph (b)(2) of this section, an employee of USDA only may appear as a witness or produce records on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is a party if such appearance or production has been ordered by the service on the employee of a valid summons, subpoena, or other compulsory process issued by a court, administrative agency, or other official authorized to compel his or her appearance.

(2) An employee requested to appear as a witness or produce records on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is a party, without being served a valid summons, subpoena, or other compulsory process, may appear or produce records only if such appearance or production has been authorized by a representative of the Department of Justice, the United States Attorney, or other counsel who is representing the United States in the case of a judicial proceeding; or by the official or attorney representing the United States, in the case of an administrative proceeding.

(c) The head of the USDA agency shall consult with the General Counsel or his or her designee as to whether

there are grounds to oppose the employee's attendance or production of documents and, if so, whether to seek to quash the summons, subpoena, compulsory process, or to deny authorization under paragraph (b)(2) of this section.

(d) As appropriate, the General Counsel or his or her designee will request the assistance of the Department of Justice, a United States Attorney, or other counsel representing the United States, in the case of a judicial proceeding; or of the official or attorney representing the United States, in the case of an administrative proceeding, to represent the interest of the employee and USDA.

(e) If there is any question regarding the validity of a summons, subpoena, or other compulsory process, an employee shall contact the Office of the General Counsel for advice.

### § 1.217 Witness fees and travel expenses.

(a) Any employee of USDA who attends a judicial or administrative proceeding as a witness in order to testify or produce official documents on behalf of the United States is entitled to travel expenses in connection with such appearance in accordance with the Agriculture Travel Regulations.

(b) An employee of USDA who attends a judicial or administrative proceeding on behalf of the United States is not entitled to receive fees for such attendance.

(c) An employee of USDA who attends a judicial or administrative proceeding on behalf of a party other than the United States when such appearance is in his or her official capacity or arises out of or relates to his or her employment with USDA is entitled to travel expenses in accordance with the Agriculture Travel Regulations to the extent that such expenses are not paid for by the court, agency, or official compelling his or her appearance or by the party on whose behalf he or she appears.

(d) An employee of USDA who attends a judicial or administrative proceeding on behalf of a party other than the United States when such appearance is in his or her official capacity or arises out of or relates to his or her employment with USDA is required to collect the authorized fees for such service and remit such fees to his or her USDA agency.

### § 1.218 Penalty.

An employee who testifies or produces records in a judicial or administrative proceeding in violation of the provisions of this regulation shall be subject to disciplinary action.

### § 1.219 Delegations.

(a) Except as provided in paragraphs (b), (c), or (d) of this section, the head of a USDA agency may delegate his or her responsibilities under this subpart, including the requirement to be notified of the receipt of a subpoena as provided in §§1.214(a) and 1.216(a) of this part, 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 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 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) The responsibilities assigned to heads of agencies and to Assistant and Under Secretaries in §1.214(b)(2) of this part may not be redelegated.

[58 FR 62495, Nov. 29, 1993; 58 FR 64353, Dec. 6, 1993]

## 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, correctly designated at 57 FR 3909, Feb. 3, 1992, unless otherwise noted.

### § 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 $5,000 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 $5,000 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.

### § 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.

## 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. 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 ENVIRONMENTAL POLICY ACT

Sec.

1b.1 Purpose.
1b.2 Policy.
1b.3 Categorical exclusions.
1b.4 Exclusion of agencies.

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: 48 FR 11403, Mar. 18, 1983, unless otherwise noted.

### § 1b.1 Purpose.

(a) This part supplements the regulations for implementation of the National Environmental Policy Act (NEPA), for which regulations were published by the Council on Environmental Quality (CEQ) in 40 CFR parts 1500 through 1508. This part incorporates and adopts those regulations.

(b) This part sets forth Departmental policy concerning NEPA, establishes categorical exclusions of actions carried out by the Department and its agencies, and sets forth those USDA agencies which are excluded from the requirement to prepare procedures implementing NEPA.

[48 FR 11403, Mar. 18, 1983, as amended at 60 FR 66481, Dec. 22, 1995]

### § 1b.2 Policy.

(a) All policies and programs of the various USDA agencies shall be planned, developed, and implemented so as to achieve the goals and to follow the procedures declared by NEPA in order to assure responsible stewardship of the environment for present and future generations.

(b) Each USDA agency is responsible for compliance with this part, the regulations of CEQ, and NEPA. Compliance will include the preparation and implementation of specific procedures and processes relating to the programs and activities of the individual agency, as necessary.

(c) The Under Secretary, Natural Resources and Environment (NR&E), is responsible for ensuring that agency implementing procedures are consistent with CEQ's NEPA regulations and for coordinating NEPA compliance for the Department. The Under Secretary, NR&E, through the Agricultural Council on Environmental Quality, will develop the necessary processes to be used by the Office of the Secretary in reviewing, implementing, and planning its NEPA activities, determinations, and policies.

(d) In connection with the policies and requirements set forth in this part, all USDA agencies are responsible for compliance with Executive Order 12114, ''Environmental Effects Abroad of Major Federal Actions.'' Compliance

will include the preparation and implementation of specific procedures and processes relative to the programs and activities of the individual agencies, as necessary. Agencies shall consult with the Department of State; the Council on Environmental Quality; and the Under Secretary, NR&E, prior to placing procedures and processes in effect.

[48 FR 11403, Mar. 18, 1983, as amended at 60 FR 66481, Dec. 22, 1995]

### § 1b.3 Categorical exclusions.

(a) The following are categories of activities which have been determined not to have a significant individual or cumulative effect on the human environment and are excluded from the preparation of environmental assessment (EA's) or environmental impact statement (EIS's), unless individual agency procedures prescribed otherwise.

(1) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counselling and representation;

(7) Activities related to trade representation and market development activities abroad.

(b) Agencies will identify in their own procedures the activities which normally would not require an environmental assessment or environmental impact statement.

(c) Notwithstanding the exclusions listed in paragraphs (a) of this section and §1b.4, or identified in agency procedures, agency heads may determine that circumstances dictate the need for preparation of an EA or EIS for a particular action. Agencies shall continue to scrutinize their activities to determine continued eligibility for categorical exclusion.

[48 FR 11403, Mar. 18, 1983, as amended at 60 FR 66481, Dec. 22, 1995]

### § 1b.4 Exclusion of agencies.

(a) The USDA agencies and agency units listed in paragraph (b) of this section conduct programs and activities that have been found to have no individual or cumulative effect on the human environment. The USDA agencies and agency units listed in paragraph (b) of this section are excluded from the requirements of preparing procedures to implement NEPA. Actions of USDA agencies and agency units listed in paragraph (b) of this section are categorically excluded from the preparation of an EA or EIS unless the agency head determines that an action may have a significant environmental effect.

(b)(1) Agricultural Marketing Service
(2) Economic Research Service
(3) Extension Service
(4) Federal Corp Insurance Corporation
(5) Food and Consumer Service
(6) Food Safety and Inspection Service
(7) Foreign Agricultural Service
(8) Grain Inspection, Packers and Stockyards Administration
(9) National Agricultural Library
(10) National Agricultural Statistics Service
(11) Office of the General Counsel
(12) Office of the Inspector General

[60 FR 66481, Dec. 22, 1995]

## PART 1c—PROTECTION OF HUMAN SUBJECTS

Sec.

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AUTHORITY: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

SOURCE: 56 FR 28012, 28018, June 18, 1991, unless otherwise noted.

### § 1c.101 To what does this policy apply?

(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which 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.

(1) Research that is conducted or supported by a Federal department or agency, whether or not it is regulated as defined in §1c.102(e), must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a Federal department or agency but is subject to regulation as defined in §1c.102(e) must be reviewed and approved, in compliance with §1c.101, §1c.102, and §1c.107 through §1c.117 of this policy, by an institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) Research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

(i) Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and

(ii) Any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if:

(i) The human subjects are elected or appointed public officials or candidates for public office; or

(ii) Federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine:

(i) Public benefit or service programs;

(ii) Procedures for obtaining benefits or services under those programs;

(iii) possible changes in or alternatives to those programs or procedures; or

(iv) Possible changes in methods or levels of payment for benefits or services under those programs.

(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.

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy.

(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 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 which provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which 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 subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1989) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] 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. 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 Protection from Research Risks, Department of Health and Human Services (HHS), and shall also publish them in the FEDERAL REGISTER or in such other manner as provided in department or agency procedures.[1]

[56 FR 28012, 28018, June 18, 1991; 56 FR 29756, June 28, 1991]

[1] Institutions with HHS-approved assurances on file will abide by provisions of title 45 CFR part 46 subparts A–D. Some of the other Departments and Agencies have incorporated all provisions of title 45 CFR part 46 into their policies and procedures as well. However, the exemptions at 45 CFR 46.101(b) do not apply to research involving prisoners, fetuses, pregnant women, or human in vitro

*Continued*

**§ 1c.102 Definitions.**

(a) *Department or agency head* means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.

(b) *Institution* means any public or private entity or agency (including federal, state, and other agencies).

(c) *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.

(d) *Research* means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

(e) *Research subject to regulation*, and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

(f) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains:

(1) Data through intervention or interaction with the individual, or

(2) Identifiable private information.

*Intervention* includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. ''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 which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(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) *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.

(j) *Certification* means the official notification by the institution to the supporting department or agency, 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.

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fertilization, subparts B and C. The exemption at 45 CFR 46.101(b)(2), for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed.

**§ 1c.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.**

(a) Each institution engaged in research which is covered by this policy and which 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 set forth in 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 Protection from Research Risks, HHS, 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 Protection from Research Risks, HHS.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved 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 provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of whether the research is subject to federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under §1c.101 (b) or (i).

(2) Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

(3) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., 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. Changes in IRB membership shall be reported to the department or agency head, unless in accord with §1c.103(a) of this policy, the existence of an HHS-approved assurance is accepted. In this case, change in IRB membership shall be reported to the Office for Protection from Research Risks, HHS.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for 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) for ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.

(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head 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.

(c) 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.

(d) The department or agency head will evaluate all assurances submitted in accordance with this policy through such officers and employees of the department or agency and such experts or consultants engaged for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under §1c.101 (b) or (i). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by §1c.103 of this Policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by §1c.103 of the Policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

(Approved by the Office of Management and Budget under control number 9999–0020)

[56 FR 28012, 28018, June 18, 1991; 56 FR 29756, June 28, 1991]

**§§1c.104–1c.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, and the diversity of the members, including consideration of 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. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments 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 vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) 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.

(d) 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.

(e) 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.

(f) An IRB may, at its discretion, invite individuals with competence in special areas to assist in the review of issues which 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.

In order to fulfill the requirements of this policy each IRB shall:

(a) Follow written procedures in the same detail as described in § 1c.103(b)(4) and, to the extent required by, § 1c.103(b)(5).

(b) Except when an expedited review procedure is used (see § 1c.110), 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.

### § 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.

(b) An IRB shall require that information given to subjects 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 covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and 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 9999–0020)

### § 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, 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 list will be amended, as appropriate after consultation with other departments and agencies, through periodic republication by the Secretary, HHS, in the FEDERAL REGISTER. A copy of the list is available from the Office for Protection from Research Risks, National Institutes of Health, HHS, Bethesda, Maryland 20892.

(b) An IRB may use the expedited review procedure to review either or both of the following:

(1) Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk,

(2) Minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

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 non-expedited procedure set forth in §1c.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which 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 which are consistent with sound research design and which 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 (for example, 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 and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, 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, in accordance with, and to the extent required by §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.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, 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.

(Approved by the Office of Management and Budget under control number 9999–0020)

### § 1c.114 Cooperative research.

Cooperative research projects are those projects covered by this policy which 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. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified 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 documents, 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.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described is §1c.103(b)(3).

(6) Written procedures for the IRB in the same detail as described in §1c.103(b)(4) and §1c.103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by §1c.116(b)(5).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a reasonable manner.

(Approved by the Office of Management and Budget under control number 9999–0020)

### § 1c.116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the 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.

(a) *Basic elements of informed consent.* Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

(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 which 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 which 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; and

(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.

(b) *Additional elements of informed consent.* When appropriate, one or more of the following elements of information shall also be provided to each subject:

(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) which are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject'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 which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) The approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) 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: (i) Public benefit of service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and

(2) The research could not practicably be carried out without the waiver or alteration.

(d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;

(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) The research could not practicably be carried out without the waiver or alteration; and

(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in this policy are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) 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.

(Approved by the Office of Management and Budget under control number 9999–0020)

### § 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 consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by §1c.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A short form written consent document 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. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the 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 representative, in addition to a copy of the short form.

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

(2) 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.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research.

(Approved by the Office of Management and Budget under control number 9999–0020)

### § 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 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. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under §1c.101 (b) or (i), 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 department or agency.

### § 1c.119 Research undertaken without the intention of involving human subjects.

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 department or agency, and final approval given to the proposed change by the department or agency.

**§ 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 department or agency through such officers and employees of the 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 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 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 paragarph (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 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

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2.25 Director, Hazardous Materials Management Group.
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2.40 Deputy Under Secretary for Farm and Foreign Agricultural Services.
2.42 Administrator, Farm Service Agency.
2.43 Administrator, Foreign Agricultural Service.
2.44 Administrator, Risk Management Agency and Manager, Federal Crop Insurance Corporation.

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2.45 Deputy Under Secretary for Rural Economic and Community Development.
2.47 Administrator, Rural Utilities Service.
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2.55 Deputy Under Secretary for Food, Nutrition, and Consumer Services.
2.57 Administrator, Food and Nutrition Service.

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2.59 Deputy Under Secretaries for Natural Resources and Environment.
2.60 Chief, Forest Service.
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2.63 Deputy Under Secretary for Research, Education, and Economics.
2.65 Administrator, Agricultural Research Service.
2.66 Administrator, Cooperative State Research, Education, and Extension Service.
2.67 Administrator, Economic Research Service.
2.68 Administrator, National Agricultural Statistics Service.

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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 Policy and New Uses.

Subpart M—Delegations of Authority by the Chief Financial Officer

2.75 Deputy Chief Financial Officer.

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2.77 Deputy Assistant Secretary for Marketing and Regulatory Programs.
2.79 Administrator, Agricultural Marketing Service.
2.80 Administrator, Animal and Plant Health Inspection Service.
2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

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2.83 Deputy Assistant Secretary for Congressional Relations.
2.85 Director, Office of Congressional and Intergovernmental Relations.

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2.87 Deputy Assistant Secretary for Administration.
2.88 Director, Office of Small and Disadvantaged Business Utilization.
2.89 Director, Office of Civil Rights.
2.90 Director, Office of Outreach.
2.91 Director, Office of Operations.
2.92 Director, Office of Human Resources Management.
2.93 Director, Office of Procurement, Property, and Emergency Preparedness.
2.94 Director, Office of Planning and Coorination.
2.95 Director, Office of Ethics.

**Subpart Q—Delegations of Authority by the Chief Information Officer**

2.200 Deputy Chief Information Officer.

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.

## 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 and Foreign Agricultural Services; the Under Secretary for Rural Economic and Community Development; the Under Secretary for Food Safety; the Under Secretary for Food, Nutrition, and Consumer Services; the Under Secretary for Natural Resources and Environment; the Under Secretary for Research, Education, and Economics; the Assistant Secretary for Marketing and Regulatory Programs; the Assistant Secretary for Congressional Relations; the Assistant Secretary for Administration; the General Counsel; the Inspector General; the Chief Financial Officer; Chief Information Officer; the Judicial Officer; the Director, Office of Budget and Program Analysis; the Chief Economist; the Director, National Appeals Division; the Director of

Communications; and the Director, Office of Small and Disadvantaged Business Utilization.

[60 FR 56393, Nov. 8, 1995, as amended at 65 FR 77756, Dec. 13, 2000]

### § 2.5 Order in which officers of the Department shall act as Secretary.

(a) Pursuant to Executive Order 11957, 3 CFR, 1977 Comp., p. 79, in the case of the absence, sickness, resignation, or death of both the Secretary and the Deputy Secretary, the officials designated in paragraphs (a)(1) through (a)(10) of this section shall act as Secretary in the order in which they are listed. Each official shall act only in the absence, sickness, resignation, or death of the immediately preceding official:

(1) The Under Secretary for Farm and Foreign Agricultural Services.

(2) The Under Secretary for Rural Economic and Community Development.

(3) The Under Secretary for Food Safety.

(4) The Under Secretary for Food, Nutrition, and Consumer Services.

(5) The Under Secretary for Natural Resources and Environment.

(6) The Under Secretary for Research, Education, and Economics.

(7) The General Counsel.

(8) The Assistant Secretary for Marketing and Regulatory Programs.

(9) The Assistant Secretary for Administration.

(10) The Assistant Secretary for Congressional Relations.

(b) [Reserved]

## Subpart B—General Delegations of Authority by the Secretary of Agriculture

### § 2.7 Authority to supervise and direct.

Unless specifically reserved, or otherwise delegated, 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.

### § 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, the Under Secretaries and Assistant Secretaries

EDITORIAL NOTE: Nomenclature changes to subpart C appear at 60 FR 66713, Dec. 26, 1995.

### § 2.15 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.

### § 2.16 Under Secretary for Farm and Foreign Agricultural Services.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Under Secretary for Farm and Foreign Agricultural Services:

(1) *Related to consolidated farm service.*

(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) Administer the Agricultural Conservation Program under title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501 *et seq.*), and under the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g *et seq.*).

(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 and Foreign Agricultural Services has been delegated authority under paragraph (a)(3) of this section and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(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. 450j *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) [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) Administer the U.S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Farm Service Agency programs.

(xvii) Administer the provisions of the Soil Conservation and Domestic Allotment Act relating to assignment of payments (16 U.S.C. 590h(g)).

(xviii) Formulate and carry out the Conservation Reserve Program under the Food Security Act of 1985, as amended (16 U.S.C. 1231 *et seq.*).

(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) Administer the Integrated Farm Management Program under the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(xxi) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Farm Service Agency administered program.

(xxii) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(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) Formulate policies and administer programs authorized by Title I of the Federal Agriculture Improvement and Reform Act of 1996.

(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) The authority in section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprise loans;

(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;

(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 rural industrialization assistance;

(H) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises;

(I) Section 342 (7 U.S.C. 1013a);

(J) Section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c), regarding assets and programs related to rural development; and

(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.

(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) Administer the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Farm Service Agency.

(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 and tribal corporations (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.

(3) *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 General Agreement on Tariffs and Trade (GATT) and 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 Assistant 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 GATT, 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.*), the provisions of subtitle B of title III of the North American Free Trade Agreement Implementation Act, 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) Conduct Department activities to carry out the provisions of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f).

(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 Assistant 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(e) of the Andean Trade Preference Act (19 U.S.C. 3203(e));

(F) Functions under sections 309 and 316 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3358 and 3381);

(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) Represent the Department on the Interdepartmental Committee for Export Control and to conduct departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*), except as reserved to the Secretary under paragraph (b)(2) of this section.

(ix) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in the administration of such Agreement.

(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. 2901–2918); 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. 4501–4513); the Honey Research, Promotion, and Consumer Information Act of 1984, as amended (7 U.S.C. 4601–4612); 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 Public Law 480, 83rd Congress, hereafter referred to as ''Public Law 480'' (7 U.S.C. 1691, 1701 *et seq.*).

(xiii) 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 payment and related services with respect to export programs and barter operations.

(xiv) Coordinate within the Department activities arising under Public Law 480 (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 Public Law 480, and other departments, agencies and committees of the Government.

(xv) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14), and of sunflowerseed oil and cottonseed oil, as authorized under section 301(b)(2)(A) of the Disaster Assistance Act of 1988, as amended (7 U.S.C. 1464 note).

(xvi) Formulate policies and implement a program for the export sales of dairy products, as authorized by section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note).

(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) Carry out debt-for-health-and-protection swaps, as authorized by section 1517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1706).

(xix) Determine the agricultural commodities acquired under price support programs which are available for export and allocate such commodities 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 Assistant 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 Pub. L. 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.

(xxix)–(xxx) [Reserved]

(xxxi) Administer programs under the Food for Progress Act of 1985 (7 U.S.C. 1736o).

(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 institutions (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 in 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).

(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.

(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.* 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 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; farm credit and financial assistance; and foreign agricultural intelligence and other foreign agricultural matters.

(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 (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 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.

(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)).

(2) *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 Public Law 480 (7 U.S.C. 1731).

(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.

[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]

### § 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 Economic and Community 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 Economic and Community 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) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Rural Housing Service, the Rural Business-Cooperative Service and the Rural Utilities Service.

(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) 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;

(F) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development;

(G) Section 310B(b) (7 U.S.C. 1932(b));

(H) Section 310B(i) (7 U.S.C. 1932(i)), relating to loans for business telecommunications partnerships; and

(I) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural utility activities.

(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).

(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)(11)(A) (7 U.S.C. 1926 (a)(11)(A)), relating to grants for business technical assistance and planning;

(B) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises;

(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 rural industrialization assistance, rural business enterprise grants and rural technology and cooperative development grants;

(E) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises; and

(F) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural business-cooperative activities.

(iii) Administer Alcohol Fuels Credit Guarantee Program Account (Pub. L. 102–341, 106 Stat. 895).

(iv) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(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) Exercise administrative oversight and final decisionmaking authority over the Alternative Agricultural Research and Commercialization Corporation (AARCC) and the AARCC Revolving Fund, established pursuant to the Alternative Agricultural Research and Commercialization Act of 1990, (7 U.S.C. 5901 *et seq.*).

(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).

(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; and

(C) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to rural housing activities.

(ii) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), except those functions pertaining to research.

(iii) Make grants, administer a grant program, and determine the types of assistance to be provided to aid low-income migrant and seasonal farmworkers (42 U.S.C. 5177a).

(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.

(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.

(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) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 65 FR 12427, Mar. 9, 2000; 66 FR 31107, June 11, 2001]

### § 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);

(B) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also 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. 601–611, 615–624, 641–645, 661, 671–680, 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; and

(G) Administer and conduct a Food Safety Research Program (7 U.S.C. 427).

(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.

[60 FR 56393, Nov. 8, 1995, as amended at 65 FR 12428, Mar. 9, 2000]

### § 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 Stamp Act of 1977, as amended (7 U.S.C. 2011–2032);

(B) National School Lunch Act of 1946, as amended (42 U.S.C. 1751–1769h), 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); and

(E) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103–448).

(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) Section 402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922);

(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 (7 U.S.C. 612c note);

(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 food coupons 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 food coupons to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and food coupons to be so distributed.

(v) 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.

(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).

(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.

(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) [Reserved]

### § 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. This delegation covers the acquisition and disposition of 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).

(iii) 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.

(iv) 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 670o.

(v) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559b–f), 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.

(vi) 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.

(vii) 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)–(h), 205(a)–(d), 211, 317, 402(a)).

(viii) Exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR parts 215 and 217 and 36 CFR part 251, subpart C.

(ix) 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).

(x) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(xi) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(xii) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(xiii) 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).

(xiv) 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).

(xv) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(xvi) 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).

(xvii) 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).

(xviii) 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).

(xix) Administer Rural Fire Protection and Control Programs (16 U.S.C. 2106).

(xx) 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).

(xxi) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(xxii) 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. 1010–1012).

(xxiii) 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)(xxiii)(A)(*1*), (*2*) and (*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 (33 U.S.C. 701b–1); 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)).

(xxiv) 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).

(xxv) 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; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(xxvi) 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.

(xxvii) 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

(E) Representing USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(xxviii) [Reserved]

(xxix) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 note) for USDA.

(xxx) 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. 2716–2717), 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.

(xxxi) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(xxxii) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(xxxiii) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278).

(xxxiv) 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. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), 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.

(xxxv) 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.*).

(xxxvi) Administer the Public Lands Corps program (16 U.S.C. 1721 *et seq.*) for USDA consistent with the Department's overall national service program.

(xxxvii) Jointly administer the Forestry Incentives Program with the Natural Resources Conservation Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(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).

(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 Pub. L. No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590 a–f, i–l, 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 33 U.S.C. 702b–1;

(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. 1001–1009, except for responsibilities assigned to the Under Secretary for Rural Economic and Community 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 under sections 401–405 of the Agricultural Credit Act of 1978 (the Act), 16 U.S.C. 2201 *et seq.*, except for the provisions of sections 401 and 402 of the Act, 16 U.S.C. 2201–2202, as administered by the Under Secretary for Farm and Foreign Agricultural Services.

(v) Administer the Great Plains Conservation Program and the Critical Lands Resources Conservation Program under 16 U.S.C. 590p(b), 590q and 590q–3.

(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 Economic and Community 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.

(xxii) 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) Administer natural resources conservation authorities under title XII of the Food Security Act of 1985 (Act), as amended (16 U.S.C. 3801 *et seq.*), including responsibilities for:

(A) The conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(B) Technical assistance related to soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Act, as amended (16 U.S.C. 3831–3844);

(C) The Environmental Easement Program authorized by sections 1239–1239d of the Act (16 U.S.C. 3839–3839d);

(D) The Agricultural Water Quality Improvement Program authorized by sections 1238–1238f of the Act, as amended (16 U.S.C. 3838–3838f); and

(E) The Wetland Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Act, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Pub. L. No. 103–75.

(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.

(xvi) Jointly administer the Forestry Incentives Program with the Forest Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(xvii) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301 *et seq.*).

(xviii) Administer water quality activities under the Agriculture and Water Policy Coordination Act, subtitle G, title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5501–5505).

(xix) Administer the Rural Environmental Conservation Program authorized by sections 1001–1010 of the Agriculture Act of 1970, as amended (16 U.S.C. 1501–1510).

(xx) 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)).

(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 outreach and technical assistance to socially disadvantaged farmers and ranchers. Provide outreach and technical assistance to socially disadvantaged farmers and ranchers and make grants and enter into contracts and other agreements to provide such outreach and technical assistance under 7 U.S.C. 2279.

(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) [Reserved]

[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]

### §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.

(1) *Related to science 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; research regarding the production, preparation, processing, handling, and storage of agricultural products; a Plant and Animal Pest and Disease Control Program; and any other provisions pursuant to title XVI of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. No. 101–624, 104 Stat. 3703), except the provisions relating to the USDA Graduate School in section 1669 and the provisions relating to alternative agricultural research and commercialization under sections 1657–1664 (7 U.S.C. 5801 *et seq.*).

(iii) Coordinate USDA policy and conduct programs 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).

(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 (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; establish a task force on a 10-year strategic plan for agricultural research facilities; ensure that each research activity conducted by an Agricultural Research Service facility serves a national or multistate need; and review periodically each operating agricultural research facility constructed in whole or in part with Federal funds, pursuant to criteria established, to ensure that a comprehensive research capacity is maintained (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) [Reserved]

(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. 450a).

(xix) Carry out a program (IR–4 Program) for the collection of residue and efficacy data in support of minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i).

(xx) Administer and direct a program of competitive grants for research, and special grants for research, education, or extension, to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, national laboratories (competitive grants only), private organizations or corporations, and individuals, and of facilities grants to State agricultural experiment stations and other designated colleges and universities, to promote research, extension, or education, in food, agriculture and related areas (7 U.S.C. 450i).

(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. 1441 note).

(xxvi) Conduct a research and development program to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(xxvii) Conduct research to develop and determine methods for the humane slaughter of livestock (7 U.S.C. 1904).

(xxviii) Administer a competitive grant program for non- profit institutions to establish and operate centers for rural technology or cooperative development (7 U.S.C. 1932(f)).

(xxix) Administer a Nutrition Education Program for Food Stamp recipients and for the distribution of commodities on reservations (7 U.S.C. 2020(f)).

(xxx) Conduct education and extension programs and a pilot project related to nutrition education (7 U.S.C. 2027(a) and 5932).

(xxxi) Provide for the dissemination of appropriate rural health and safety information resources possessed by the Rural Information Center, in cooperation with State educational program efforts. Promote coordinated and integrated rural community initiatives that advance and empower capacity building (7 U.S.C. 2662).

(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 the States, a Cooperative Rural Development and Small Farm Research and Extension 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) Conduct programs related to composting research and extension (7 U.S.C. 3130).

(xliii) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(xliv) Formulate and administer programs to strengthen secondary education and two-year post secondary teaching programs; promote linkages between secondary, two-year post secondary, and higher education programs in the food and agricultural sciences; administer grants to secondary education and two-year post secondary teaching programs, and to colleges and universities; maintain a national food and agricultural education information system (7 U.S.C. 3152).

(xlv) Administer the National Food and Agricultural Sciences Teaching Awards Program for recognition of educators in the food and agricultural sciences (7 U.S.C. 3152).

(xlvi) Administer the National Agricultural Science Award for research or advanced studies in the food and agricultural sciences (7 U.S.C. 3153).

(xlvii) Administer grants to colleges, universities, and Federal laboratories for research on the production and marketing of alcohols and industrial hydrocarbons from agricultural commodities and forest products (7 U.S.C. 3154).

(xlviii) Administer a National Food and Human Nutrition Research and Extension Program. Establish and administer a Human Nutrition Intervention and Health Promotion Research Program (7 U.S.C. 3171–3175).

(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 colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centers (7 U.S.C. 3221, 3222, 3222c, 3222d).

(li) 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).

(lii) Establish and administer competitive grants (or grants without regard to any requirement for competition) 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; 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).

(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) Conduct programs of education, extension, and research related to water quality, agrichemicals and nutrient management (7 U.S.C. 5503–5506).

(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) Design, implement, and develop handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices (7 U.S.C. 5831).

(lxvii) Administer a competitive grant program to organizations to carry out a training program on sustainable agriculture (7 U.S.C. 5832).

(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) Administer grants and conduct research programs to measure microbiological and chemical agents associated with the production, preparation, processing, handling, and storage of agricultural products (7 U.S.C. 5871–5874).

(lxxiii) Administer and conduct research and extension programs on integrated pest management, including research to benefit floriculture (7 U.S.C. 5881).

(lxxiv) Establish a National Pesticide Resistance Monitoring Program and disseminate information on materials and methods of pest and disease control available to agricultural producers through the pest and disease control database (7 U.S.C. 5882).

(lxxv) Administer and conduct research and grant programs on the control and eradication of exotic pests (7 U.S.C. 5883).

(lxxvi) Conduct research and educational programs to study the biology and behavior of chinch bugs (7 U.S.C. 5884).

(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) [Reserved]

(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).

(lxxxi) Administer a program of competitive grants to support research and extension activities in Nutrient Management Research and Extension (7 U.S.C. 5925a).

(lxxxii)–(lxxxvi) [Reserved]

(lxxxvii) Administer competitive grants to support research and extension activities regarding organically grown and processed agricultural commodities (7 U.S.C. 5925b).

(lxxxviii) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

(lxxxix) [Reserved]

(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) Conduct research on diseases affecting honeybees (7 U.S.C. 5934).

(xcv) Control within USDA the acquisition, use, and disposal of material and equipment that may be a source of ionizing radiation hazard.

(xcvi) Conduct programs of research, technology development, and education related to global climate change (7 U.S.C. 6701–6710).

(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) Cooperate with the States for the purposes of encouraging and assisting them in carrying out programs of forestry, natural resources, and environmental research (16 U.S.C. 582a–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) Provide educational assistance to farmers regarding the Agricultural Water Quality Protection Program (16 U.S.C. 3838b).

(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) Conduct research on the control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(cxvii) Obtain and furnish Federal excess property to eligible recipients for use in the conduct of research and extension programs (40 U.S.C. 483(d)(2)).

(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) Carry out research, demonstration, and educational activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(cxx) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(cxxi) Administer a Cooperative Agricultural Extension Program related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code 31–1409).

(cxxii) Provide leadership and direct assistance in planning, conducting and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(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 Council 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(e).

(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 pursuant to the provisions of section 25 of the Food Stamp Act of 1977 (7 U.S.C. 2034).

(cxlii) Receive, accept, and administer funds for the purpose of awarding research, extension, and education competitive grants pursuant to the Fund for Rural America (7 U.S.C. 2204f).

(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) Make grants, competitive grants, and special research grants to, and enter into cooperative agreements and other contracting instruments with, policy research centers (7 U.S.C. 3155).

(cxlvi) Conduct a pilot research program to link major cancer and heart and other circulatory disease research efforts with agricultural research efforts to identify compounds in vegetables and fruits that prevent these diseases (7 U.S.C. 3174a).

(cxlvii) 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).

(cxlviii) Administer the Stuttgart National Aquaculture Research Center (16 U.S.C. 778 *et seq.*; Pub. L. 104–127, sec. 889).

(cxlix) Provide technical and educational assistance to conserve and enhance private grazing land resources (16 U.S.C. 2005b).

(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 Cooperative State Research, Education, and Extension Service 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 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 Cooperative State Research, Education, and Extension Service (7 U.S.C. 7613(a)).

(cliv) 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)).

(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, 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) Administer an Initiative for Future Agriculture and Food Systems (except with respect to funds provided by the Secretary to the Alternative Agricultural Research and Commercialization Corporation) (7 U.S.C. 7621).

(clviii) Administer a program of competitive grants to eligible partnerships to coordinate and manage research and extension activities to enhance the quality of high-value agricultural products (7 U.S.C. 7622).

(clix) Administer a program of competitive grants to eligible entities to conduct research, education, or information dissemination projects for the development and advancement of precision agriculture (7 U.S.C. 7623).

(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) Administer the Thomas Jefferson Initiative for Crop Diversification program of competitive grants and contracts for the purpose of conducting research and development, in cooperation with other public and private entities, on the production and marketing of new and nontraditional crops needed to strengthen and diversify the agricultural production base of the United States (7 U.S.C. 7625).

(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 a grant to a consortium of land-grant colleges and universities to enhance the ability of the consortium to carry out a multi-State research project aimed at understanding and combating diseases of wheat and barley caused by Fusarium graminearum 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) Request the National Academy of Sciences to conduct a study of the role and mission of federally funded agricultural research, extension, and education (7 U.S.C. 7672).

(clxxi) Take a census of agriculture in 1998 and every fifth year thereafter pursuant to the Census of Agriculture Act of 1997, Pub. L. No. 105–113 (7 U.S.C. 2204g).

(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. 3171–3175, 3177).

(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) Perform economic and other social science research under section 104(b)(1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service (7 U.S.C. 1704).

(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) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect on family farms and rural communities of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(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).

(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 514.44(c)).

(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.

(iv) Serve as a USDA Environmental Executive responsible for coordinating waste prevention; recycling; and the procurement, acquisition, and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101 (dual assignment with the Assistant Secretary for Administration).

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *Related to science and education.* (i) Withhold funds from States in accordance with section 1436 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3198).

(ii) Reapportion funds under section 4 and apportion funds under section 5 of the Act of October 10, 1962 (16 U.S.C. 582a–3, 582a–5).

(iii) Appoint an advisory committee under section 6 of the Act of October 10, 1962 (16 U.S.C. 582a–4).

(iv) Final concurrence in Equal Employment Opportunity Programs within the cooperative extension programs submitted under part 18 of this title.

(v) Approve selection of State directors of extension.

(vi) Approve the memoranda of understanding between the land-grant universities and USDA related to cooperative extension programs.

(2) *Related to economic research and statistical reporting.* (i) Final approval and issuance of the monthly crop report (7 U.S.C. 411a).

(ii) Final action on rules and regulations for the Agricultural Statistics Board.

[60 FR 56393, Nov. 8, 1995, as amended at 62 FR 65593, Dec. 15, 1997; 64 FR 40735, July 28, 1999; 65 FR 5414, Feb. 4, 2000; 65 FR 12428, Mar. 9, 2000; 65 FR 31245, May 17, 2000]

### § 2.22 Assistant Secretary for Marketing and Regulatory Programs.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant 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. 1621–1627), 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. 1621–1627).

(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 contained in 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 Farm and Foreign Agricultural Services in § 2.16(a)(3)(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 Farm and Foreign Agricultural Services in § 2.16(a)(3)(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 Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(U) Potato Research and Promotion Act (7 U.S.C. 2611–2627), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(V) [Reserved]

(W) Egg Research and Consumer Information Act (7 U.S.C. 2701–2718), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in § 2.16(a)(3)(x);

(X) Beef Research and Information Act, as amended (7 U.S.C. 2901–2918), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §§2.16(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 Farm and Foreign Agricultural Services in

§2.16(a)(3)(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) In carrying out the procurement functions in paragraphs (a)(1)(viii)(AA) and (BB) of this section, the Assistant Secretary for Marketing and Regulatory Programs shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Farm Service Agency;

(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 Farm and Foreign Agricultural Services in §2.16(a)(3)(x);

(FF) The Watermelon Research and Promotion Act (7 U.S.C. 4901–4916), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §2.16(a)(3)(x);

(GG) The Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4612), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §2.16(a)(3)(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 Farm and Foreign Agricultural Services in §2.16(a)(3)(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 Farm and Foreign Agricultural Services in §2.16(a)(3)(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 Farm and Foreign Agricultural Services in §2.16(a)(3)(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 Farm and Foreign Agricultural Services in §2.16(a)(3)(x);

(OO) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §2.16(a)(3)(x);

(PP) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §2.16(a)(3)(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 Farm and Foreign Agricultural Services in §2.16(a)(3)(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 Farm and Foreign Agricultural Services in §2.16(a)(3)(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 Farm and Foreign Agricultural Services in §2.16(a)(3)(x);

(ZZ) The Canola and Rapeseed Research, Promotion, and Consumer Information Act (7 U.S.C. 7441–7452), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §2.16(a)(3)(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 Farm and Foreign Agricultural Services in §2.16(a)(3)(x);

(BBB) The Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7481–7491), except as delegated to the Under Secretary for Farm and Foreign Agricultural Services in §2.16(a)(3)(x).

(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) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(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) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the Gypsy Moth Program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands;

(iii) The Mexican Border Act, as amended (7 U.S.C. 149);

(iv) The Golden Nematode Act (7 U.S.C. 150–150g);

(v) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj);

(vi) The Plant Quarantine Act, as amended (7 U.S.C. 151–164a, 167).

(vii) The Terminal Inspection Act, as amended (7 U.S.C. 166);

(viii) The Honeybee Act, as amended (7 U.S.C. 281–286);

(ix) The Halogeton Glomeratus Control Act (7 U.S.C. 1651–1656);

(x) Tariff Act of June 17, 1930, as amended, sec. 306 (19 U.S.C. 1306);

(xi) Act of August 30, 1890, as amended (21 U.S.C. 102–105);

(xii) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111–114a, 114a–1, 115–130);

(xiii) Act of February 28, 1947, as amended (21 U.S.C. 114b–114c, 114d–1);

(xiv) Act of June 16, 1948 (21 U.S.C. 114e–114f);

(xv) Act of September 6, 1961 (21 U.S.C. 114g–114h);

(xvi) Act of July 2, 1962 (21 U.S.C. 134–134h);

(xvii) Act of May 6, 1970 (21 U.S.C. 135–135b);

(xviii) Sections 12–14 of the Federal Meat Inspection Act, as amended, and so much of section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 612–614, 618);

(xix) Improvement of poultry, poultry products, and hatcheries (7 U.S.C. 429);

(xx) The responsibilities of the United States under the International Plant Protection Convention;

(xxi) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159);

(xxii) Horse Protection Act (15 U.S.C. 1821–1831);

(xxiii) 28 Hour Law, as amended (49 U.S.C. 80502);

(xxiv) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902);

(xxv) 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);

(xxvi) Virus-Serum-Toxin Act (21 U.S.C. 151–158);

(xxvii) 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);

(xxviii) 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;

(xxix) Talmadge Aiken Act (7 U.S.C. 450) with respect to cooperation with States in control and eradication of plant and animal diseases and pests;

(xxx) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801–2814);

(xxxi) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544);

(xxxii) Executive Order 11987, 3 CFR, 1977 Comp., p. 116;

(xxxiii) Section 101(d), Organic Act of 1944 (7 U.S.C. 430);

(xxxiv) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813);

(xxxv) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378);

(xxxvi) 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);

(xxxvii) 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);

(xxxviii) The Act of March 2, 1931 (7 U.S.C. 426–426b);

(xxxix) The Act of December 22, 1987 (7 U.S.C. 426c);

(xl) 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));

(xli) 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;

(xlii) The provisions of 35 U.S.C. 156;

(xliii) 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

(xliv) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(xlv) Sections 901–905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note).

(xlvi) Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772).

(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).

(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 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.

(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.

(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 because of the outbreak of any dangerous, communicable disease of livestock or poultry anywhere in the United States and that such outbreak threatens the livestock or poultry of the United States (21 U.S.C. 114a, 114c, 134a(b)).

(ii) Determination as to the measure and character of cooperation with Canada, Mexico, Central American countries, Panama, and Columbia related to operations and measures to eradicate,

suppress, or control or to prevent or retard any communicable disease of animals, the designation of members of advisory committees, and the appointment of commissioners on any joint commission with these governments set up under such programs (21 U.S.C. 114b).

(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. 665).

(iv) Determination that an extraordinary emergency exists under the criteria in section 105(b)(1) of the Federal Plant Pest Act, as amended, (7 U.S.C. 150dd(b)(1)).

[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]

### § 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) 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.

(3) *Related to Indian affairs.* Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

(b) [Reserved]

### § 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) *Related to 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;

(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; and

(J) Performing upon request the following services with respect to any hearings in such proceedings:

(*1*) Arranging for suitable hearing place; and

(*2*) Arranging for stenographic reporting of hearings and handling details in connection therewith.

(2) *Related to small and disadvantaged business utilization.* (i) In compliance with Public Law 95–507, the Assistant Secretary for Administration is designated as the Department's Director for Small and Disadvantaged Business Utilization. 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:

(A) Administering 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;

(B) Providing Departmentwide liaison and coordination of activities related to small, small disadvantaged, and women-owned businesses with the Small Business Administration and others in public and private sector;

(C) Developing policies and procedures required by the applicable provision of the Small Business Act, as amended to include the establishment of goals; and

(D) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(3) *Related to equal opportunity in programs and employment.* (i) 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:

(A) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in Federally assisted programs;

(B) Actions to enforce Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, prohibiting discrimination in Federal employment;

(C) 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;

(D) 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;

(E) 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 by the Department;

(F) 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 conducted programs.

(G) Actions to enforce Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12131, *et seq.*, prohibiting discrimination against individuals with disabilities in State and local government services.

(H) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(I) Actions to develop and implement the Department's Federal Women's Program; and

(J) Actions to develop and implement the Department's Hispanic Employment Program.

(ii) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(iii) Provide leadership and coordinate Departmental agencies and systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(iv) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(v) 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 the General Counsel.

(vi) 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 the General Counsel.

(vii) 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.

(viii) 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.

(ix) 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 of Agriculture with his or her recommended findings and proposed action.

(x) Authorize the taking of action pursuant to §15.8(a) of this title relating to compliance by ''other means authorized by law.''

(xi) Make determinations required by §15.8(d) of this title that compliance cannot be secured by voluntary means, and then take action, as appropriate.

(xii) Make determinations, after legal sufficiency reviews by the Office of the General Counsel, 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;

(xiii) Perform investigations and make final determinations, after legal sufficiency reviews by the Office of the General Counsel, on both the merits and required corrective action, as to complaints filed under part 15d of this title.

(xiv) Conduct investigations and compliance reviews Departmentwide.

(xv) Develop regulations, plans, and procedures necessary to carry out the Department's civil rights programs, including the development, implementation, and coordination of Action Plans.

(xvi) Coordinate the Department's affirmative employment program, special emphasis programs, Federal Equal Opportunity Recruitment Program, equal employment opportunity evaluations, and development of policy.

(xvii) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

(xviii) Monitor, evaluate, and report on agency compliance with established policy and Executive Orders which further the participation of historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(xix) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity (EEO), to provide equal employment opportunity services for managers and employees, and to make final agency decisions, after legal sufficiency reviews by the Office of the General Counsel, on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(xx) Maintain liaison with historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment, and assist Department agencies in strengthening such institutions by facilitating institutional participation in Department programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(xxi) Administer the Department's EEO Program.

(xxii) Oversee and manage the EEO counseling function for the Department.

(xxiii) 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.

(xxiv) Process formal EEO discrimination complaints by employees or applicants for employment.

(xxv) Investigate Department EEO and program discrimination complaints.

(xxvi) Make final decisions, after legal sufficiency reviews by the Office of the General Counsel, on both EEO and program discrimination complaints, except in those cases where the Assistant Secretary has participated in the events that gave rise to the matter.

(xxvii) Order such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

(xviii) Provide liaison on EEO matters concerning complaints and appeals with the Department agencies and Department employees.

(xxix) Make final determinations, or enter into settlement agreements, after legal sufficiency reviews by the Office of the General Counsel, on discrimination complaints in 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 CCC and FCIC funds to satisfy such an award.

(xxx) Require corrective action on findings of discrimination on program complaints and recommend to the Secretary that relief be granted under 7 U.S.C. 6998(d), notwithstanding the finality of National Appeals Divisions decisions.

(xxxi) Provide civil rights and equal employment opportunity support services, 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;

(C) The offices and agencies reporting to the Assistant Secretary for Administration; and

(D) Any other offices or agencies of the Department as may be agreed.

(4) *Related to outreach.* (i) Develop policy guidelines and implement a Departmental outreach program which delivers services to the traditionally under-served customers.

(ii) Administer and provide leadership, direction, coordination, and monitoring for the Small Farmer Outreach Training and Technical Assistance program, *i.e.* Outreach and Technical Assistance Grants to Socially Disadvantaged Farmers and Ranchers Program, including the authority to make grants and enter into contracts and other agreements pursuant to 7 U.S.C. 2279(a).

(iii) Develop a strategic outreach plan for the Department which coordinates the goals, objectives, and expectations of mission area outreach programs.

(iv) Coordinate the dissemination/communication of all outreach information from the Department and its mission areas ensuring its transmission to as wide a public spectrum as possible.

(v) Serve as the Department's official outreach spokesperson.

(vi) Provide coordination and oversight of agency outreach activities including the establishment of outreach councils.

(vii) Develop a system to monitor the delivery of outreach grants and funding.

(viii) Report agency outreach status and accomplishments, and make recommendations to the Secretary.

(5) *Related to operations.* (i) Provide services for the Department in the following areas:

(A) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments, in the Washington, D.C. metropolitan area;

(B) Acquiring, storing, distributing, and disposing of forms; and

(C) Mail management and all related functions.

(ii) Operating centralized Departmental services to provide printing, copy reproducing, offset composing, supplies, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuing of general employee identification cards, supplemental distributing of Department directives, space allocating and management, and related management support.

(iii) Providing property management, space management, messenger, and other related services 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;

(C) The offices reporting to the Assistant Secretary for Administration;

(D) Any other offices or agencies of the Department as may be agreed; and

(E) Other federal, state, or local government organizations on a cost recovery basis.

(iv) Represent the Department in contacts with other organizations or agencies on matters related to assigned responsibilities.

(v) Promulgate Departmental regulations, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services, in the Washington, D.C. metropolitan area.

(vi) Provide internal administrative management and support services for the defense program of the Department.

(6) *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 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.

(vi) Receive, review, and recommend action on all requests for the Secretary's approval in human resources matters.

(vii) 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; and

(C) Execute, change, extend, or renew:

(*1*) Labor-Management Agreements; and

(*2*) Associations of Management Officials' or Supervisors' Agreements.

(D) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations;

(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, D.C., 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; and

(*3*) Administrative Law Judge.

(L) Authorize adverse actions for positions in GS–14–15 and equivalent and, as appropriate, redelegate this authority to Heads of Department agencies;

(M) Authorize adverse action for positions in the career senior executive service or equivalent, and as appropriate, redelegate this authority on a case by case basis to the Heads of Departmental agencies;

(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.

(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 resource program management evaluations;
(N) Social security;
(O) Life insurance;
(P) Health benefits;
(Q) Unemployment compensation;
(R) Labor management relations;
(S) Intramanagement consultation;
(T) Security;
(U) Discipline; and
(V) Appeals.

(xi) Provide human resources services, as listed in paragraph (a)(6)(x) of this section, and organizational support services, 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;
(C) The offices and agencies reporting to the Assistant Secretary for Administration; and
(D) Any other offices or agencies of the Department as may be agreed.

(xii) Maintain, review, and update Departmental delegations of authority.

(xiii) Authorize organizational changes which occur in:
(A) Departmental organizations:
(*1*) Agency or office;
(*2*) Division (or comparable component); and
(*3*) Branch (or comparable component in Departmental centers, only).
(B) Field organizations:
(*1*) First organizational level; and
(*2*) Next lower organizational level-required only for those types of field installations where the establishment, change in location, or abolition of same, requires approval in accordance with Departmental internal direction.

(xiv) Formulate and promulgate departmental organizational objectives and policies.

(xv) Approve coverage of individual law enforcement and firefighter positions under the special retirement provisions of the Civil Service Retirement System and the Federal Employees Retirement System.

(xvi) 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 within the Department.

(xvii) 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.

(xviii) Determine and provide Departmentwide technical services and regional staff support for the safety and health programs.

(xix) Administer the computerized management information systems for the collection, processing and dissemination of data related to the Department's occupational safety and health programs.

(xx) 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.

(xxi) Administer the Department's Occupational Health and Preventive Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(xxii) Provide education and training on a Departmentwide basis for safety and health-related issues and develop resource and operational manuals.

(xxiii) Oversee and manage the Department's administrative grievance program.

(xxiv) Make final decisions in those cases where an agency head has appealed the recommended decision of a grievance examiner.

(7) *Related to procurement and property management.* (i) 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, 3 CFR, 1978 Comp., p. 243);

(H) Implementation of the Uniform Relocation Assistance and Real Property Policies Act of 1970 (42 U.S.C. 4601, *et seq.*); and

(I) Development and implementation of energy management and environmental actions related to acquisition and procurement, real and personal property management, waste prevention and resource recycling, and logistics. Maintain liaison with the Office of the Federal Environmental Executive, the Department of Energy, and other Government agencies in these matters.

(ii) 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 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; and

(H) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities.

(iii) 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 Circular 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 includes the authority to:

(A) Insure that OMB Circular 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, excluding information technology;

(C) Designate the program manager for each major systems acquisition, excluding information technology; and

(D) Designate any Departmental acquisition as a major system acquisition, excluding information technology, under OMB Circular A–109.

(iv) Pursuant to Executive Order 12931, 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, 418(b), and 433, designate the Senior Procurement Executive for the Department and delegate responsibility for the following:

(A) Prescribing and publishing Departmental acquisition policies, regulations, and procedures;

(B) Taking any necessary actions consistent with policies, regulations, and procedures with respect to purchases, contracts, leases, and other transactions;

(C) Designating contracting officers;

(D) Establishing clear lines of contracting authority;

(E) Evaluating and monitoring the performance of the Department's procurement system;

(F) Managing and enhancing career development of the Department's acquisition work force;

(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 and designating agency Procurement Executives when these standards not are met;

(M) Redelegating as appropriate, the authority in paragraph (a)(6)(iv)(A) of this section to agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(N) Redelegating the authorities in paragraphs (a)(6)(iv)(B), (C), (D), (F), and (G) of this section to agency Procurement executives or other qualified agency officials with the power of further redelegation.

(v) Represent the Department in establishing standards for acquisition transactions within the electronic data interchange environment.

(vi) Pursuant to the Alternative Agricultural Research and Commercialization Act of 1990 (7 U.S.C. 5901–5909), establish and maintain a Preference List for selected products developed with commercialization assistance under 7 U.S.C. 5905.

(vii) Designate the Departmental Task Order Ombudsman pursuant to 41 U.S.C. 253j.

(viii) 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.

(ix) Promulgate Departmental policies, standards, techniques, and procedures, and represent the Department in maintaining the security of physical facilities nationwide.

(x) Review and approve exemptions for USDA contracts and subcontracts 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, 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 Environmental Protection Agency (40 CFR 32.2155(b)).

(xi) Promulgate policy concerning excess Federal personal property in accordance with section 923 of Public Law 104–127, 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 (Public Law 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; and

(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) Issue regulations and directives to implement or supplement the Federal Acquisition Regulations (48 CFR Chapters 1 and 4).

(xiii) Issue regulations and directives to implement or supplement the Federal Property Management Regulations (41 CFR chapters 101 and 102).

(xiv) Serve as a USDA Environmental Executive responsible for coordinating waste prevention, recycling, and the

procurement, acquisition and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101.

(xv) Provide administrative support to the USDA Hazardous Materials Management Group.

(xvi) In accordance with Public Law 95–91, section 656 and pursuant to Executive Order 13123, serve as the Department's principal Energy Conservation Officer.

(xvii) Exercise full Departmentwide contracting and procurement authority.

(xviii) Conduct acquisitions with authority to take actions required by law or regulation to procure supplies, services, and equipment 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 offices or agencies of the Department as may be agreed; and

(E) For other federal, state, or local government organizations on a cost recovery basis.

(8) *Related to competition advocacy.* (i) 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; and

(F) Designating an Advocate for Competition for each procuring activity within the Department.

(9) *Related to emergency preparedness:* (i) Administer the Department Emergency Preparedness Program. This includes the:

(A) Coordination of the assignments made to the Department by Executive Order 12656, November 18, 1988, ''Assignment of Emergency Preparedness Responsibilities,'' 3 CFR, 1988 Comp. p. 255, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any other emergency.

(B) Management of the Department Emergency Coordination Center and alternate facilities;

(C) Development and promulgation of 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;

(D) Providing guidance and direction regarding issues of emergency preparedness, disaster assistance, and national security to the agencies, mission areas, and the State and County Emergency Boards;

(E) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations, including the Federal Emergency Management Agency and the National Security Council, concerning matters of assigned responsibilities; and

(F) Oversight of the Department continuity of operations, planning, and emergency relocation facilities to ensure that resources are in a constant state of readiness.

(ii) Provide guidance and direction to the Department Emergency Coordinator, who, along with the Chief Economist, is responsible for coordinating the preparation of Department estimates of agricultural losses from natural disaster.

(iii) Coordinate Department responsibilities under disaster assistance authorities, including the Chemical Stockpile Emergency Preparedness Program, the Federal Radiological Emergency Response Plan, the Federal Response Plan, the National Oil and Hazardous Substance Pollution Contingency Plan, and other Federal emergency response plans.

(10) *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.*).

(11) *Related to management.* (i) Administer a productivity program in accordance with Executive Order 12089, 3 CFR, 1979 Comp., p. 246, and other policy and procedural directives and laws to:

(ii) Develop strategies to improve processes with respect to administrative and associated financial activities of the Department and make recommendations to the Secretary.

(iii) Improve Departmental management by: performing management studies and reviews in response to agency requests for assistance; enhancing management decision making by developing and applying analytic techniques to address particular administrative operational and management problems; searching for more economical or effective approaches to the conduct of business; developing and revising systems, processes, work methods and techniques; and undertaking other efforts to improve the management effectiveness and productivity of the Department.

(iv) Coordinate Departmental Administration strategic planning and budget coordination activities on behalf of the Assistant Secretary.

(12) *Related to conflict management.* (i) Designate the senior official to serve as the Department Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, 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, Departmental program disputes, 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; and

(D) Any other officer 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; and

(vi) Monitor Agency ADR programs and report at least annually to the Secretary on the Department's ADR activities; and

(13) *Related to ethics.* The Ethics function in the U.S. Department of Agriculture is under the authority of the Assistant Secretary for Administration for purposes of general supervision only. The Assistant Secretary does not have any authority over the functions exercised by the Director, Office of Ethics, pursuant to the Director's responsibilities as Designated Agency Ethics Official under the Office of Government Ethics regulations at 5 CFR part 2638.

(14) *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) Present, in coordination with the Chairman of the USDA Hazardous Materials Policy Council, the USDA Hazardous Waste Management Appropriation budget request to the Office of Management and Budget and to Congress.

(15) *Related to defense.* Provide internal administrative management and support services for the defense program of the Department.

(16) *Related to the Board of Contract Appeals.* Provide administrative supervision of the Board of Contract Appeals. No review by the Assistant Secretary for Administration of the merits of appeals or of decisions of the Board is authorized and the Board shall be the representative of the Secretary in such matters.

(17) *Related to hazardous materials management:* (i) Serve on the USDA Hazardous Materials Policy Council.

(ii) Recommend actions and policies that enable USDA offices of assigned responsibility 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 matters of assigned responsibility.

(iv) Present, in coordination with the Chairman of the USDA Hazardous Materials Policy Council, the USDA Hazardous Waste Management Appropriation budget request to the Office of Management and Budget and to Congress.

(b) The following authorities are reserved to the Secretary of Agriculture:

(1) *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; and

(iv) Issuance of temporary certificates to occupy sensitive positions.

(2) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 65 FR 12428, Mar. 9, 2000; 65 FR 77756, Dec. 13, 2000]

EDITORIAL NOTE: The following amendment could not be incorporated into § 2.24 because of inaccurate amendatory instruction. For the convenience of the user the amendatory instruction and text is set forth as follows:

At 65 FR 77756, Dec. 13, 2000, § 2.24 was amended in part by adding paragraph (a)(14).

**§ 2.24 Assistant Secretary for Administration.**

(a) * * *

(14) *Related to budget and finance.* Exercise general financial and budget authority over all organizations assigned to the Assistant Secretary for Administration.

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## Subpart D—Delegations of Authority to Other General Officers and Agency Heads

EDITORIAL NOTE: Nomenclature changes to subpart D appear at 60 FR 66713, Dec. 26, 1995.

### § 2.25 Director, Hazardous Materials Management Group.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Director, Hazardous Materials Management Group.

(1) Serve as Executive Director of the USDA Hazardous Materials Policy Council.

(2) Represent USDA in consulting or working with the Environmental Protection Agency (EPA), the Council on Environmental Quality, the Domestic Policy Council, and others to develop

policies relating to hazardous materials management and Federal facilities compliance.

(3) Monitor, review, evaluate, and oversee hazardous materials management program activities and compliance Department-wide.

(4) Monitor, review, evaluate, and oversee USDA agency expenditures for hazardous materials management program accomplishments.

(5) Coordinate for the USDA Hazardous Materials Policy Council the presentation of the USDA Hazardous Waste Management appropriation budget request to the Office of Management and Budget (OMB) and Congress.

(6) Prepare for the USDA Hazardous Materials Policy Council the hazardous materials management program budget and accomplishment reports to Congress, OMB, and EPA and take a lead role in the preparation of replies to Congressional inquiries.

(7) Represent USDA on the National Response Team on hazardous spills 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, 3 CFR, 1987 Comp., p. 193; Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Contingency Plan, 40 CFR Part 300.

(8) 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.

(9) Provide program leadership and oversight for USDA compliance with applicable pollution control laws and executive orders, including Executive Order 13148, Greening of the Government Through Leadership in Environmental Management.

(10) 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.

(11) 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, as amended by Executive Order 13016.

(12) Receive administrative support from the Assistant Secretary for Administration.

(b) [Reserved]

[65 FR 82891, Dec. 29, 2000; 66 FR 8149, Jan. 29, 2001]

### § 2.26 Director, Office of the Executive Secretariat.

The following delegation of authority is made by the Secretary of Agriculture to the Director, Office of the Executive Secretariat: Responsible for all correspondence control and related records management functions for the Office of the Secretary.

### § 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)):

(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)(1)(iii).

### § 2.28 Chief Financial Officer.

(a) The Chief Financial Officer, under the supervision of the Secretary, is responsible for executing the duties enumerated for agency Chief Financial Officers in the Chief Financial Officers Act of 1990, Public Law No. 101–576, 31 U.S.C. 902, including:

(1) Reporting directly to the Secretary of Agriculture regarding financial management matters and the financial execution of the budget.

(2) Overseeing all financial management activities relating to the programs and operations of the Department and component agencies.

(3) Developing and maintaining 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;

(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) Making 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) Directing, managing, and providing policy guidance and oversight of Department financial management personnel, activities, and operations, including:

(i) Preparing and annually revising a Departmental plan to:

(A) Implement the 5-year financial management plan prepared by the Director of the Office of Management and Budget 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) Developing Departmental financial management budgets, including the oversight and recommendation of approval of component agency financial management budgets;

(iii) Recruiting, selecting, and training of personnel to carry out Departmental financial management functions;

(iv) Approving and managing Departmental, and approving component agency, financial management systems design or enhancement projects; and

(v) Implementing and approving Departmental, and approving component agency, asset management systems, including systems for cash management, credit management, debt collection, and property and inventory management and control.

(6) Preparing and transmitting, 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 the Office of Management and Budget, 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); and

(v) Other information the Secretary considers appropriate to inform fully the President and the Congress concerning the financial management of the Department.

(7) Monitoring the financial execution of the budget of the Department in relation to projected and actual expenditures, and preparing and submitting to the Secretary timely performance reports.

(8) Reviewing, on a biennial basis, the fees, royalties, rent, and other charges imposed by the Department for services and things of value it produces, and making recommendations on revising those charges to reflect costs incurred by the Department in providing those services and things of value.

(9) Accessing 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) Requesting such information or assistance as may be necessary for carrying out the duties and responsibilities granted the Chief Financial Officer by the Chief Financial Officers Act of 1990 (Pub. L. No. 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, entering 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.

(b) In addition to the above responsibilities, the following delegations of authority are made by the Secretary of Agriculture to the Chief Financial Officer:

(1) Designate the Department's Director of Finance and Comptroller of the Department Working Capital Fund.

(2) 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 payroll 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; and

(iv) Section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

(3) Establish policies related to the Department Working Capital Fund.

(4) 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.

(5) Exercise responsibility and authority for operating USDA's Central Accounting System and related administrative systems including:

(i) Management of the National Finance Center (NFC), which includes developing, maintaining, and operating manual and automated administrative and accounting systems for the USDA agencies related to the Central Accounting System, Departmentwide payroll and personnel information, statistics, administrative payments, billings and collections, and related reporting systems that are either requested by the agencies or required by the Department;

(ii) Management of the NFC automated data processing and telecommunications systems and coordination with the Office of the Chief Information Officer to assure that the hardware and software located at the NFC will be integrated with and compatible with all other systems;

(iii) Develop new or modified accounting systems and documentation supporting the Central Accounting System which includes working with USDA agencies to obtain General Accounting Office approval; and

(iv) Review and approve the issuance of accounting and management instructions related to the operation of the NFC.

(6) 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)(5)(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.

(7) 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 (b)(2) 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; and

(ix) Monitoring USDA implementation of section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 853a) as it relates to grants, loans, and licenses.

(8) 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) Implementation of the policies and procedures set forth in OMB Circulars No. A–76: Performance of Commercial Activities, and No. A–117: Management Improvement and the Use of Evaluation in the Executive Branch;

(ii) Increased use of operations research and management science in the areas of productivity and management; and

(iii) All activities financed through the Department Working Capital Fund.

(9) Designate the Commercial Industrial Officer for USDA.

(10) 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.

(11) Represent the Department in contacts with the Office of Management and Budget, General Services Administration, General Accounting Office, 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.

(12) Maintain the Departmental inventory of commercial activities required by OMB Circular No. A–76 and provide Departmentwide technical assistance to accomplish Circular objectives.

(13) Establish policies related to travel by USDA employees.

(14) Exercise responsibility for coordinating and overseeing the implementation of the Government Performance and Results Act of 1993, Pub. L. No. 103–62, at the Department.

(15) Exercise responsibility for design, implementation, and oversight of the Department's project known as Financial Information Systems Vision, and approval of the design and implementation of an integrated financial information and management system for the Department and all component agencies.

(16) Provide budget, accounting, fiscal and related financial management services, with authority to take action required by law or regulation to provide such services for Working Capital Funds and general appropriated and trust funds 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; and

(iv) Any other officers and agencies of the Department as may be agreed.

(17) Develop, promulgate, and coordinate Department-wide policy concerning nonprocurement debarment and suspension, as contained in 7 CFR part 3017.

[60 FR 56393, Nov. 8, 1995, as amended at 63 FR 11101, Mar. 6, 1998; 65 FR 77761, Dec. 13, 2000]

### § 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.

(iii) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agriculture sciences (7 U.S.C. 3318).

(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.

(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) *Related to remote sensing.* (i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) 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.

(iii) Designate the Executive Secretary for the Remote Sensing Coordination Committee.

(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) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agriculture sciences (7 U.S.C. 3318).

(iv) Enter into cost-reimbursable agreements relating to agricultural research (7 U.S.C. 3319a).

(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.

[60 FR 56393, Nov. 8, 1995, as amended at 63 FR 66979, Dec. 4, 1998; 64 FR 40735, July 28, 1999]

### § 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; and

(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 General Accounting Office, the Treasury Department, 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.

(b) The following authority is reserved to the Secretary of Agriculture: Final approval of the Department's program and financial plans.

### § 2.31 General Counsel.

The General Counsel, as the chief law officer of the Department, is legal adviser 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:

(a) 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; 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).

(b) Certify documents as true copies of those on file in the Department.

(c) 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.*).

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) Represent the Department in proceedings before the Interstate Commerce Commission involving freight rates on farm commodities, and in appeals from decisions of the Commission to the courts.

(i) 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.

(j) Review cases having criminal aspects and refer them to the Department of Justice.

(k) Act as liaison between the Department and the Department of Justice.

(l) Perform the following legal services:

(1) Render legal opinions on questions arising in the conduct of the Department's activities;

(2) Prepare or review regulations;

(3) Draft proposed legislation;

(4) Prepare or review contracts, mortgages, deeds, leases, and other documents; and

(5) Examine titles to land to be acquired or accepted as security for loans.

(m) Perform such other legal services as may be required in the administration of the Department's activities, including the defense program.

(n) 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).

(o) Settle claims for damage to, or loss of, privately owned property pursuant to the provisions of 31 U.S.C. 3723.

(p) Serve on the USDA Hazardous Materials Policy Council.

[60 FR 56393, Nov. 8, 1995, as amended at 61 FR 49237, Sept. 19, 1996; 65 FR 12429, Mar. 9, 2000]

### § 2.32 Alternative Agricultural Research and Commercialization Board.

The following delegation of authority is made by the Secretary of Agriculture to the Alternative Agricultural Research and Commercialization Board: Enter into contracts, grants, or cooperative agreements to further research programs in the agricultural sciences (7 U.S.C. 3318).

### § 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) Provide for the personal security of 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.

### § 2.34 Director, National Appeals Division.

The Director, National Appeals Division, under the general supervision of the Secretary, has specific duties, responsibilities, and authorities pursuant to subtitle H of the Department of Agriculture Reorganization Act of 1994, Pub. L. No. 103–354, title II (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.

### § 2.35 Judicial Officer.

The following delegations of authority are made by the Secretary of Agriculture to the Judicial Officer: Pursuant to the provisions of the Act of April 4, 1940 (7 U.S.C. 450c–450g), and Reorganization Plan No. 2 of 1953 (5 U.S.C. App.), the Judicial Officer is hereby authorized to act as final deciding officer in adjudication proceedings subject to 5 U.S.C. 556 and 557; in other adjudication proceedings which are or may be made 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; in adjudication proceedings under 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; in rate proceedings under the Packers and Stockyards Act; in adjudication proceedings under 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; in adjudication proceedings subject to the ''Rules of Practice Governing the 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; and in reparation proceedings under statutes administered by the Department. As used herein the term ''Judicial Officer'' shall mean any person or persons so designated by the Secretary of Agriculture. The provisions of this delegation shall not be construed to limit the authority of the Judicial Officer to perform any functions, in addition to those defined in the said Act of April 4, 1940, which from time to time may be assigned by the Secretary to him or her.

### § 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 the authority to determine policy for all USDA communication activities and agency information activities in order to provide leadership and centralized operational direction for USDA and agency information activities so

that all material 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) Oversee general officers and agency heads in the development and implementation of information policies issued pursuant to the provisions of the ''Freedom of Information Act'' (5 U.S.C. 552) and the ''Privacy Act'' (5 U.S.C. 552a), and provide consultation regarding those policies.

(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.

(b) [Reserved]

### § 2.37 Chief Information Officer.

(a) *Delegation.* The Chief Information Officer, under the supervision of the Secretary, is responsible for executing the duties enumerated in Public Law 104–106 for agency Chief Information Officers, as follows:

(1) Reporting directly to the Secretary of Agriculture regarding information technology matters.

(2) Overseeing 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) Providing advice and other assistance to the Secretary and other senior management personnel to ensure that information technology is acquired and managed for the Department consistent with chapter 35 of title 44, United States Code (Coordination of Federal Information Policy).

(4) Developing, implementing, and maintaining a sound and integrated Departmentwide information technology architecture.

(5) Promoting 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) Approving the acquisition or procurement of information technology resources by, or on behalf of, any Department agency or office.

(7) Providing guidance and assistance to Department procurement personnel with respect to information technology acquisition strategy and policy.

(8) The Chief Information Officer is designated 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 Circular A–109, Major Systems Acquisitions, for information technology. This includes the authority to:

(i) Ensure that OMB Circular 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; and

(iv) Designate any Departmental information technology acquisition as a major system acquisition under OMB Circular A–109.

(9) On an annual basis:

(i) Assessing 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) Developing strategies and specific plans for hiring, training, and professional development at the executive and management level to meet personnel information technology personnel requirements.

(iii) Reporting to the Secretary on progress made in improving information resources management capability.

(10) The Chief Information Officer is designated 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) Ensuring that the information policies, principles, standards, guidelines, rules and regulations prescribed by the Office of Management and Budget are appropriately implemented within the Department;

(ii) Reviewing 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) Developing and implementing procedures for assessing the burden to the public and costs to the Department of information requirements contained in proposed legislation affecting Department programs; and

(iv) Assisting the Office of Management and Budget in the performance of its functions assigned under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), including review of Department information activities.

(11) The Chief Information Officer is responsible for:

(i) Providing 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) Providing 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; and security. Monitoring 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) Managing the Department Computer Centers, with the exception of the National Finance Center, including setting rates to recover the cost of goods and services within approved policy and funding levels;

(iv) Reviewing and evaluating 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;

(v) Designing, developing, implementing, and revising systems, processes, work methods, and techniques to improve the management and operational effectiveness of information resources;

(vi) Administering the Departmental records, forms, reports and Directives Management Programs;

(vii) Managing all aspects of the USDA Telecommunications Program including planning, development, acquisition, and use of equipment and systems for voice and data communications, excluding the actual procurement of data transmission equipment, software, maintenance, and related supplies;

(viii) Managing Departmental telecommunications contracts;

(ix) Providing technical advice throughout the Department;

(x) Implementing a program for applying information resources management technology to improve productivity in the Department;

(xi) Planning, developing, installing, and operating computer-based systems for message exchange, scheduling, computer conferencing, and other applications of office automation technology which can be commonly used by multiple Department agencies and offices;

(xii) Representing the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, the National Institute for Science and Technology, and other organizations or agencies on matters related to delegated responsibilities; and

(xiii) Review, clear, and coordinate all statistical forms, survey plans, and reporting and record keeping requirements originating in the Department and requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

(12) Implementing policies established pursuant to paragraphs (a)(1) through (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 agency Chief Information Officers, information resources managers, and project managers to be used in the performance appraisal process;

(iii) Approving the selection of agency Chief Information Officers and agency major information technology system project managers in accordance with criteria to be promulgated by the Chief Information Officer;

(iv) Provide recommendations to Agency 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 agencies to validate and verify major information technology systems through the use of an existing contract for such purpose designated by the Chief Information Officer; and

(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.

(13) Provide management and operational support to the Secretary of Agriculture; the general staff offices; the offices and agencies reporting to the Assistant Secretary for Administration and for any other offices or agencies of the Department as may be agreed. As used in this section, such support services shall include:

(i) Information technology services, as listed in paragraph (a)(11)(v) of this section with authority to take actions required by law or regulation to perform such services; and

(ii) Forms management, files management, and directives management with authority to take actions required by law or regulation to perform such services.

(b) [Reserved]

[65 FR 77761, Dec. 13, 2000]

## Subpart E [Reserved]

## Subpart F—Delegations of Authority by the Under Secretary for Farm and Foreign Agricultural Services

EDITORIAL NOTE: Nomenclature changes to subpart F appear at 60 FR 66713, Dec. 26, 1995.

### § 2.40 Deputy Under Secretary for Farm and Foreign Agricultural Services.

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 and Foreign Agricultural 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 Farm and Foreign Agricultural Services: 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.

### § 2.42 Administrator, Farm Service Agency.

(a) *Delegations.* Pursuant to § 2.16(a)(1) through (a)(4) and (a)(6) through (a)(8), subject to the reservations in § 2.16(b)(1), the following delegations of authority are made by the Under Secretary for Farm and Foreign Agricultural Services 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) 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) Providing for liaison with EROS Data Center to support USDA programs and research with satellite imagery reproductions; and

(x) Maintaining library and files of USDA aerial film and retrieving and supplying reproductions on request.

(4) Administer the Agricultural Conservation Program under title X of the Agricultural Act of 1970, as amended (16 U.S.C. 1501 *et seq.*), and under the Soil Conservation and Domestic Allotment Act, as amended (16 U.S.C. 590g *et seq.*).

(5) 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 production; food processing, storage, and distribution of farm equipment and fertilizers. rehabilitation and use of feed, agricultural and related agribusiness facilities; and farm credit and financial assistance.

(6) Administer the Emergency Conservation Program under the Agricultural Credit Act of 1978, as amended (16 U.S.C. 2201 *et seq.*).

(7) Conduct fiscal, accounting and claims functions relating to CCC programs for which the Foreign Agricultural Service has been delegated authority under § 2.43 and, in conjunction with other agencies of the U.S. Government, develop and formulate agreements to reschedule amounts due from foreign countries.

(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. 450j *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 Farm and Foreign Agricultural Services 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) 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 payment and related services with respect to export programs and barter operations.

(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) Administer the U. S. Warehouse Act, as amended (7 U.S.C. 241–273), and perform compliance examinations for Farm Service Agency programs.

(19) Administer the provisions of the Soil Conservation and Domestic Allotment Act relating to assignment of payments (16 U.S.C. 590h(g)).

(20) Formulate and carry out the Conservation Reserve Program under the Food Security Act of 1985, as amended (16 U.S.C. 1231 *et seq.*).

(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) Administer the Integrated Farm Management Program under section 1451 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5822).

(25) Administer the provisions of section 326 of the Food and Agricultural Act of 1962, as amended (7 U.S.C. 1339c), as they relate to any Farm Service Agency administered program.

(26) Conduct an Options Pilot Program pursuant to sections 1151–1156 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 1421 note).

(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) The authority in section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprise loans;

(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;

(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 rural industrialization assistance;

(viii) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises;

(ix) Section 342 (7 U.S.C. 1013a);

(x) Section 364 (7 U.S.C. 2006f), section 365 (7 U.S.C. 2008), section 366 (7 U.S.C. 2008a), section 367 (7 U.S.C. 2008b), and section 368 (7 U.S.C. 2008c), regarding assets and programs related to rural development; and

(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.

(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) [Reserved]

(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) Administer the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Farm Service Agency.

(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 and tribal corporations (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) [Reserved]

(42) Administer the provisions concerning the end-use certificate system authorized pursuant to section 301(f) of the North American Free Trade Implementation Act (19 U.S.C. 3391(f)).

(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) Formulate policies and administer programs authorized by Title I of the Federal Agriculture Improvement and Reform Act of 1996.

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Farm and Foreign Agricultural Services:

(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]

### §2.43 Administrator, Foreign Agricultural Service.

(a) *Delegations.* Pursuant to §2.16 (a)(3) and (a)(6), subject to reservations in §2.16(b)(2), the following delegations of authority are made by the Under Secretary for Farm and Foreign Agricultural Services 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 General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO).

(2) Conduct functions of the Department relating to GATT, 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.*), the

provisions of subtitle B of title III of the North American Free Trade Agreement Implementation Act (except the provisions concerning the end-use certificate system authorized pursuant to section 321(f) of that Act (19 U.S.C. 3391(f)) delegated to the Administrator, Farm Service Agency), 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 Assistant Secretary for Marketing and Regulatory Programs.

(5) Conduct Department activities to carry out the provisions of the International Coffee Agreement Act of 1968 (19 U.S.C. 1356f).

(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 Assistant Secretary for Marketing and Regulatory Programs.

(7) Represent the Department on the Interdepartmental Committee for Export Control and conduct Departmental activities to carry out the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 *et seq.*), except as reserved to the Secretary under § 2.16(b)(2).

(8) Exercise the Department's responsibilities in connection with international negotiations of the International Wheat Agreement and in the administration of such agreement.

(9) Provide foreign agricultural intelligence and other foreign agricultural services in support of programs administered by 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.*).

(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 Public Law 480 (7 U.S.C. 1691, 1701 *et seq.*).

(17) Coordinate within the Department activities arising under Public Law 480 (except as delegated to the Under Secretary for Research, Education, and Economics in §2.21(a)(8)), and to represent the Department in its relationships in such matters with the Department of State, any interagency committee on Public Law 480, and other departments, agencies and committees of the Government.

(18) Formulate policies and implement programs to promote the export of dairy products, as authorized under section 153 of the Food Security Act of 1985, as amended (15 U.S.C. 713a–14), and of sunflowerseed oil and cottonseed oil, as authorized under section 301(b)(2)(A) of the Disaster Assistance Act of 1988, as amended (7 U.S.C. 1464 note).

(19) Formulate policies and implement a program for the export sales of dairy products, as authorized by section 1163 of the Food Security Act of 1985 (7 U.S.C. 1731 note).

(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) Carry out debt-for-health-and-protection swaps, as authorized by section 1517 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1706).

(22) Allocate among the various export programs agricultural commodities determined under §2.16(a)(3)(xix) to be available for export.

(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. 2901–2918); 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. 4501–4513); the Honey Research, Promotion, and Consumer Information Act of 1984, as amended (7 U.S.C. 4601–4612); 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 agencies with respect to joint regulations and authority to approve 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 Pub. L. 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 institutions (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).

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 61 FR 25776, May 23, 1996; 61 FR 37552, July 18, 1996; 62 FR 40254, July 28, 1997]

### § 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 and Foreign Agricultural Services 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.

(b) [Reserved]

[62 FR 19901, Apr. 24, 1997]

## Subpart G—Delegations of Authority by the Under Secretary for Rural Development

EDITORIAL NOTE: Nomenclature changes to subpart G appear at 60 FR 66713, Dec. 26, 1995.

### § 2.45 Deputy Under Secretary for Rural Economic and Community Development.

Pursuant to § 2.17(a), subject to reservations in § 2.17(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 Rural Economic and Community 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 Economic and Community Development.

### § 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 Economic and Community Development, the following delegations of authority are made by the Under Secretary for Rural Economic and Community Development to the Administrator, Rural Utilities Service:

(1) 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 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) 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;

(vi) Section 306 (7 U.S.C. 1926) relating to hazardous weather early warning systems;

(vii) Section 310A (7 U.S.C. 1931), relating to watershed and resource conservation and development;

(viii) Section 310B(b) (7 U.S.C. 1932(b));

(ix) Section 310B(i)), relating to loans for business telecommunications partnerships;

(x) Section 342 (7 U.S.C. 1013a); and

(xi) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Utilities Service activities;

(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) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to the claims of the Rural Utilities Service.

(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) 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 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).

(b) *Reservations.* The following authority is reserved to the Under Secretary for Rural Economic and Community 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]

### § 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 Economic and Community Development, the following delegations of authority are made by the Under Secretary for Rural Economic and Community 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) Section 304(b) (7 U.S.C. 1924(b)), relating to small business enterprises;

(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 rural industrialization assistance, rural business enterprise grants and rural technology and cooperative development grants;

(v) Section 312(b) (7 U.S.C. 1942(b)), relating to small business enterprises; and

(vi) Administrative Provisions of subtitle D of the Consolidated Farm and Rural Development Act relating to Rural Business-Cooperative Service activities;

(3) Administer Alcohol Fuels Credit Guarantee Program Account (Pub L. No. 102–341, 106 Stat. 895).

(4) Administer section 1323 of the Food Security Act of 1985 (7 U.S.C. 1932 note).

(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) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to the claims of the Rural Business-Cooperative Service.

(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) 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.

(18) 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.*).

(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 Economic and Community 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) Exercise administrative oversight and final decision-making authority over the Alternative Agricultural Research and Commercialization Corporation (AARCC) and the AARCC Revolving Fund, established pursuant to the Alternative Agricultural Research and Commercialization Act of 1990, (7 U.S.C. 5901 *et seq.*).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Economic and Community 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]

### § 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 directions by the Under Secretary for Rural Economic and Community Development, the following delegations are made by the Under Secretary for Rural Economic and Community 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;

(2) Administer title V of the Housing Act of 1949 (42 U.S.C. 1471 *et seq.*), except those functions pertaining to research.

(3) Make grants, administer a grant program, and determine the types of assistance to be provided to aid low-income migrant and seasonal farmworkers (42 U.S.C. 5177a).

(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) Collect, service, and liquidate loans made, insured or guaranteed by the Rural Housing Service or its predecessor agencies.

(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) Administer the Federal Claims Collection Act of 1966 (31 U.S.C. 3711 *et seq.*), and joint regulations issued pursuant thereto by the Attorney General and the Comptroller General (4 CFR chapter II), with respect to claims of the Rural Housing Service.

(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) 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.

(10) 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.*).

(b) *Reservation.* The following authority is reserved to the Under Secretary for Rural Economic and Community 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]

## 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 Farm and Foreign Agricultural Services.

### § 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);

(ii) Federal Meat Inspection Act, as amended, and related legislation, excluding sections 12–14, and also 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. 601–611, 615–624, 641–645, 661, 671–680, 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).

(b) [Reserved]

## 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 Stamp Act of 1977, as amended (7 U.S.C. 2011–2032);

(ii) National School Lunch Act of 1946, as amended (42 U.S.C. 1751–1769h), 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); and

(v) Section 301 of the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. No. 103–448).

(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) Section 402 of the Mutual Security Act of 1954, as amended (22 U.S.C. 1922);

(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 (7 U.S.C. 612c note);

(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 food coupons 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 food coupons to eligible recipients, authority to determine the requirements for such agricultural commodities and products thereof and food coupons 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 food stamp assistance.

(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.

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 63 FR 35787, July 1, 1998]

## Subpart J—Delegations of Authority by the Under Secretary for Natural Resources and Environment

EDITORIAL NOTE: Nomenclature changes to subpart J 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), (a)(2), (a)(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. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, except that the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended, and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) is limited to acquisitions of less than $250,000 in value.

(3) 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.

(4) 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 670o.

(5) For the purposes of the National Forests System Drug Control Act of 1986 (16 U.S.C. 559–f), 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. 481) 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.

(6) 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.

(7) 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)–(h), 205(a)–(d), 211, 317, 401(a)).

(8) 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.

(9) 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).

(10) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(11) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(12) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 582a–8, 1643–1645, 1649).

(13) 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).

(14) 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).

(15) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(16) 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).

(17) 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).

(18) 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).

(19) Administer rural fire protection and control program (16 U.S.C. 2106).

(20) 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).

(21) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(22) 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. 1010–1012).

(23) 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)(23)(i)(A), (B), and (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 (33 U.S.C. 701b-1);

(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)).

(24) 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).

(25) 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; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(26) 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.

(27) 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.

(28) Represent USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(29) [Reserved]

(30) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 note) 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. 2716–2717), 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. 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 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. 1271–1278), 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. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), 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) Jointly administer the Forestry Incentives Program with the Natural Resources Conservation Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(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, Pub. L. 105–83, relating to the acquisition so the New World Mines and other priority land acquisitions, land exchanges, and other activities.

(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).

(6) Approval of acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) of $250,000 or more in value for national forest purposes.

(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]

### § 2.61 Chief, Natural Resources Conservation Service.

(a) *Delegations.* Pursuant to § 2.20 (a)(1), (a)(3), (a)(5), (a)(6), (a)(7)(ii) and (a)(8), subject to reservations in § 2.20(b)(1), the following delegations of authority are made by the Under Secretary for Natural Resources and Environment 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 Administrator, Cooperative State Research, Education, and Extension Service in § 2.66(a)(76).

(3) Administer the basic program of soil and water conservation under Pub. L. No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590a–f, 1–1, 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 nonmetroplitan 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 33 U.S.C. 702b–1, 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. 1001–1009, 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 under sections 401–405 of the Agricultural Credit Act of 1978 (the Act), 16 U.S.C. 2201 *et seq.*, except for the provisions of sections 401 and 402 of the Act, 16 U.S.C. 2201–2202, as administered by the Farm Service Agency.

(5) Administer the Great Plains Conservation Program and the Critical Lands Resources Conservation Program under 16 U.S.C. 590p(b).

(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 under title XII of the Food Security Act of 1985 (Act), as amended (16 U.S.C. 3801 *et seq.*), including responsibilities for:

(i) the conservation of highly erodible lands and wetlands pursuant to sections 1211–1223 of the Act (16 U.S.C. 3811–3823);

(ii) technical assistance related to soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Act, as amended (16 U.S.C. 3831–3844);

(iii) the Environmental Easement Program authorized by sections 1239–1239d of the Act (16 U.S.C. 3839–3839d);

(iv) the Agricultural Water Quality Improvement Program authorized by sections 1238–1238f of the Act, as amended (16 U.S.C. 3838–3838f); and

(v) the Wetland Reserve Program and the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Act, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Pub. L. No. 103–75.

(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) Jointly administer the Forestry Incentives Program with the Forest Service, in consultation with State Foresters, under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(17) Administer the Water Bank Program under the Water Bank Act (16 U.S.C. 1301 *et seq.*).

(18) Administer water quality activities under the Agriculture and Water Policy Coordination Act, subtitle G, title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended (7 U.S.C. 5501–5505).

(19) Administer the Rural Environmental Conservation Program authorized by sections 1001–1010 of the Agriculture Act of 1970, as amended (16 U.S.C. 1501–1510).

(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 (42 U.S.C. 9633(b)(1)), related to mixed funding agreements.

(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) Provide outreach and technical assistance to socially disadvantaged farmers and ranchers and make grants and enter into contracts and other agreements to provide such outreach and technical assistance under 7 U.S.C. 2279.

(b) *Reservations.* The following authorities are reserved to the Under Secretary for Natural Resources and Environment:

(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.

[60 FR 56393, Nov. 8, 1995, as amended at 62 FR 1031, Jan. 8, 1997]

## 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) 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).

(2) Conduct research related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants (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) [Reserved]

(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) Make facilities grants and conduct research under the IR–4 program (7 U.S.C. 450i(d) and (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. 1441 note).

(16) Conduct research to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(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) Conduct research on potential uses for compost from agricultural wastes, including evaluating the application of compost on soil, plants, and crops (7 U.S.C. 3130).

(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) Conduct and coordinate Departmental research programs on water quality and nutrient management (7 U.S.C. 5504).

(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) Administer grants and conduct research programs to measure microbiological and chemical agents associated with the production, preparation, processing, handling, and storage of agricultural products (7 U.S.C. 5871–5874).

(35) Conduct research on integrated pest management, including research to benefit floriculture (7 U.S.C. 5881).

(36) Conduct research in the control and eradication of exotic pests (7 U.S.C. 5883).

(37) Conduct research to study the biology and behavior of chinch bugs (7 U.S.C. 5884).

(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)–(45) [Reserved]

(46) Conduct research on diseases affecting honeybees (7 U.S.C. 5934).

(47) Coordinate USDA policy and programs relating to global climate change (7 U.S.C. 6701–6703).

(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) Conduct research on the control and eradication of cattle grubs (screwworms) (21 U.S.C. 114e).

(54) [Reserved]

(55) Conduct research on losses of livestock in interstate commerce due to injury or disease (45 U.S.C. 71 note).

(56) Control within USDA the acquisition, use, and disposal of material and equipment that may be a source of ionizing radiation hazard.

(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(e).

(59) Provide management support services for the Economic Research Service, the Cooperative State Research, Education and Extension Service, 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, procurement, property management, communications, paperwork management, ADP support, 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) Carry out research activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(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 and a Human Nutrition Intervention and Health Promotion 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. 3171–3175, 3177).

(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) Provide a repository of agriculture and ground water quality planning information (7 U.S.C. 5505).

(83) Disseminate information on materials and methods of pest and disease control available to agricultural producers through the pest and disease control database (7 U.S.C. 5882).

(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 a grant to a consortium of land-grant colleges and universities to enhance the ability of the consortium to carry out a multi-State research project aimed at understanding and combating diseases of wheat and barley caused by Fusarium graminearum 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)).

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 62 FR 65594, Dec. 15, 1997; 65 FR 5416, Feb. 4, 2000]

### § 2.66 Administrator, Cooperative State Research, Education, and Extension Service.

(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 Extension to the Administrator, Cooperative State Research, Education, and Extension Service.

(1) Administer research and technology development grants related to the economic feasibility of the manufacture and commercialization of natural rubber from hydrocarbon-containing plants (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 minor use pesticide registration or reregistration and to determine tolerances for minor use chemical residues in or on agricultural commodities (7 U.S.C. 450i(e)).

(7) Administer a program of competitive grants to State agricultural experiment stations, colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals for research to further USDA programs (7 U.S.C. 450i(b)).

(8) Administer a program of special grants to carry out research, extension, or education activities to facilitate or expand promising breakthroughs in areas of food and agricultural sciences and to facilitate or expand ongoing State-Federal food and agricultural research, extension, or education programs; and administer a program of facilities grants to renovate and refurbish research spaces (7 U.S.C. 450i (c) and (d)).

(9) Conduct a research and development program to formulate new uses for farm and forest products (7 U.S.C. 1632(b)).

(10) Administer, in cooperation with the States, a cooperative rural development and small farm research and extension program under the Rural Development Act of 1972, as amended. Promote coordinated and integrated rural community initiatives that advance and empower capacity building (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) Formulate and administer programs to strengthen secondary education and two-year post secondary teaching programs; promote linkages between secondary, two-year post-secondary, and higher education programs in the food and agricultural sciences; administer grants to secondary education and two-year post secondary teaching programs, and to colleges and universities; and maintain a national food and agricultural education information system (7 U.S.C. 3152).

(14) Administer the National Food and Agricultural Sciences Teaching Awards program for recognition of educators in the food and agricultural sciences (7 U.S.C. 3152).

(15) Administer grants to colleges, universities, and Federal laboratories for research on the production and marketing of alcohol and industrial hydrocarbons from agricultural commodities and forest products (7 U.S.C. 3154).

(16) Make grants, competitive grants, and special research grants to, and enter into agreements and other contracting instruments with policy research centers (7 U.S.C. 3155).

(17) Conduct a program of grants to States to support continuing animal health and disease research programs 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 colleges, including Tuskegee University, and administer a grant program for five National Research and Training Centennial Centers (7 U.S.C. 3221, 3222, 3222c, 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, and 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 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 (7 U.S.C. 3291, 3292b).

(21) [Reserved]

(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) [Reserved]

(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) In cooperation with the Agricultural Research Service, administer competitive research grants regarding the production, preparation, processing, handling, and storage of agriculture products (7 U.S.C. 5871–5874).

(35) Administer a grants and contracts program on integrated pest management including research to benefit floriculture and administer an extension program developed for integrated pest management (7 U.S.C. 5881).

(36) Administer a grants program to States on the control of infestations and eradication of exotic pests (7 U.S.C. 5883).

(37) Administer a grant program for risk assessment research to address concerns about the environmental effects of biotechnology (7 U.S.C. 5921).

(38) [Reserved]

(39) Conduct a research initiative known as the Agricultural Genome Initiative; and make grants or enter into cooperative agreements on a competitive basis with individuals and organizations to carry out the Initiative (7 U.S.C. 5924).

(40)–(41) [Reserved]

(42) Administer a competitive high priority research and extension grants program in specified subject areas (7 U.S.C. 5925).

(43) Administer a program of competitive grants to support research and extension activities in Nutrient Management Research and Extension (7 U.S.C. 5925a).

(44) Administer competitive grants to support research and extension activities regarding organically grown and processed agricultural commodities (7 U.S.C. 5925b).

(45) [Reserved]

(46) Establish and administer a program for the development and utilization of an agricultural communications network (7 U.S.C. 5926).

(47)–(48) [Reserved]

(49) Support research on the effects of global climate change in agriculture and forestry, including mitigation of the effects on crops of economic significance, and on the effects of the emissions of certain gases on global climate change (7 U.S.C. 6702).

(50) Administer the Small Business Innovation Development Act of 1982 for USDA (15 U.S.C. 638(e)-(k)).

(51) Administer a competitive forestry, natural resources, and environmental grant program (16 U.S.C. 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) Provide management support services to agencies reporting to the Under Secretary for Research, Education, and Economics in the administration of discretionary grants.

(57) Represent the Department on the Federal Interagency Council on Education.

(58) Conduct and coordinate Departmental research programs on water quality and nutrient management (7 U.S.C. 5504).

(59) Establish and administer education programs relating to water quality (7 U.S.C. 5503).

(60) Administer education programs for the users and dealers of agrichemicals (7 U.S.C. 5506).

(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 related to agriculture, uses of solar energy with respect to agriculture, and home economics in the District of Columbia (D.C. Code 31–1409).

(63) Conduct educational and demonstration work related to the distribution and marketing of a agricultural products under the Agricultural

Marketing Act of 1946, as amended (7 U.S.C. 1621–1627).

(64) Administer a competitive grant program for non-profit institutions to establish and operate centers for rural technology or cooperative development (7 U.S.C. 1932(f)).

(65) Administer a nutrition education program for Food Stamp recipients and for the distribution of commodities on reservations (7 U.S.C. 2020(f)).

(66) Administer a grants program for rural health and safety education and promote coordinated and integrated rural community initiatives that advance and empower capacity building (7 U.S.C. 2662).

(67) Administer a rural economic and business development program to employ specialists to assist individuals in business activities (7 U.S.C. 2662).

(68) Administer a national program to provide rural citizens with training to increase their leadership abilities (7 U.S.C. 2662).

(69) Administer a competitive grant program for financially stressed farmers, dislocated farmers, and rural families (7 U.S.C. 2662(f)).

(70) Administer a grant program to improve the rural health infrastructure (7 U.S.C. 2662 note).

(71) Administer a competitive grant program to establish demonstration areas for rural economic development (7 U.S.C. 2662a).

(72) Administer a cooperative extension program under the Farmer-to-Consumer Direct Marketing Act of 1976 (7 U.S.C. 3004).

(73) Identify and compile information on methods of composting agricultural wastes and its potential uses and develop educational programs on composting (7 U.S.C. 3130).

(74) Administer a National Food and Human Nutrition Research and Extension Program (7 U.S.C. 3171–3173, 3175)

(75) Make grants, under such terms and conditions as the Administrator determines, to eligible institutions for the purpose of assisting such institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings, to provide adequate facilities to conduct extension work, and issue rules and regulations as necessary to carry out this authority (7 U.S.C. 3224).

(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) Establish and administer education programs relating to water quality (7 U.S.C. 5503).

(78) Design, implement, and develop handbooks, technical guides, and other educational materials emphasizing sustainable agriculture production systems and practices (7 U.S.C. 5831).

(79) Administer a competitive grant program to organizations to carry out a training program on sustainable agriculture (7 U.S.C. 5832).

(80) Establish a national pesticide resistance monitoring program (7 U.S.C. 5882).

(81) Conduct educational programs on the biology and behavior of chinch bugs (7 U.S.C. 5884).

(82) Administer education programs on Indian reservations and tribal jurisdictions (7 U.S.C. 5930).

(83) Administer competitive grants to States to establish a pilot project to coordinate food and nutrition education programs (7 U.S.C. 2027(a) and 5932).

(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) Conduct forestry and natural resource education programs, including guidelines for technology transfer (16 U.S.C. 1674).

(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) Provide educational assistance to farmers regarding the Agricultural Water Quality Protection Program (16 U.S.C. 3838b).

(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) Provide leadership and direct assistance in planning, conducting, and evaluating extension programs under a memorandum of agreement with the Bureau of Indian Affairs dated May 1956.

(95) Exercise the responsibilities of the Secretary under regulations dealing with Equal Employment Opportunity (part 18 of this title).

(96) Carry out demonstration and educational activities authorized in section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(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 pursuant to the provisions of section 25 of the Food Stamp Act of 1977 (7 U.S.C. 2034).

(103) Receive, accept, and administer funds for the purpose of awarding research, extension, and education competitive grants pursuant to the Fund for Rural America (7 U.S.C. 2204f).

(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) Conduct a pilot research program to link major cancer and heart and other circulatory disease research efforts with agricultural research efforts to identify compounds in vegetables and fruits that prevent these diseases (7 U.S.C. 3174a).

(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 (or grants without regard to any requirement for competition) 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) [Reserved]

(109) Award a grant, on a competitive basis, to establish a red meat safety research center at an eligible research facility (7 U.S.C. 5929).

(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) 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).

(112) Conduct a program of grants to States to expand, renovate, or improve schools of veterinary medicine (7 U.S.C. 3151).

(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) Coordinate USDA policy and conduct programs 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).

(116) Conduct programs of research, technology development, and education related to global climate change (7 U.S.C. 6701–6710).

(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) Conduct a program of nutrition education research.

(119) Ensure that agricultural research, extension, or education activities administered, on a competitive basis, by the Cooperative State Research, Education, and Extension Service 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 (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 merit review of each agricultural extension or education grant administered, on a competitive basis, by the Cooperative State Research, Education, and Extension Service (7 U.S.C. 7613(a)).

(122) 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)).

(123) Require a procedure to be established by each 1862, 1890, and 1994 Institution, 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) Administer an Initiative for Future Agriculture and Food Systems (except with respect to funds provided by the Secretary to the Alternative Agricultural Research and Commercialization Corporation) (7 U.S.C. 7621).

(125) Administer a program of competitive grants to eligible partnerships to coordinate and manage research and extension activities to enhance the quality of high-value agricultural products (7 U.S.C. 7622).

(126) Administer a program of competitive grants to eligible entities to conduct research, education, or information dissemination projects for the development and advancement of precision agriculture (7 U.S.C. 7623).

(127) Administer the Thomas Jefferson Initiative for Crop Diversification program of competitive grants and contracts for the purpose of conducting research and development, in cooperation with other public and private entities, on the production and marketing of new and nontraditional crops needed to strengthen and diversify the agricultural production base of the United States (7 U.S.C. 7625).

(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).

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 62 FR 65595, Dec. 15, 1997; 65 FR 5417, Feb. 4, 2000]

### § 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) Perform economic and other social science research under section 104(b)(1) and (3) of the Agricultural Trade Development and Assistance Act of 1954, as amended, with funds administered by the Foreign Agricultural Service (7 U.S.C. 1704(b)(1), (3)).

(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) Prepare for transmittal by the Secretary to the President and both Houses of Congress, an analytical report under section 5 of the Agricultural Foreign Investment Disclosure Act of 1978 (7 U.S.C. 3504) concerning the effect of holdings, acquisitions, and transfers of U.S. agricultural land by foreign persons.

(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)–(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)).

(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]

### § 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, Pub. L. 105–113 (7 U.S.C. 2204g).

(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]

## 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.

(3) Enter into contracts, grants, or cooperative agreements to further research programs in the food and agriculture sciences (7 U.S.C. 3318).

(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]

### § 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.

(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) *Related to remote sensing.* (i) Provide technical assistance, coordination, and guidance to Department agencies in planning, developing, and carrying out satellite remote sensing activities to assure full consideration and evaluation of advanced technology.

(ii) 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.

(iii) Designate the Executive Secretary for the Remote Sensing Coordination Committee.

(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.

### § 2.73 Director, Office of Energy Policy and New Uses.

(a) Delegations. Pursuant to § 2.29(a)(11), the following delegations of authority are made by the Chief Economist to the Director, Office of Energy Policy and New Uses:

(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.

(b) [Reserved]

[64 FR 40736, July 28, 1999]

## Subpart M—Delegations of Authority by the Chief Financial Officer

### § 2.75 Deputy Chief Financial Officer.

Pursuant to § 2.28, the following delegation of authority is made by the Chief Financial Officer to the 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.

## Subpart N—Delegations of Authority by the Assistant Secretary for Marketing and Regulatory Programs

### § 2.77 Deputy Assistant 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 Assistant Secretary, the following delegation of authority is made by the Asistant Secretary for Marketing and Regulatory Programs to the Deputy Assistant Secretary for Marketing and Regulatory Programs, 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 Marketing and Regulatory Programs.

### § 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 Assistant 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. 1621–1627), 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. 1621–1627).

(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) In carrying out the procurement functions in paragraphs (a)(8)(xxxv) and (xxxvi) of this section, the Administrator, Agricultural Marketing Service shall, to the extent practicable, use the commodity procurement, handling, payment and related services of the Farm Service Agency;

(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).

(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) Collect, summarize, and publish data on the production, distribution, and stocks of sugar.

(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.*).

(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]

### § 2.80 Administrator, Animal and Plant Health Inspection Service.

(a) *Delegations.* Pursuant to § 2.22 (a)(2), (a)(6) through (a)(9), subject to reservations in § 2.22(b)(2), the following delegations of authority are made by the Assistant 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) Section 102, Organic Act of 1944, as amended, and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e), relating to control and eradication of plant pests and diseases, including administering survey and regulatory activities for the gypsy moth program and, with the Chief of the Forest Service, jointly administering gypsy moth eradication activities by assuming primary responsibility for eradication of gypsy moth infestations of 640 acres or less on State and private lands that are not contiguous to infested Federal lands.

(3) The Mexican Border Act, as amended (7 U.S.C. 149).

(4) The Golden Nematode Act (7 U.S.C. 150–150g).

(5) The Federal Plant Pest Act, as amended (7 U.S.C. 150aa–150jj).

(6) The Plant Quarantine Act, as amended (7 U.S.C. 151–164a, 167).

(7) The Terminal Inspection Act, as amended (7 U.S.C. 166).

(8) The Honeybee Act, as amended (7 U.S.C. 281–286).

(9) The Halogeton Glomeratus Control Act (7 U.S.C. 1651–1656).

(10) Tariff Act of June 17, 1930, as amended, section 306 (19 U.S.C. 1306).

(11) Act of August 30, 1890, as amended (21 U.S.C. 102–105).

(12) Act of May 29, 1884, as amended, Act of February 2, 1903, as amended, and Act of March 3, 1905, as amended, and supplemental legislation (21 U.S.C. 111–114a, 114a–1, 115–130).

(13) Act of February 28, 1947, as amended (21 U.S.C. 114b–114c, 114d–1).

(14) Act of June 16, 1948 (21 U.S.C. 114e–114f).

(15) Act of September 6, 1961 (21 U.S.C. 114g–114h).

(16) Act of July 2, 1962 (21 U.S.C. 134–134h).

(17) Act of May 6, 1970 (21 U.S.C. 135–135b).

(18) Sections 12–14 of the Federal Meat Inspection Act, as amended, and so much of section 18 of such Act as pertains to the issuance of certificates of condition of live animals intended and offered for export (21 U.S.C. 612–614, 618).

(19) Improvement of poultry, poultry products, and hatcheries (7 U.S.C. 429).

(20) The responsibilities of the United States under the International Plant Protection Convention.

(21) (Laboratory) Animal Welfare Act, as amended (7 U.S.C. 2131–2159).

(22) Horse Protection Act (15 U.S.C. 1821–1831).

(23) 28 Hour Law, as amended (49 U.S.C. 80502).

(24) Export Animal Accommodation Act, as amended (46 U.S.C. 3901–3902).

(25) 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).

(26) Virus-Serum-Toxin Act (21 U.S.C. 151–158).

(27) 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).

(28) 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.

(29) Talmadge-Aiken Act (7 U.S.C. 450) with respect to cooperation with States in control and eradication of plant and animal diseases and pests.

(30) 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.

(31) The Federal Noxious Weed Act of 1974, as amended (7 U.S.C. 2801–2814).

(32) The Endangered Species Act of 1973 (16 U.S.C. 1531–1544).

(33) Executive Order 11987, 3 CFR, 1977 Comp., p. 116.

(34) Section 101(d), Organic Act of 1944 (7 U.S.C. 430).

(35) The Swine Health Protection Act, as amended (7 U.S.C. 3801–3813).

(36) Lacey Act Amendments of 1981, as amended (16 U.S.C. 3371–3378).

(37) 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).

(38) 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).

(39) Provide management support services for the Grain Inspection, Packers and Stockyards Administration, and 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 budget, finance, personnel, procurement, property management, communications, paperwork management, and related administrative services.

(40) 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.

(41) The Act of March 2, 1931 (7 U.S.C. 426–426b).

(42) The Act of December 22, 1987 (7 U.S.C. 426c).

(43) 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)).

(44) 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.

(45) 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.*).

(46) 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.

(47) The provisions of 35 U.S.C. 156.

(48) 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).

(49) The Alien Species Prevention and Enforcement Act of 1992 (39 U.S.C. 3015 note).

(50) Sections 901–905 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 1901 note).

(51) Plant Protection Act (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772).

(b) *Reservation.* The following authority is reserved to the Assistant 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]

### § 2.81 Administrator, Grain Inspection, Packers and Stockyards Administration.

(a) *Delegations.* Pursuant to §§ 2.22 (a)(3) and (a)(9), the following delegations of authority are made by the Assistant Secretary for Marketing and Regulatory Programs to the Administrator, Grain Inspection Service, Packers and Stockyards Administration:

(1) Administer the United States Grain Standards Act, as amended (7 U.S.C. 71–87h).

(2) 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 related to grain.

(3) Administer the Packers and Stockyards Act, 1921, as amended and supplemented.

(4) 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.

(5) Exercise the functions of the Secretary of Agriculture contained in section 1324 of the Food Security Act of 1985 (7 U.S.C. 1631).

(6) 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.

(7) 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.*).

(b) [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 Congressional and Intergovernmental Relations.

(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 Congressional and Intergovernmental Relations:

(1) Exercise responsibility for coordination of all congressional matters in the Department.

(2) Maintain liaison with the Congress and the White House on legislative matters of concern to the Department.

(3) 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.

(4) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(5) 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.

(6) Act as the department representative for Federal executive board matters.

(7) Administer the implementation of the National Historic Preservation Act of 1966, 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.

(8) Coordinate the Department's programs involving assistance to American Indians except civil rights activities.

(b) [Reserved]

## Subpart P—Delegations of Authority by the Assistant Secretary for Administration

### § 2.87 Deputy Assistant Secretary for Administration.

Pursuant to § 2.24(a), 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.

### § 2.88 Director, Office of Small and Disadvantaged Business Utilization.

(a) *Delegations.* Pursuant to § 2.24 (a)(3), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Small and Disadvantaged Business Utilization:

(1) The Director, Office of Small and Disadvantaged Business Utilization, under the supervision of the Assistant Secretary for Administration, has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(i) Administering 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;

(ii) Providing Departmentwide liaison and coordination of activities related to small, small disadvantaged, and women-owned businesses with the Small Business Administration and others in public and private sector;

(iii) Developing policies and procedures required by the applicable provision of the Small Business Act, as amended, to include the establishment of goals; and

(iv) Implementing and administering programs described under sections 8 and 15 of the Small Business Act, as amended (15 U.S.C. 637 and 644).

(b) [Reserved]

[65 FR 77763, Dec. 13, 2000]

### § 2.89 Director, Office of Civil Rights.

(a) *Delegations.* Pursuant to § 2.24 (a)(4), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of 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 by the Department;

(vi) 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 conducted programs;

(vii) Actions to enforce Title II of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12131, *et seq.*, prohibiting discrimination against individuals with disabilities in State and local government services.

(viii) Actions to enforce related Executive Orders, Congressional mandates, and other laws, rules, and regulations, as appropriate;

(ix) Actions to develop and monitor compliance in the Department's Federal Women's Program; and

(x) Actions to develop and monitor the Department's Hispanic Employment Program.

(2) Evaluate Departmental agency programs, activities, and impact statements for civil rights concerns.

(3) Provide leadership and coordinate Department agencies and systems for targeting, collecting, analyzing, and evaluating program participation data and equal employment opportunity data.

(4) Provide leadership and coordinate Departmentwide programs of public notification regarding the availability of USDA programs 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 the 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 the 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 of Agriculture 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, after legal sufficiency reviews by the Office of the General Counsel, 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) Perform investigations and make final determinations, after legal sufficiency reviews by the Office of the General Counsel, on both the merits and required corrective action, as to complaints filed under part 15d of this title.

(14) Conduct investigations and compliance reviews Departmentwide.

(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) Coordinate the Department's affirmative employment program, special emphasis programs, Federal Equal Opportunity Recruitment Program, equal employment opportunity evaluations, and development of policy.

(17) Provide liaison on equal employment opportunity programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

(18) Monitor, evaluate, and report on agency compliance with established policy and Executive Orders which further the participation of historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment in Departmental programs and activities.

(19) Is designated as the Department's Director of Equal Employment Opportunity with authority to perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority to make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's program for Equal Employment Opportunity, to provide equal employment opportunity services for managers and employees, and to make final agency decisions, after legal sufficiency reviews by the Office of the General Counsel, on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(20) Maintain liaison with historically Black colleges and universities, the Hispanic-serving institutions, 1994 tribal land grant institutions, and other colleges and universities with substantial minority group enrollment, and assist Department agencies in strengthening such institutions by facilitating institutional participation in Department programs and activities and by encouraging minority students to pursue curricula that could lead to careers in the food and agricultural sciences.

(21) Administer the Department's EEO Program.

(22) Oversee and manage the EEO counseling function for the Department.

(23) 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.

(24) Process formal EEO discrimination complaints, up to the appellate stage, by employees or applicants for employment.

(25) Investigate Department EEO and program discrimination complaints.

(26) Issue Departmental regulations, policies and procedures relating to the use of Alternative Dispute Resolution to resolve employment and program discrimination complaints.

(27) Make final decisions, after legal sufficiency reviews by the Office of the General Counsel, on both EEO and program discrimination complaints, except in those cases where the Director, Office of Civil Rights, has participated in the events that gave rise to the matter.

(28) Order such corrective measures in EEO complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to engage in a discriminatory practice.

(29) Provide liaison on EEO matters concerning complaints and appeals with Department agencies and Department employees.

(30) Make final determinations, or enter into settlement agreements,

after legal sufficiency reviews by the Office of the General Counsel, on discrimination complaints in conducted programs subject to the Equal Credit Opportunity Act.

(31) Require corrective action on findings of discrimination on program complaints and recommend to the Secretary that relief be granted under 7 U.S.C. 6998(d), notwithstanding the finality of National Appeals Divisions decisions.

(32) Provide civil rights and equal employment opportunity support services, except for the equal employment opportunity support services provided by the Office of Human Resources Management, 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; and

(iv) Any other offices or agencies of the Department as may be agreed.

(b) [Reserved]

[65 FR 77763, Dec. 13, 2000]

### § 2.90 Director, Office of Outreach.

(a) *Delegations.* Pursuant to §2.24 (a)(5), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Outreach.

(1) Develop policy guidelines and implement a Departmental outreach program which delivers services to the traditionally under-served customers.

(2) Administer and provide leadership, direction, coordination, and monitoring for the Small Farmer Outreach Training and Technical Assistance program, *i.e.* Outreach and Technical Assistance Grants to Socially Disadvantaged Farmers and Ranchers Program, including the authority to make grants and enter into contracts and other agreements pursuant to 7. U.S.C. 2279 (a).

(3) Develop a strategic outreach plan for the Department which coordinates the goals, objectives and expectations of mission area outreach programs.

(4) Coordinate the dissemination/communication of all outreach information from the Department and its mission areas ensuring its transmission to as wide a public spectrum as possible.

(5) Serve as the Department's official outreach spokesperson.

(6) Provide coordination and oversight of agency outreach activities including the establishment of outreach councils.

(7) Develop a system to monitor the delivery of outreach grants and funding.

(8) Report agency outreach status, accomplishments and make recommendations to the Assistant Secretary for Administration.

(b) [Reserved]

[65 FR 77765, Dec. 13, 2000]

### § 2.91 Director, Office of Operations.

(a) *Delegations.* Pursuant to §2.24 (a)(6), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Operations:

(1) Provide services for the Department in the following areas:

(i) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments, in the Washington, DC metropolitan area.

(ii) Acquiring, storing, distributing, and disposing of forms; and

(iii) Mail management and all related functions.

(2) Operating centralized Departmental services to provide printing, copy reproducing, offset composing, supplies, mail, automated mailing lists, excess property pool, resource recovery, shipping and receiving, forms, labor services, issuing of general employee identification cards, supplemental distributing of Department directives, space allocating and management, and related management support.

(3) Providing property management, space management, messenger, communications, and other related 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; and

(v) Other federal, state, or local government organizations on a cost recovery basis.

(4) Represent the Department in contacts with other organizations or agencies on matters related to assigned responsibilities.

(5) Promulgate Departmental regulations, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities, self-protection, and warden services, in the Washington, DC metropolitan area.

(6) Provide internal administrative management and support services for the defense program of the Department.

(b) [Reserved]

[65 FR 77765, Dec. 13, 2000]

### § 2.92 Director, Office of Human Resources Management.

(a) *Delegations.* Pursuant to § 2.24 (a)(7), subject to reservations in § 2.24(b)(1), 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 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.

(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) 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; and

(iii) Execute, change, extend, or renew:

(A) Labor-Management Agreements; and

(B) Associations of Management Officials' or Supervisors' Agreements.

(iv) Represent any part of the Department in all contacts and proceedings with the National Offices of Labor Organizations.

(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; and

(C) Administrative Law Judge.

(xii) Make final decisions on adverse actions for positions in GS–14 and 15 or equivalent and, as appropriate, redelegate this authority to the Heads of Departmental agencies;

(xiii) Authorize adverse action for positions in the career Senior Executive Service or equivalent and, as appropriate, redelegate this authority on a case by case basis to Heads of Departmental agencies;

(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; and

(xvii) Initiate and take adverse action in cases involving a violation of the merit system.

(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 resource program management evaluation;

(xiv) Social security;

(xv) Life insurance;

(xvi) Health benefits;

(xvii) Unemployment compensation;

(xviii) Labor management relations;

(xix) Intramanagement consultation;

(xx) Security;

(xxi) Discipline; and

(xxii) Appeals.

(11) Provide human resource services, as listed in paragraph (a)(10) of this section; and organizational 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 reporting to the Assistant Secretary for Administration; and

(iv) Any other officer or agency of the Department as may be agreed.

(12) Maintain, review, and update Departmental delegations of authority.

(13) Recommend authorization of organizational changes which occur in:

(i) Departmental organizations:

(A) Agency or office;

(B) Division (or comparable component); and

(C) Branch (or comparable component in Departmental centers, only).

(ii) Field organizations;

(A) First organizational level; and

(B) Next lower organizational level-required only for those types of field installations where the establishment, change in location, or abolition of same requires approval in accordance with Departmental internal direction.

(14) Formulate and promulgate Departmental policies regarding reorganizations.

(15) 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 within the Department.

(16) Represent the Department in all rulemaking, advisory, or legislative capacities on any groups, committees, or Government wide activities that affect the USDA Occupational Safety and Health Management Program.

(17) Determine and provide Departmentwide technical services and regional staff support for the safety and health programs.

(18) Administer the computerized management information systems for the collection, processing, and dissemination of data related to the Department's occupational safety and health programs.

(19) 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.

(20) Administer the Department's Occupational Health and Prevention Medical Program, as well as design and operate employee assistance and workers' compensation activities.

(21) Provide education and training on a Departmentwide basis for safety and health-related issues and develop resource and operational manuals.

(22) Oversee and manage the Department's administrative grievance program.

(23) Make final decisions in those cases where an agency head has appealed the recommended decision of a grievance examiner.

(b) *Reservation.* The following authority is 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) [Reserved]

[65 FR 77765, Dec. 13, 2000]

### § 2.93 Director, Office of Procurement, Property, and Emergency Preparedness.

(a) *Delegations.* Pursuant to §§ 2.24 (a)(8), (a)(9), (a)(10), and (a)(11), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Procurement, Property, and Emergency Preparedness:

(1) 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, leasing, utilization, value analysis, construction, maintenance, and disposition of real and personal property, including control of space assignments;

(v) Motor vehicle and aircraft fleet and other vehicular transportation;

(vi) Transportation of things (traffic management);

(vii) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

(viii) Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, *et seq.*); and

(ix) Development and implementation of energy management and environmental actions related to acquisition and procurement, real and personal property management, waste prevention and resource recycling, and logistics. Maintain liaison with the Office of the Federal Environmental Executive, the Department of Energy, and other Government agencies in these matters.

(2) Exercise the following special authorities:

(i) The Director, Office of Procurement, Property, and Emergency Preparedness 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) Conduct liaison with the Office of Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18;

(iii) Maintain custody and permit appropriate use of the official seal of the Department;

(iv) Establish policy for the use of the official flags of the Secretary and the Department;

(v) Coordinate collection and disposition of personal property of historical significance;

(vi) 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).

(vii) Promulgate regulations for the management of contracting and procurement for information technology and telecommunication equipment, software, services, maintenance and related supplies; and

(viii) Represent the Department in contacts with the General Accounting Office, the General Services Administration, the Office of Management and Budget, and other organizations or agencies on matters related to assigned responsibilities; and

(ix) Redelegate, as appropriate, the authority in paragraph (a)(10) of this section to agency Property Officials or other qualified agency officials with no power of further redelegation.

(3) Exercise authority under the Department's Acquisition Executive (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 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) Insure that OMB Circular 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; and

(iv) Designate any Departmental acquisition, excluding information technology, as a major system acquisition under OMB Circular A–109.

(4) Pursuant to Executive Order 12931, 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, 418(b), and 433, serve as the Senior Procurement Executive for the Department with responsibility for the following:

(i) Prescribing and publishing Departmental acquisition policies, regulations, and procedures;

(ii) Taking any necessary actions consistent with policies, regulations, and procedures, with respect to purchases, contracts, leases, and other transactions;

(iii) Designating contracting officers;

(iv) Establishing clear lines of contracting authority;

(v) Evaluating and monitoring the performance of the Department's procurement system;

(vi) Managing and enhancing career development of the Department's acquisition work force;

(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 whether procurement goals are being achieved;

(xii) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards are not met;

(xiii) Redelegating, as appropriate, the authority in paragraph (a)(5)(i) of this section to agency Procurement Executives or other qualified agency officials with no power of further redelegation; and

(xiv) Redelegating the authorities in paragraphs (a)(5)(ii), (iv), (vi), and (vii) of this section to agency Procurement executives or other qualified agency officials with the power of further redelegation.

(5) Represent the Department in establishing standards for acquisition transactions within the electronic data interchange environment.

(6) Pursuant to the Alternative Agricultural Research and Commercialization Act of 1990 (7 U.S.C. 5901–5909), establish and maintain a Preference List for selected products developed with commercialization assistance under 7 U.S.C. 5905.

(7) Designate the Departmental Task Order Ombudsman pursuant to 41 U.S.C. 253j.

(8) Promulgate Departmental policies, standards, techniques, and procedures and represent the Department in maintaining the security of physical facilities nationwide.

(9) Review and approve exemptions for USDA contracts and subcontracts 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, 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 Environmental Protection Agency (40 CFR 32.215 (b)).

(10) Promulgate policy and obtain and furnish excess Federal personal property in accordance with section 923 of Public Law 104–127, in 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, (Public Law 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; and

(iii) Any Hispanic-serving Institutions (as defined in sections 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c (b)).

(11) Issuance of regulations and directives to implement or supplement the Federal Acquisition Regulations (48 CFR chapters 1 and 4).

(12) Issuance of regulations and directives to implement or supplement the Federal Property Management Regulations (41 CFR chapters 101 and 102).

(13) Exercise full Departmentwide contracting and procurement authority.

(14) Conduct acquisitions with authority to take actions required by law or regulation to procure supplies, services, and equipment 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; and

(v) For other federal, state, or local government organizations on a cost recovery basis.

(15) 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; and

(vi) Designating an Advocate for Competition for each procuring activity within the Department.

(16) *Related to emergency preparedness:*

(i) Administer the Department Emergency Preparedness Program. This includes the:

(A) Coordination of the assignments made to the Department by Executive Order 12656, November 18, 1988, ''Assignment of Emergency Preparedness Responsibilities,'' 3 CFR, 1988 Comp., p. 255, to ensure that the Department has sufficient capabilities to respond to any occurrence, including natural disaster, military attack, technological emergency, or any other emergency.

(B) Management of the Department Emergency Coordination Center and alternate facilities;

(C) Development and promulgation of 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;

(D) Providing guidance and direction regarding issues of emergency preparedness, disaster assistance, and national security to the agencies, mission areas, and the State and County Emergency Boards;

(E) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations, including the Federal Emergency Management Agency and the National Security Council, concerning matters of assigned responsibilities; and

(F) Overseeing Department continuity of operations, planning, and emergency relocation facilities to ensure that resources are in a constant state of readiness.

(ii) Provide guidance and direction to the Department Emergency Coordinator, who, along with the Chief Economist, is responsible for coordinating the preparation of Department estimates of agricultural losses from natural disaster.

(iii) Coordinate the Department responsibilities under disaster assistance authorities, including the Chemical Stockpile Emergency Preparedness Program, the Federal Radiological Emergency Response Plan, the Federal Response Plan, the National Oil and Hazardous Substance Pollution Contingency Plan, and other Federal emergency response plans.

(17) 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.*).

(b) [Reserved]

[65 FR 77766, Dec. 13, 2000]

### § 2.94 Director, Office of Planning and Coordination.

(a) *Delegations.* Pursuant to §2.24 (a)(12) and (a)(13), the following delegations of authority are made by the Assistant Secretary for Administration to the Director, Office of Planning and Coordination:

(1) Administer a productivity program in accordance with Executive Order 12089, 3 CFR, 1979 Comp., p. 246, and other policy and procedural directives and laws to:

(2) Develop strategies to improve processes with respect to administrative and financial activities of the Department and make recommendations to the Secretary.

(3) Improve Departmental management by: performing management studies and reviews in response to agency requests for assistance; enhancing management decision making by developing and applying analytic techniques to address particular administrative operational and management problems; searching for more economical or effective approaches to the conduct of business; developing and revising systems, processes, work methods and techniques; and undertaking other efforts to improve the management effectiveness and productivity of the Department.

(4) Coordinate Departmental Administration strategic planning and budget activities on behalf of the Assistant Secretary.

(5) Oversee the Conflict Prevention and Resolution Center, the Director of which:

(i) Serves as the Department's Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, and provides leadership, direction and coordination for the Department's conflict prevention and resolution activities;

(ii) Provides 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; and

(D) Any other officer or agency of the Department as may be agreed.

(iii) Develops and issues standards for mediators and other ADR neutrals utilized by the Department.

(iv) Coordinates ADR activities throughout the Department; and

(vi) Monitors Agency ADR programs and reports at least annually to the Secretary on the Department's ADR activities.

(b) [Reserved]

[65 FR 77768, Dec. 13, 2000]

### § 2.95 Director, Office of Ethics.

(a) *Delegations.* Pursuant to the Office of Government Ethics regulations at 5 CFR part 2638, and the Delegations of Authority from the Secretary dated April 28, 1998, the Director, Office of Ethics, shall be the USDA Designated Agency Ethics Official and shall exercise all authority pursuant to that designation.

(b) [Reserved]

[65 FR 77769, Dec. 13, 2000]

## Subpart Q-Delegations of Authority by the Chief Information Officer

### § 2.200 Deputy Chief Information Officer.

Pursuant to § 2.37, 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.

[65 FR 77769, Dec. 13, 2000]

# PART 3—DEBT MANAGEMENT

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## Subpart A—Settlement of Small or Old Debts

AUTHORITY: Sec. 1, 58 Stat. 836; 12 U.S.C. 1150.

SOURCE: 10 FR 807, Jan. 23, 1945, unless otherwise noted. Redesignated at 13 FR 6903, Nov. 24, 1948.

### § 3.1 Purposes of the act and regulations.

The principal purposes of the act and of the regulations in this part are to provide means of:

(a) Settling, by compromise, adjustment or cancellation relatively small debts long past due and owing to the Government arising from loans or payments made under farm programs administered by the Department;

(b) recovering by the Department of substantial sums which are found uncollectible when the indebtednesses are treated as full obligations, and which otherwise would probably never be collected;

(c) clearing the accounts of balances so small as not to warrant continued efforts of collection; and

(d) the clearing of the accounts of the records of indebtedness made uncollectible by reason of the death or disappearance of the debtors.

The existence of the act will neither serve as grounds for any relaxation in the general collection policy of the Department nor should it serve as grounds for any lessening of the efforts of farmers to pay their indebtedness.

### § 3.2 Definitions.

(a) *Department* means Department of Agriculture.

(b) *Indebtedness* with respect to any person, means a debt to the Government under each of the acts and programs listed in § 3.10.

(c) *Compromise* means final liquidation of the indebtedness through the immediate payment of a portion thereof, and acceptance by the United States of such payment in full satisfaction of the indebtedness.

(d) *Adjustment* means the scaling down of the amount of the indebtedness including interest, conditioned upon the payment of the adjusted amount at some specified future time or times; such adjustment is not to be considered as effective as a settlement under this act until the provisions of the adjustment arrangement have been carried out.

(e) *Cancellation* means the complete discharge, without payment, of the indebtedness and the debtor.

[10 FR 807, Jan. 23, 1945, as amended at 11 FR 11984, Oct. 15, 1946. Redesignated at 13 FR 6903, Nov. 24, 1948; 55 FR 38662, Sept. 20, 1990]

### § 3.3 Settlement of indebtedness.

(a) Indebtedness will be compromised, adjusted, or canceled, upon applicability by the debtor except in those cases where it is found that it is legally impossible for the debtor to make application, and upon the making of all the following findings:

(1) That said indebtedness has been due and payable for five years or more;

(2) That the debtor is unable to pay said indebtedness in full and has no reasonable prospect of being able to do so; officers of the Department shall not make such findings on the basis of mere unwillingness to pay on the part of the debtor, or mere financial disadvantage to him, but should find that the settlement is the most advantageous arrangement possible from the standpoint of the Government under the findings prescribed in this part. In no event shall cancellation be made

unless, in addition to the foregoing requirements, there is an advantage in removing the indebtedness from the accounts.

(3) That the debtor has acted in good faith in an effort to meet his obligation; and

(4) That the principal amount of said indebtedness is not in excess of $1,000.

(b) Indebtedness may also be canceled without application when any one of the following circumstances is found:

(1) The amount of said indebtedness, including interest, is less than $10; such efforts of collection have been made as are warranted under the circumstances, and the cost of collection or of continued maintenance of accounts is deemed greater than the amount of the indebtedness;

(2) The debtor is deceased and there is no reasonable prospect of recovering from his estate;

(3) The debtor's whereabouts has remained unknown for two years and there is no reasonable prospect of obtaining collection; heads of agencies designated in § 3.5 will prescribe procedures which will assure that cancellations on this ground will be made only after a diligent effort has been made to locate the debtor, including such contact with other agencies of the Department or otherwise as the amount of the indebtedness and the circumstances warrant;

(4) The debtor has been discharged of the indebtedness in any proceeding under ''An act to establish a uniform system of bankruptcy throughout the United States.''

(5) It is impossible or impracticable for legal or other reasons to obtain the debtor's application but all of the findings required by paragraph (a) of this section are made.

[10 FR 807, Jan. 23, 1945, as amended at 12 FR 441, Jan. 22, 1947. Redesignated at 13 FR 6903, Nov. 24, 1948, and amended at 21 FR 3213, May 16, 1956]

### § 3.4 Investigations and findings.

The heads of agencies designated in § 3.5 shall prescribe procedures for the conduct of investigations to determine the facts incident to the settlement of any indebtedness. These procedures should include, among other things, provisions for consultations with local authorities, businessmen, or local representatives of other Government agencies, or for obtaining the recommendations of committees or other groups or persons designated by each agency for assistance in its regular program, or otherwise. The file relating to each debtor shall contain the formal findings required by § 3.3, together with such evidence as has been obtained in support of such findings.

In order to effect uniformity in settlements, agency procedures should also provide that, where it appears from the application of the debtor or from investigation that the debtor is otherwise indebted to the United States, to the extent practicable consultation should be had (other than in cases under § 3.3(b)(1) and (4) with any other creditor agencies, to ascertain pertinent information as to the status of such other obligation or obligations. Such information shall be considered in connection with the settlement and for inclusion in the findings.

The head of each agency shall provide for review of proposed indebtedness settlements within his agency by officers or employees designated for that purpose under such conditions as he shall determine to be adequate to insure the protection of the interests of the United States.

### § 3.5 Delegations of authority.

The heads of any administration or other agency having jurisdiction over any of the acts or programs listed in § 3.10 (including those of Federal Crop Insurance Corporation) are hereby authorized, within their respective jurisdictions, to exercise any or all of the functions prescribed by this part. The head of each of such agencies may delegate and authorize the redelegation of any of the functions vested in him by this part: *Provided*, That the determination of any settlement shall not be delegated beyond the head of the highest field office having jurisdiction, except that in the case of the Agricultural Stabilization and Conservation State Offices, such authority may also be delegated to the State Administrative Officers and except that in the

case of the Farmers Home Administration, such authority may also be delegated to Assistant State Directors and Chiefs, Production Loan Operations, in State offices of that administration.

[21 FR 3213, May 16, 1956, as amended at 55 FR 18591, May 3, 1990]

### § 3.6 Forms and records.

The Office of Management and Budget may prescribe or approve forms for applications for settlement of indebtedness under this part; and shall require each agency to establish records to insure the immediate availability of necessary information of operations under this part. Each agency shall furnish to the Office of Management and Budget a report of operations under this part quarterly, or for such other periods as the Director of Finance may designate.

[21 FR 3213, May 16, 1956, as amended at 55 FR 38662, Sept. 20, 1990]

### § 3.8 Penalties.

The act prescribes the punishment by a fine of not more than $1,000 or imprisonment for not more than one year, or both, upon conviction, for anyone making any material representation, knowing it to be false, for the purpose of influencing in any way the action of the Secretary or of any person acting under his authority in connection with any compromise, adjustment, or cancellation of indebtedness provided for in the act. The act also prohibits the acceptance by any officer, employee, or other person to whom is delegated any power or function under the act, of any fee, commission, gift, or other consideration, directly or indirectly, for or in connection with any transaction or business relating to the compromise, adjustment, or cancellation of indebtedness under the act.

### § 3.9 Indebtedness referred to the Comptroller General or the Attorney General.

No settlement shall be effected under this part if the indebtedness is pending before the Comptroller General for compromise, or the Attorney General for collection.

[10 FR 807, Jan. 23, 1945. Redesignated at 13 FR 6903, Nov. 24, 1948, and amended at 55 FR 38662, Sept. 20, 1990]

### § 3.10 Scope of the act.

The authorities prescribed in this part are applicable to indebtedness arising from loans or payments made or credit extended pursuant to the following acts and programs:

1. Act of July 1, 1918 (40 Stat. 635), Loans for seed.
2. Act of March 3, 1921 (41 Stat. 1347), Loans for seed.
3. Act of March 20, 1922 (42 Stat. 467), Loans for seed.
4. Act of April 26, 1924 (43 Stat. 110), Loans for seed and feed.
5. Act of February 25, 1927 (44 Stat. 1245), Loans for seed, feed and fertilizer.
6. Act of February 28, 1927 (44 Stat. 1251), Hurricane damage loans.
7. Act of February 25, 1929 (45 Stat. 1306), as amended May 17, 1929 (46 Stat. 3), Loans for seed, feed and fertilizer and to vegetable and fruit growers.
8. Act of March 3, 1930 (46 Stat. 78–79), as amended April 24, 1930 (46 Stat. 254). Loans for seed, feed, fertilizer, fuel and oil.
9. Act of December 20, 1930 (46 Stat. 1032), as amended February 14, 1931 (46 Stat. 1160). Loans for seed, feed, fertilizer, fuel and oil and crop production, and for assisting in forming local agricultural credit corporations, livestock loan companies, or like organizations.
10. Act of February 23, 1931 (46 Stat. 1276), Loans for seed, feed, fertilizer, fuel and oil.
11. Act of January 22, 1932 (47 Stat. 5), Loans for crop production.
12. Act of March 3, 1932 (47 Stat. 60), Loans for agricultural credit corporations, livestock loan companies, or like organizations.
13. Act of February 4, 1933 (47 Stat. 795), Loans for crop production and harvesting.
14. Act of February 23, 1934 (48 Stat. 354), Loans for crop production and harvesting.
15. Act of June 19, 1934 (48 Stat. 1056), Loans for emergency relief and for seed, feed, freight, summer fallowing and similar purposes.
16. Act of February 20, 1935 (49 Stat. 28), Loans for crop production and harvesting.
17. Act of March 21, 1935 (49 Stat. 50), appropriation to effectuate Act of February 20, 1935.
18. Act of April 8, 1935 (49 Stat. 115), E. O. 7305, Loans for crop production and harvesting.
19. Act of January 29, 1937 (50 Stat. 5), Loans for crop production and harvesting.

20. Act of February 4, 1938 (52 Stat. 27), Loans for crop production and harvesting.
21. Agricultural Adjustment Act (of 1933), as heretofore amended.
22. Bankhead Cotton Act of April 21, 1934, as heretofore amended, on account of the several cotton tax-exemption certificate pools.
23. Jones-Connally Cattle Act of April 7, 1934, as heretofore amended.
24. Emergency Appropriation Act, fiscal year 1935, approved June 19, 1934 (48 Stat. 1056), as heretofore amended, (amendment to Agricultural Adjustment Act of 1933, relating to cotton option contracts.)
25. Kerr Tobacco Act of June 28, 1934 and Public Resolution No. 76 of March 14, 1936, as heretofore amended.
26. Section 32 of the Act of August 24, 1935 and related legislation, as heretofore amended.
27. Supplemental Appropriation Act, fiscal year 1936, as heretofore amended, (rental and benefit payments and cotton price adjustment payments).
28. Sections 7 to 17 of the Soil Conservation and Domestic Allotment Act, as heretofore amended.
29. Sugar Act of 1937, as heretofore amended.
30. Sections 303 and 381(a) of the Agricultural Adjustment Act of 1938 and related or subsequent legislation, as heretofore amended, authorizing parity or adjustment payments.
31. Title IV and Title V of the Agricultural Adjustment Act of 1938 and related legislation, as heretofore amended, (Cotton Pool Participation Trust Certificates (Title IV), and crop insurance (Title V)).
32. Any other Act of Congress heretofore enacted authorizing payments to farmers under programs administered through the Agricultural Adjustment Agency.
33. Act of April 8, 1935 (49 Stat. 115), Loan for rural rehabilitation and relief.
34. Act of June 22, 1936 (49 Stat. 1608), Loan for rural rehabilitation and relief.
35. Act of February 9, 1937 (50 Stat. 8), Loans for rural rehabilitation and relief.
36. Act of June 29, 1937 (50 Stat. 352), Loans for rural rehabilitation and relief.
37. The Bankhead-Jones Farm Tenant Act (50 Stat. 522 *et seq.*).
38. The Water Facilities Act of August 28, 1937 (50 Stat. 869 *et seq.*).
39. Act of March 2, 1938 (52 Stat. 83, Pub. Res. 80), Loans for rural rehabilitation and relief.
40. Act of June 21, 1938 (52 Stat. 809), Loans for rural rehabilitation and relief.
41. Act of June 30, 1939 (53 Stat. 927), Loans for rural rehabilitation and relief.
42. Act of June 26, 1940 (54 Stat. 611), Loans for rural rehabilitation and relief.
43. Act of July 1, 1941 (55 Stat. 408), Loans for rural rehabilitation.
44. Act of July 22, 1942 (56 Stat. 664), Loans for rural rehabilitation.
45. Act of July 12, 1943 (57 Stat. 392), Loans for rural rehabilitation.
46. Act of June 28, 1944 (58 Stat. 425), Loans for rural rehabilitation.
47. Flood restoration loans, Second Deficiency Appropriation Act, 1943 (57 Stat. 537, 542)
48. Subsequent legislation appropriating or making available funds for such loans as those listed under numbers 33 through 47, made by or through Resettlement Administration or the Farm Security Administration.
49. Crop-insurance programs formulated pursuant to Title V of the Agricultural Adjustment Act of 1938 (the Federal Crop Insurance Act), and any amendment or supplement thereto heretofore or hereafter enacted.
50. Any indebtedness of farmers evidenced by notes or accounts receivable, title to which has been acquired in the liquidation of loans to cooperative associations made under the provisions of the Act of June 15, 1929 (46 Stat. 11).
51. Any indebtedness of food stamp recipients and retailers/wholesalers. Food Stamp Act.

(Sec. 2, 58 Stat. 836; 12 U.S.C. 1150a)

[10 FR 807, Jan. 23, 1945. Redesignated at 13 FR 6903, Nov. 24, 1948, and amended at 55 FR 38662, Sept. 20, 1990; 62 FR 60451, Nov. 10, 1997; 64 FR 11755, Mar. 10, 1999]

## Subpart B—Debt Collection

AUTHORITY: 31 U.S.C. 3701, 3711, 3716–3719, 3728; 4 CFR part 102; 4 CFR 105.4.

SOURCE: 50 FR 7722, Feb. 26, 1985, unless otherwise noted.

### § 3.21 Debt collection standards.

(a) The regulations in this subpart are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, 3711, 3716–3719), and the Joint Regulations issued under the Act by the Attorney General and the Comptroller General (4 CFR parts 101–105), prescribing Government-wide standards for administrative collection, compromise, suspension or termination of agency collection action, disclosure of debt information to consumer reporting agencies, referral of claims to private collection contractors for resolution, and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims

by the Government for money or property.

(b) The head of each agency of the Department may carry out the duties and exercise the authority of the Secretary under 31 U.S.C. 3701, 3711, 3716–3719, 3728, the Joint Regulations of the Attorney General and the Comptroller General, and the regulations in this part, with respect to the claims of the agency. An agency head may adopt regulations, in accordance with the Debt Collection Act and the Joint Regulations, setting out agency procedures for the collection by administrative offset of such claims and debts. If the head of an agency of the Department adopts regulations separate from this subpart, the procedures thereby established, rather than those set out in this part, shall be followed for the collection of the claims and debts to which the separate regulations apply. If an agency does not adopt separate regulations, the Director of the Office of Finance and Management may carry out the duties and exercise the authority of the Secretary on behalf of agency heads.

(c) Except where administrative offset is explicitly prohibited by statute or where other procedures are explicitly provided for by statute, all contracts and other written agreements which are executed after the effective date of these regulations between an agency and any person or entity must include the following or substantially similar language:

Any monies that are payable or may become payable from the United States under this agreement to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or legal entity owes to the United States, under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, 3711, 3716–3719); 4 CFR part 102 and subpart B of this part. Information on the person's or legal entity's responsibility for a commercial debt or delinquent consumer debt owed the United States will be disclosed to consumer or commercial credit reporting agencies.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

### § 3.22 Definitions.

In this subpart:

(a) *Debt management officer* means an agency employee responsible for collection by administrative offset of debts owed the United States.

(b) *Contracting officer* has the same meaning as in 41 U.S.C. 601.

(c) *Creditor agency* means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(d) *Offsetting agency* means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and assures that the funds are paid to the creditor agency to be applied to the debt.

(e) *Reviewing officer* means an agency employee responsible for conducting a hearing or providing documentary review on the existence of the debt and the propriety of administrative offset.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

### § 3.23 Collection by administrative offset.

(a) Whenever feasible, each agency of the Department of Agriculture must use, or request any other Federal agency to use, administrative offset in accordance with 31 U.S.C. 3716 and 4 CFR 102.3 to collect debts due the United States. The debt need not be reduced to judgment or be undisputed.

(b) The feasibility of collecting a debt by administrative offset will be determined on a case-by-case basis considering among other factors the following:

(1) Legal impediments to administrative offset, such as contract provisions, or degree of certainty as to the factual basis (other than the debt amount) of the Government's claim.

(2) Practicality, considering such questions as costs in time and money of administrative offset relative to the size of the debt.

(3) Whether offset would substantially interfere with or defeat the purposes of a program authorizing payments against which offset is contemplated, as where payment is an advance for future performance by the debtor of a service the Government desires.

(4) Whether the agency has substantiated the existence of the debt.

(c) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset, or when a stay of offset expires, unless the agency determines under §3.26 that immediate action is necessary. If the debtor owes more than one debt, amounts recovered through administrative offset may be applied to them in any order, with attention to applicable statutes of limitation.

(d) These procedures will be used to collect any debt subject to 31 U.S.C. 3716, including contract debts, but not including intracontractual claims or intracontractual disputes. A contracting officer administering a claim under the Contract Disputes Act (CDA), 41 U.S.C. 601–613 must promptly refer the claim to the agency debt management officer for consideration of administrative offset apart from CDA proceedings.

(e) An agency debt management officer will determine the prima facie existence of the debt, the feasibility of administrative offset as a means of collection and what monies, if any, are payable or may become payable to the debtor. No agency employee may act as debt management officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer.

(f) An agency reviewing officer will afford debtors review of the issue of administrative offset under these rules. 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.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

### §3.24 Coordinating administrative offset with other Federal agencies.

(a) A Government list or other notice, naming debtors and their creditor agencies, which is provided to USDA will constitute a request for administrative offset.

(b) Any agency which requests another agency to effect administrative offset must certify that the debtor owes the debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met.

(c) An agency which is requested by another agency to effect administrative offset must not do so without obtaining a written certification that the debtor owes the creditor agency a debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR part 102 have been met. An offsetting USDA agency may rely on the information contained in a requesting creditor agency's certification.

(d) Only a creditor agency may agree to an installment repayment system or compromise, suspension or termination of the collection process.

(e) A USDA agency which is requested by another agency to effect administrative offset may decline for good cause. Good cause includes direct or indirect disruption of the offsetting agency's essential program operations that might result from the offset. The refusal and the reasons must be sent in writing to the creditor agency.

### §3.25 Notice requirements before offset.

(a) Before an agency effects administrative offset, the creditor agency must provide the debtor with a minimum of 30 calendar days' written notice that unpaid debt amounts will be collected by administrative offset against any money that the United States is going to pay to the debtor, unless the creditor agency determines immediate action is necessary under §3.26, or the debtor enters into a repayment agreement or requests review.

(b) The Notice of Intent to Collect by Administrative Offset must be served on the debtor by personal delivery, first class mail, or certified mail and will state:

(1) The amount of the debt, the date it was incurred, the name and address of the offsetting agency, and the program under which the debt was incurred.

(2) The rate of interest accrued from the date of mailing or other delivery of the initial demand letter, and the

amount of any other penalties or administrative costs added to the principal debt.

(3) The creditor agency's intention to collect the debt by administrative offset against any funds that might become available, until the principal debt and all accumulated interest and other charges are paid in full.

(4) The date on which administrative offset will be effected, unless the creditor agency determines immediate action is necessary under §3.26, or the debtor enters into a repayment agreement or requests a review.

(5) That the debtor has a right to inspect and copy agency or other Department records related to the debt. The debtor must pay copying costs unless they are waived by the agency.

(6) That the debtor may enter into a written agreement to repay the debt, which must be approved by the creditor agency.

(7) That the debtor has a right to obtain review of the agency's determination that the debt exists and the propriety of administrative offset.

(8) That a repayment agreement or request for review may be sought only from the creditor agency and not the offsetting agency.

(9) Time limitations and other procedures or conditions imposed by the agency.

(10) The address to which the debtor should send all correspondence relating to the offset.

(c) Any demand for payment will include a Notice of Intent to Collect by Administrative Offset, even if the debt is not delinquent at the time the letter is sent.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990; 62 FR 60451, Nov. 10, 1997]

### § 3.26 Exceptions to notice requirements.

(a) When the procedural requirements of §3.25 have been met by the creditor agency or under some other statutory or regulatory authority, an agency need not duplicate the notice before effecting administrative offset.

(b) A USDA agency may effect administrative offset against a payment to be made to a debtor before completion of the procedures in §3.25 when the agency finds, or is advised by the requesting creditor agency, that:

(1) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, such as where possible insolvency of the debtor might encourage competition among creditors for funds, or where expiration of a statute of limitations is imminent; and

(2) The time before the payment is to be made does not reasonably permit the completion of these procedures.

(c) The finding required by paragraph (b) of this section must be furnished by the offsetting agency to the debtor in writing as soon as reasonably possible after the offset is effected. Promptly after administrative offset is effected under this subsection, the creditor agency must give the debtor the notice required by §3.25.

(d) An offsetting USDA agency may rely on the information contained in a creditor agency's request for administrative offset under this section.

### § 3.27 Inspection of USDA records related to the debt.

A debtor who intends to inspect or copy agency or Departmental records with respect to the claim action must notify the agency in writing within 20 calendar days of the date the Notice of Intent to Offset was delivered to the debtor. 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.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

### § 3.28 Written agreements to repay debt as alternative to administrative offset.

The debtor may, in response to 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 20 calendar days of the date the notice was delivered to the debtor.

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.

### § 3.29 Hearings and reviews.

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset may request a hearing or documentary review of the agency's determination that the debt exists and the propriety of administrative offset. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and seeks review. The request must be received by the creditor agency within 20 calendar days of the date the notice was delivered to the debtor.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. 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) 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 calendar days and no more than 45 calendar days after receipt of the request for review.

(d) 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 calendar days after the request for review is received.

(e)(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) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(3) 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.

(f)(1) Within no more than 30 calendar days after the hearing or 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 calendar days, and beyond the 30 calendar days extension only with the consent of the debtor. The decision need not be lengthy or formal in style, but must address the substantive issues. The decision should address any significant procedural matter which was in dispute before or during the hearing or documentary review.

(2) The reviewing officer's decision constitutes final agency action as to the following issues:

(i) 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

(ii) 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.

(g) The reviewing officer will promptly distribute copies of the decision to the Assistant Secretary for Administration, USDA and to the debtor and the debtor's representative.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38662, Sept. 20, 1990]

### § 3.30 Stay of offset.

(a)(1) Unless otherwise arranged by mutual agreement between the debtor and the agency, evidenced in writing, when an agency receives a debtor's request for inspection of agency records, the offset is stayed for no longer than 10 calendar days beyond the date set by the creditor agency for the record inspection.

(2) When an agency receives a debtor's proposal for a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When administrative offset is stayed, the amount of the debt and interest will be withheld from payments to the debtor, but not applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) When administrative offset is stayed, the creditor agency will immediately notify an offsetting agency to withhold the payment pending termination of the stay.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

### § 3.31 Agency procedures.

(a) Any USDA agency may publish in the FEDERAL REGISTER, by rule or notice, a listing by category of the order in which any funds it holds for or intends to pay to a person may be reached by administrative offset.

(b) For principal debts of $600 or more, an agency head may direct that no compromise be made, or no collection action suspended or terminated without advice from the USDA General Counsel.

### § 3.32 Offset against amounts payable from Civil Service retirement and disability fund.

An agency may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the agency by the debtor. The creditor agency must certify that the debtor owes the debt, the amount of the debt, and that the creditor agency has complied with 4 CFR 102.4 and Office of Personnel Management regulations. The request must be submitted to the official designated in Office of Personnel Management regulations.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

### § 3.33 Offset of debtor's judgment against the United States.

Collection by offset against a judgment obtained by a debtor against the United States must be effected in accordance with 31 U.S.C. 3728.

### § 3.34 Interest, penalties and administrative costs.

(a) USDA creditor agencies must attempt to collect interest, penalties and administrative costs on any delinquent debts owed to the United States in accordance with 4 CFR 102.13 and 102.14, or according to written documentation constituting the basis of the debt, or under any guidelines issued by the Assistant Secretary for Administration or by the creditor agency's fiscal officer.

(1) Interest will not be assessed on interest, penalties or administrative costs. However, if a debtor defaults on a repayment agreement, interest which has accrued but was not collected under the defaulted agreement will be added to the principal to be paid under a new repayment agreement.

(2) Agencies will assess a penalty of six percent a year on any unpaid debt balance delinquent for more than 90 days. This charge accrues from the date the debt becomes delinquent.

(3) Agencies will charge the debtor for administrative costs incurred in processing and handling a delinquent debt. Administrative costs may include costs of obtaining credit reports, using a private debt collector, or selling collateral or property to satisfy the debt.

(b) Agencies will waive the collection of interest assessed under these regulations on a delinquent debt or any portion of that debt which is paid within 30 days after the date on which interest began to accrue. Agencies may extend the 30-day period on a case-by-case basis, if it is determined that an extension is appropriate because of partial

or complete absence of culpability by the debtor for the delay in payment.

(c) Agencies may waive collection of all or part of the interest, penalties, and administrative costs assessed under these regulations when it is determined:

(1) That the Government cannot collect the full amount of the delinquent debt or interest and costs because of the debtor's inability to pay the full amount within a reasonable time (considering such factors as those listed at 4 CFR 103.2(b)), or the debtor's refusal to pay the full amount where the Government is unable to effect collection in full within a reasonable time; or

(2) That there is a real doubt concerning the Government's ability to recover interest, penalties or costs in court, either because of the legal or equitable issues involved or because the facts are being disputed in court; or

(3) That the cost of collecting the delinquent debt with interest, penalties, or costs outweighs the amounts to be recovered; or

(4) That the collection of some or all of these charges would be against equity and good conscience or not in the best interests of the United States; or

(5) (For waiver of interest) that a request is pending for reconsideration, administrative review, or waiver of the underlying delinquent debt under a statute allowing but not requiring one or more of these remedies. If the statute under which review or waiver is sought by the debtor prohibits the agency from collecting the delinquent debt before resolution of the review or waiver request, interest, penalties and administrative costs must be waived during the period in which collection action is stayed. Otherwise, interest, penalties and administrative costs will not be waived except for a separate reason included in this section; or

(6) (For waiver of interest) that the agency has agreed to a repayment plan consistent with 4 CFR 102.11 and with §3.28 of this subpart, there is no indication of fault or lack of good faith by the debtor, and the amount of interest is sufficiently large relative to the size of the installments reasonably affordable by the debtor that the principal debt would never be repaid; or

(7) The debt is repaid after the date on which interest, penalties and administrative costs became payable and the estimated costs of recovering the remaining interest balance exceed the amount owed to the agency.

(d) The creditor agency must document its reasons for waiving interest, penalties, or administrative costs. This documentation must be retained by the agency for at least three years.

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

### § 3.35 Disclosure to a credit reporting agency.

(a) The Department may report all commercial debts and all delinquent consumer debts to credit reporting agencies. The Department need not report foreign debts, or the debts of State and local governments, Indian tribal governments, or other public institutions.

(b) Disclosure of delinquent consumer debts must be consistent with the requirements of 31 U.S.C. 3711(f), 4 CFR 102.3(c), and 5 U.S.C. 552a (the Privacy Act).

[50 FR 7722, Feb. 26, 1985, as amended at 55 FR 38663, Sept. 20, 1990]

### § 3.36 Use of collection agencies.

USDA agencies should use collection agencies at any time accounts become delinquent. Agencies must refer all accounts 6 months or more delinquent unless other collection actions are being pursued or referral is prohibited by statute.

[55 FR 38663, Sept. 20, 1990]

## Subpart C—Salary Offset

AUTHORITY: 5 U.S.C. 5514; 5 CFR part 550, subpart K.

SOURCE: 51 FR 8995, Mar. 17, 1986, unless otherwise noted.

### § 3.51 Scope.

(a) The provisions of this subpart set forth the Department's 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) These regulations apply to:

(1) Current employees of the Department and other agencies who owe debts to the Department; and

(2) Current employees of the Department who owe debts to other agencies.

(c) These regulations do not apply to debts or claims arising under the Internal Revenue Code of 1954 (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); 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 statute.

(d) These regulations identify the types of salary offset available to the Department, as well as certain rights provided to the employee, which include a written notice before deductions begin, the opportunity to petition for a hearing and to receive a written decision if a hearing is granted. These employee rights do not apply to 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.

(e) These regulations do not preclude an employee from:

(1) Requesting waiver of a salary 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 statute; or

(3) Questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office.

(f) Nothing in these regulations precludes the compromise, suspension or termination of collection actions where appropriate under the Department's regulations contained elsewhere.

### § 3.52 Definitions.

(a) *Agency* means:

(1) An Executive Agency as defined by section 105 of title 5 U.S.C., the U.S. Postal Service, the U.S. Postal Rate Commission; and

(2) A Military Department as defined by section 102 of title 5, U.S.C.

(b) *Debt* means:

(1) An amount owed to the United States from sources which include, but are not limited to, insured or guaranteed loans, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable due to his or her negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel;

(iii) Illegal, unauthorized obligations and expenditures of Government appropriations;

(iv) Using or authorizing the use of Government owned or leased equipment, facilities, supplies, and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed Government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the approximate cause for a loss of Government funds.

(c) *Department* or *USDA* means the United States Department of Agriculture.

(d) *Disposable pay* means any pay due an employee that remains after required deductions for Federal, State and Local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions required by law to be withheld.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(f) *Hearing official* means an administrative law judge of the Department or some other individual not under the control of the Secretary.

(g) *Salary offset* means a deduction of a debt by deduction(s) from the disposable pay of an employee without his or her consent.

(h) *Secretary* means the Secretary of the U.S. Department of Agriculture or his or her designee.

(i) *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.

### § 3.53 Coordinating offset with another Federal agency.

(a) *When USDA is owed the debt.* When USDA is owed a debt by an employee of another agency, the other agency shall 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) *When another agency is owed the debt.* The Department 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 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) and that the agency has complied with its regulations required by 5 U.S.C. 5514 and 5 CFR part 550, subpart K.

### § 3.54 Determination of indebtedness.

(a) In determining that an employee is indebted to USDA and that 4 CFR parts 101 through 105 have been satisfied and that salary offset is appropriate, the Secretary will review the debt to make sure that it is valid and past due.

(b) If the Secretary determines that any of the requirements of paragraph (a) of this section have not been met, no determination of indebtedness shall be made and salary offset will not proceed until the Secretary is assured that the requirements have been met.

### § 3.55 Notice requirements before offset.

Except as provided in § 3.51(d), salary offset will not be made unless the Secretary first provides the employee with a minimum of 30 calendar days written notice. This Notice of Intent to Offset Salary (Notice of Intent) will state:

(a) That the Secretary 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) The Secretary'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 amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the Department's requirements concerning interest, penalties and administrative costs; unless such payments are waived in accordance with 31 U.S.C. 3717 and § 3.34;

(e) The employee's right to inspect and copy Department records relating to the debt;

(f) The employee's right to enter into a written agreement with the Secretary for a repayment schedule differing from that proposed by the Secretary, so long as the terms of the repayment schedule proposed by the employee are agreeable to the Secretary;

(g) The right to a hearing conducted by a hearing official on the Secretary'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 the Secretary;

(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 calendar 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 statutes 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 statutes 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 should be directed.

### § 3.56 Request for a hearing.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for a hearing, that is received by the Secretary not later than 30 calendar days from the date of the Department's notice described in § 3.55, if an employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) The Secretary's proposed offset schedule (including percentage).

(b) The petition must be signed by the employee and should 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 should state the objection and the reasons for it.

(c) If the employee files a petition for hearing later than the 30 calendar 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).

### § 3.57 Result if employee fails to meet deadlines.

An employee will not granted a hearing and will have his or her disposable pay offset in accordance with the Secretary's offset schedule if the employee:

(a) Fails to file a petition for a hearing as prescribed in §3.56; or

(b) Is scheduled to appear and fails to appear at the hearing.

### § 3.58 Hearings.

(a) If an employee timely files a petition for a hearing under § 3.56, the Secretary shall select the time, date, and location for the hearing.

(b)(1) Hearings shall be conducted by an appropriately designated hearing official; and

(2) Rules of evidence shall not be adhered to, but the hearing official shall 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.

(c) USDA will have the burden of going forward to prove the existence of the the debt.

(d) The employee requesting the hearing shall bear the ultimate burden of proof.

(e) 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.

### § 3.59 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 of the evidence presented and the respective burdens of the parties, in light of the hearing;

(c) The amount and validity of the alledged debt determined as a result of the hearing; and

(d) There payment schedule (including percentage of disposable pay), if applicable.

(e) The determination of the amount of the debt at this hearing is the final agency action on this matter.

### § 3.60 Review of Departmental record related to the debt.

(a) *Notification by employee.* An employee who intends to inspect or copy Departmental records related to the debt must send a letter to the Secretary stating his or her intention. The letter must be received by the Secretary within 30 calendar days of the date of the Notice of Intent.

(b) *Secretary's response.* In response to the timely notice submitted by the debtor as described in paragraph (a) of this section, the Secretary will notify the employee of the location and time when the employee may inspect and copy Departmental records related to the debt.

### § 3.61 Written agreement to repay debt as alternative to salary offset.

(a) *Notification by employee.* The employee may propose, in response to a Notice of Intent, 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 which is received by the Secretary within 30 calendar days of the date of the Notice of Intent.

(b) *Secretary's response.* The Secretary will notify the employee whether the employee's prosposed written agreement for repayment is acceptable. The Secretary may accept a repayment agreement instead of proceeding by offset. In making this determination, the Secretary will balance the Department's 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, the Secretary 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.

### § 3.62 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 the Secretary's Notice of Intent to collect from the employee's current pay.

(b) If the employee filed a petition for a hearing with the Secretary before the expiration of the period provided for in § 3.56 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 the Secretary.

(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 B of this part).

### § 3.63 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 set forth in § 3.64.

### § 3.64 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 the Secretary agree to alternative arrangements for repayment under § 3.61.

(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 three 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.* The Department 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.

### § 3.65 Procedures for salary offset: Imposition of interest, penalties and administrative costs.

Interest, penalties and administrative costs will be charged in accordance with 4 CFR 102.13.

### § 3.66 Nonwaiver 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.

### § 3.67 Refunds.

The Department will refund promptly to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing the United States (unless expressly prohibited by statute or regulation); or

(b) The Department is directed by an administrative or judicial order to refund deducted from the employee's current pay.

### § 3.68 Agency regulations.

The Head of each USDA agency is delegated the authority to act for the Secretary under these regulations and may issue regulations or policies not inconsistent with Office of Personnel Management regulations (5 CFR part 550, subpart K) and regulations in this subpart governing the collection of a debt by salary offset.

## Subpart D—Cooperation with the Internal Revenue Service

AUTHORITY: 26 U.S.C. 61, 31 U.S.C. 3720A, I TFRM 4055.50.

### § 3.81 Reporting discharged debts to the Internal Revenue Service.

When the Department discharges a debt for less than the full value of the indebtedness it will report the outstanding balance discharged, not including interest, to the Internal Revenue Service, using IRS Form 1099–G or any other form prescribed by the Service, when:

(a) The principal amount of the debt not in dispute is $600 or more; and

(b) The obligation has not been discharged in a bankruptcy proceeding; and

(c) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

[50 FR 7726, Feb. 26, 1985]

### § 3.82 Offset against tax refunds.

The Department 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 and Treasury Department regulations.

[50 FR 7726, Feb. 26, 1985]

## Subpart E—Adjusted Civil Monetary Penalties

AUTHORITY: 28 U.S.C. 2461 note.

### § 3.91 Adjusted civil monetary penalties.

(a) *In general.* The Secretary will adjust the civil monetary penalties, listed in paragraph (b), to take account of inflation at least once every 4 years as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. No. 104–134).

(b) *Penalties*—(1) *Agricultural Marketing Service.* (i) Civil penalty for improper pesticide recordkeeping, codified at 7 U.S.C. 136i–1(d), has:

(A) A maximum of $550 in the case of the first offense, and

(B) A minimum of $1,100 in the case of subsequent offenses unless the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of 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 $2,200.

(iii) Civil penalty for a violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has—

(A) A maximum of $1,000 for each such offense and not more than $250 for each day it continues; or

(B) A maximum of $250 for each such 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 of $2,000 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of Export Apple and Pear Act, codified at 7 U.S.C. 586, has a minimum of $110 and a maximum of $11,000.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of $110 and a maximum of $11,000.

(vii) Civil penalty for a violation of an order issued by the Secretary, under the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of $1,100.

(viii) Civil penalty for failing to file certain reports under the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum civil penalty of $110.

(ix) Civil penalty for a violation of seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum civil penalty of $27.50 and a maximum of $550.

(x) Civil penalty for a failure to collect an assessment or fee or for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of $1,100.

(xi) Civil penalty for a violation of a cease and desist order or for deceptive marketing under the Plant Variety Protection Act, codified at 7 U.S.C. 2568(b), has a minimum of $550 and a maximum of $11,000.

(xii) Civil penalty for failing to pay, collect, remit any assessment or fee or for violating a program regarding Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of $550 and a maximum of $5,500.

(xiii) Civil penalty for failing 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 $550.

(xiv) Civil penalty for failing to pay, collect, remit any assessment or fee or for violating a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of $550 and a maximum of $5,500.

(xv) Civil penalty for failing to obey a cease and desist order for a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of $550.

(xvi) Civil penalty for failing to remit any assessment or fee or for violating a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of $5,500.

(xvii) Civil penalty for failing to remit any assessment or for violating a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of $1,100.

(xviii) Civil penalty for failing to pay, collect, or remit any assessment or fee or violating a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum $550 and a maximum of $5,500.

(xix) Civil penalty for failing 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 $550.

(xx) Civil penalty for a violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of $1,100.

(xxi) Civil penalty for failing to pay, collect, or remit any assessment or fee or for violating the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has

a minimum civil penalty of $550 and a maximum of $5,500.

(xxii) Civil penalty for failing to obey a cease and desist order of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum civil penalty of $550.

(xxiii) Civil penalty for a violation of a program of the Pork Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of $1,100.

(xxiv) Civil penalty for failing to obey a cease and desist order under the Pork Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of $550.

(xxv) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of $550 and a maximum of $5,500.

(xxvi) Civil penalty for failing to obey a cease and desist order for a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of $550.

(xxvii) Civil penalty for failing to pay, collect, or remit any assessments or fee or for a violation of program under the Pecan Promotion and Research Act, codified at 7 U.S.C. 6009(c)(1), has a minimum of $1,100 and a maximum of $11,000.

(xviii) Civil penalty for failing to obey a cease and desist order of the Pecan Promotion and Research Act, codified at 7 U.S.C. 6009(e), has a maximum of $1,100.

(xxix) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program of the Mushroom Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6107(c)(1), has a minimum of $550 and a maximum of $5,500.

(xxx) Civil penalty for failing to obey a cease and desist order under the Mushroom Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6107(e), has a maximum of $550.

(xxxi) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violation of the Lime Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 6207(c)(1), has a minimum of $550 and a maximum of $5,500.

(xxxii) Civil penalty for failing to obey a cease and desist order under the Lime Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 6207(e), has a maximum of $550.

(xxxiii) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(c)(1), has a maximum civil penalty of $1,100.

(xxxiv) Civil penalty for failing 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 $5,500.

(xxxv) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violating a program of the Fluid Milk Promotion Act, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of $550 and a maximum civil penalty of $5,500; or in the case of a violation which is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of $11,000 and a maximum of $110,000.

(xxxvi) Civil penalty for failing to obey a cease and desist order for a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of $5,500.

(xxxvii) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act, codified at 7 U.S.C. 6519(a), has a maximum of $11,000.

(xxxviii) Civil penalty for failing to pay, collect, or remit any assessments or fee or for violation of a program of the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act, codified at 7 U.S.C. 6808(c)(1), has a minimum of $530 and a maximum of $5,300.

(xxxix) Civil penalty for failing to obey a cease and desist order for a program of the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act, codified at 7 U.S.C. 6808(e), has a maximum of $5,300.

(xl) Civil penalty for a violation of program of the Sheep Promotion, Research, and Consumer Information Act,

codified at 7 U.S.C. 7107(c)(1), has a maximum of $1,030.

(xli) Civil penalty for failing to obey a cease and desist order for a program of the Sheep Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7107(e), has a maximum of $520.

(xlii) 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 $1,000 and a maximum of $10,000 for each violation.

(xliii) Civil penalty for a violation of a cease and desist order issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of $1,000 and a maximum of $10,000 for each day the violation occurs.

(xliv) 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), has a maximum of $1,000 for each violation.

(xlv) Civil penalty for a violation of a cease and desist order issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of $5,000 for each day the violation occurs.

(xlvi) Civil penalty for a 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 $500 and a maximum of $5,000 for each violation.

(xlvii) Civil penalty for a violation of a cease and desist order issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of $500 for each day the violation occurs.

(xlviii) Civil penalty for a violation of an order or regulation issued under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487, has a maximum of $1,000 for each violation.

(xlix) Civil penalty for a violation of an order or regulation issued under the egg surveillance provisions of the Eggs Product Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $5,500 for each violation.

(2) *Animal and Plant Health Inspection Service.* (i) Civil penalty for a violation of the Act of January 31, 1942, plant and pest regulations, codified at 7 U.S.C. 149(b)(2), has a maximum of $1,100.

(ii) Civil penalty for a violation of the Federal Plant Pest Act, codified at 7 U.S.C. 150gg(b), has a maximum of $1,100.

(iii) Civil penalty for a violation of the Act of August 20, 1912 (commonly known as the Plant Quarantine Act), codified at 7 U.S.C. 163, has a maximum of $1,100.

(iv) Civil penalty for a violation of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $27.50 and a maximum of $550.

(v) Civil penalty for a violation of Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $2,750; and knowing failure to obey a cease and desist order has a civil penalty of $1,650.

(vi) Civil penalty for a violation of Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of $11,000.

(vii) Civil penalty for a violation of Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of $2,200.

(viii) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of $3,300 and exhibition of disqualified horse, codified at 15 U.S.C. 1825(c), has a maximum of $3,300.

(ix) Civil penalty for a violation of the Act of August 30, 1890, codified at 21 U.S.C. 104, has a maximum of $1,100.

(x) Civil penalty for a violation of the Act of May 29, 1884 (commonly known as the Animal Industry Act), codified at 21 U.S.C. 117(b), has a maximum of $1,100.

(xi) Civil penalty for a violation of the Act of February 2, 1903 (commonly known as the Cattle Contagious Disease Act), codified at 21 U.S.C. 122, has a maximum of $1,100.

(xii) Civil penalty for a violation of the Act of March 3, 1905, codified at 21 U.S.C. 127, has a maximum of $1,100.

(xiii) Civil penalty for a violation of the Act of July 2, 1962, codified at 21

U.S.C. 134e(a)(2), has a maximum of $1,100.

(xiv) Civil penalty for a violation of the Act of May 6, 1970, codified at 21 U.S.C. 135a(b), has a maximum of $1,100.

(xv) Civil penalty for knowingly violating, or, if in the business, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) 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), as set forth at 16 U.S.C. 1540(a) (other than regulations relating to recordkeeping or filing reports), (f), or (g) of the Endangered Species Act of 1973 (16 U.S.C. 1538(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d), (f), and (g)), has a maximum of $25,000.

(xvi) Civil penalty for knowingly violating, or, if in the business, violating, with respect to terrestrial plants, any regulation issued under the Endangered Species Act (16 U.S.C. 1531 *et seq.*), as set forth at 16 U.S.C. 1540(a) [except as provided in subparagraph (O)], has a maximum of $12,000.

(xvii) Civil penalty for any violation, with respect to terrestrial plants, of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), as set forth at 16 U.S.C. 1540(a) [except as provided in subparagraphs (O) and (P)], has a maximum of $500.

(3) *Food and Consumer Service.* (i) Civil penalty for hardship fine in lieu of disqualification, codified at 7 U.S.C. 2021(a), has a maximum of $11,000 per violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $20,000 for each violation, except that the maximum penalty for violations occurring during a single investigation is $40,000.

(iii) Civil penalty for the sale of firearms, ammunition, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of $20,000 for each violation except that the maximum penalty for violations occurring during a single investigation is $40,000.

(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 the bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of $100,000,000.

(4) *Food Safety and Inspection Service.* (i) Civil penalty for a violation of the Eggs Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum penalty of $5,500 for each violation.

(ii) Civil penalty for a failure to file timely certain reports, codified at 21 U.S.C. 467d, has a maximum civil penalty of $11 per day for each day the report is not filed.

(iii) Civil penalty for a failure to file timely certain reports codified at 21 U.S.C. 677, has a maximum civil penalty of $11 per day for each day the report is not filed.

(iv) Civil penalty for a failure to file timely certain reports codified at 21 U.S.C. 1051, has a maximum civil penalty of $11 per day for each day the report is not filed.

(5) *Forest Service.* (i) Civil penalty for a willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands has a maximum of $550,000 per violation or three times the gross value of the unprocessed timber whichever is greater, codified at 16 U.S.C. 620d(c)(1)(A).

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, has a maximum penalty of $82,500 per violation, codified at 16 U.S.C. 620d(c)(2)(A)(i).

(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 of 1990 (16 U.S.C. 620 *et seq.*) or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, has

a maximum penalty of $55,000 per violation, codified at 16 U.S.C. 620d(c)(2)(A)(ii).

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 *et seq.*) or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, has a maximum penalty of $550,000 per violation, codified at 16 U.S.C. 620d(c)(2)(A)(iii).

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of $11,000.

(6) *Grain Inspection, Packers and Stockyards Administration*. (i) Civil penalty for a packer violation, codified at 7 U.S.C. 193(b), has a maximum of $11,000.

(ii) Civil penalty for livestock market agency, dealer, failure to register, codified at 7 U.S.C. 203, has a maximum of $550 and not more than $27.50 for each day the violation continues.

(iii) Civil penalty for a violation of stockyard rate, regulation or practice, codified at 7 U.S.C. 207(g), has a maximum civil penalty of $550 and not more than $27.50 for each day the violation continues.

(iv) Civil penalty for a stockyard owner, livestock market agency and dealer violations, codified at 7 U.S.C. 213(b), has a maximum of $11,000.

(v) Civil penalty for a stockyard owner, livestock market agency and dealer compliance order violations, codified at 7 U.S.C. 215(a), has a maximum of $550.

(vi) Civil penalty for a failure to file required reports, codified at 15 U.S.C. 50, has a maximum of $110.

(vii) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b-2(b), has a maximum of $22,000.

(viii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum civil penalty of $82,500.

(7) *Federal Crop Insurance Corporation*. Civil penalty for any person who willfully and intentionally provides materially false or inaccurate information to the Federal Crop Insurance Corporation or an approved insurance provider reinsured by the Federal Crop Insurance Corporation, codified at 7 U.S.C. 1506(n)(1)(A), has a maximum civil penalty of $10,000.

(8) *All USDA Agencies*. Civil penalty for work hours and safety violations, codified at 40 U.S.C. 328, has a maximum of $11 per day of violation.

[62 FR 40925, July 31, 1997; 62 FR 42857, Aug. 8, 1997]

## 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 on GPO Access.

### § 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; 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.

[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.

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—General Provisions

Sec.

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6.3 Requests by interested persons for action by Department of Agriculture.
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6.5 Hearings under section 22.
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6.36 Miscellaneous.
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APPENDICES 1, 2, AND 3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING

## Subpart—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—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.

### § 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—Dairy Tariff-Rate Import Quota 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.

### § 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 Pub. L. 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 new tariff-rate quotas are listed in Appendices 1, 2, and 3 of this subpart. Licenses will be issued pursuant to the provisions of this subpart for the 1997 and subsequent quota years. These licenses will 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 a tariff-rate quota, 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 maybe affecting the trade in the articles concerned.

### § 6.21 Definitions.

As used in this subpart and the Appendices thereto, the following terms mean:

*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.

*Customs*. The United States Customs Service.

*Country*. Country of origin as determined in accordance with Customs rules and regulations, except that ''EC 12'', ''EC 15'', and ''Other countries'' shall each be treated as a country.

*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.

*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 12*. Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, and the United Kingdom.

*EC 15*. Austria, Belgium, Denmark, the Federal Republic of Germany, Finland, France, Greece, Ireland, Italy,

Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

*Enter* or *Entry*. To make or making entry for consumption, or withdrawal from warehouse for consumption in accordance with Customs 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 Import Quota Licensing System, currently the Import Policies and Programs Division of the Foreign Agricultural Service.

*Other countries*. Countries not listed by name as having separate tariff-rate quota allocations for an article in the Additional U.S. Notes to Chapter 4 of the Harmonized Tariff Schedule.

*Person*. An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

*Postmark*. The postage cancellation mark or date applied by the United States Postal Service. This does not include the date on metered postage affixed by the applicant, or on mail delivered by private entities.

*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.

[61 FR 53007, Oct. 9, 1996, as amended at 65 FR 1298, Jan. 10, 2000]

### § 6.22 Requirement for a license.

(a) *General rule*. A person who seeks to enter, or cause to be entered, an article shall obtain a license, in accordance with this subpart, except as provided in paragraph (b).

(b) *Exceptions*. Licenses are not required if:

(1) The article is imported by or for the account of any agency of the U.S. Government;

(2) The article is imported for the personal use of the importer, provided that the net weight does not exceed five kilograms in any one shipment;

(3) The article imported will not enter the commerce of the United States and is imported as a sample for taking orders, for exhibition, for display or sampling at a trade fair, for research, for testing of equipment; or for use by embassies of foreign governments. Written approval of the Licensing Authority shall be obtained prior to entry, and the importer of record (or a broker or agent acting on its behalf) shall provide to the Licensing Authority, prior to the release of such articles, the appropriate Customs documentation identifying the article, quantity to be imported, its location, intended use, an entry number and the importer of record. The Licensing Authority may also require as a condition of import that the article be destroyed or re-exported after such use; or

(4) Such person pays the applicable over-quota rate of duty.

### § 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.

(b) *Eligibility for the 1997 and subsequent quota years*—(1) *Historical licenses (Appendix 1)*. Any person issued a historical or nonhistorical license for the 1996 quota year for an article may apply for a historical license (Appendix 1) for the same article from the same country for the 1997 and subsequent quota years, 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) *Certain butter.* A person issued a nonhistorical license for butter for the 1997 or 1998 quota year may annually apply for a historical license (Appendix 1) for the same quantity of butter for the subsequent quota year and each year thereafter, provided that such person has used at least 90 percent of the original license issued for the previous quota year and meets the requirements of paragraph (b)(1)(ii). However, if a person is issued a historical license pursuant to this paragraph, that person may not be issued a nonhistorical license for butter for any quota year in which that historical license is issued to that person, unless applicants who do not hold such a license have all been issued such a nonhistorical license.

(3) *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) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(i) of this section.

(4) *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) for the 1997 quota year and each quota year thereafter if such person meets the requirements of paragraph (b)(1)(ii).

(5) *Designated license (Appendix 3).* A person may annually apply for a designated license (Appendix 3) for the 1997 quota year and for each quota year thereafter, provided that such person meets the requirements of paragraph (b)(1)(i), of this section and provided further that the government of the country has designated such person for such license. The designating country shall submit its selection of designated importers in writing directly to the Licensing Authority not later than October 31 prior to the beginning of the quota year.

(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, for which the applicant receives a designated license.

### § 6.24 Application for a license.

(a) Application for license shall be made on forms provided by the Licensing Authority and shall be duly notarized and mailed in accordance with § 6.35(b). All parts of the application shall be completed. For the 1997 quota year, applications should be postmarked no earlier than October 10 and no later than October 31. For the 1998 and subsequent quota years, the application shall be postmarked no earlier than September 1 and no later than October 15 of the year preceding that for which license application is made. The Licensing Authority will not accept incomplete or unpostmarked applications.

(b)(1) Where the applicant seeks to establish eligibility on the basis of imports, applications shall include Customs Form 7501 showing 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.

(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) However, if the applicant is applying on the basis of more than eight shipments, the application shall include:

(1) The required documentary evidence for eight shipments;

(2) A signed certification that the remaining required documents are on file at the applicant's premises; and

(3)(i) If the application is made on the basis of imports, a listing of the entry numbers, dates of entry and volumes on those remaining documents; or

(ii) If the application is made on the basis of exports, a listing of the dates of export and volumes on those documents.

(d) 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 which are not cheese or cheese products.

### § 6.25 Allocation of licenses.

(a) *Historical licenses for the 1997 quota year (Appendix 1).* (1) A person issued a historical license for the 1996 quota year will be issued a historical license for the 1997 quota year in an amount equal to the Basic Annual Allocation level used by the Licensing Authority for the 1996 quota year provided that such person meets the requirements of § 6.23(b)(1) and § 6.23(c).

(2) A person issued a nonhistorical license for the 1996 quota year will be issued a historical license for the 1997 quota year for the same quantity as the license for the 1996 quota year, provided that such person meets the requirements of § 6.23.

(3) If a person was issued more than one historical license, or one or more historical licenses and a nonhistorical license, for the same article from the same country for the 1996 quota year, such person will be issued a single historical license for the 1997 quota year, the amount of which shall be determined in accordance with paragraphs, (a) (1) and (2) of this section.

(b) *Historical licenses for the 1998 and subsequent quota years (Appendix 1).* (1) A person issued a historical license for the 1997 quota year will be issued a historical license in the same amount for the same article from the same country for the 1998 quota year and for each subsequent quota year except that:

(i) Beginning with the 1999 quota year, a person who has surrendered more than 50 percent of such historical license in each of the prior three quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those three quota years; and

(ii) Beginning with the quota year 2001, a person who has surrendered more than 50 percent of such historical license in at least three of the prior five quota years will thereafter be issued a license in an amount equal to the average annual quantity entered during those five quota years.

(2) However, prior to the beginning of the 1999 quota year, the Secretary of Agriculture may determine that the exceptions in paragraphs (b)(1) (i) and (ii) of this section shall not apply in light of market conditions.

(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 and in writing to the Licensing Authority:

(i) The names and addresses of the importers that it is designating to receive licenses; and

(ii) The amount, in percentage terms, 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.

EFFECTIVE DATE NOTE: At 63 FR 13481, Mar. 20, 1998, in §6.25, paragraphs (b)(1) (i) and (ii) were suspended indefinitely.

### § 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 in writing, mailed in accordance with § 6.35(b) and postmarked 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 has been issued a 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. The application shall be submitted to the Licensing Authority by mail postmarked no earlier than September 1 and not later than September 15, in accordance with § 6.35(b), and shall specify:

(1) The name and control number of the applicant;

(2) The article and country being requested, the applicable 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 and addresses of the importers that it is designating and the amount in percentage terms of such article for which each importer is being designated. In such case the requirements of paragraph (c) of this section shall not apply.

(f) Except for paragraph (a), the provisions of § 6.26 for surrendered and reallocated tariff-rate quota shares do not apply for the 1996 quota year. Reissued tariff-rate quota shares for licenses surrendered during 1996 will be made pursuant to the provisions in effect for the 1996 quota year (§ 6.26(f)(2) as contained in 7 CFR subtitle A, revised as of January 1, 1996).

### § 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.

### § 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) by mail as required in § 6.35(b). 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 written notice shall include 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 mail copies of the final documents to the Licensing Authority, in accordance with § 6.35(b). 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.

### § 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, 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, Customs 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, 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, at the time of entry:

(1) Customs 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 Customs regulations relating to tariff-rate quotas.

### § 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.

### § 6.31 Debarment and suspension.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), Subparts A through E, applies to this subpart.

### § 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.

### § 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 by mail, postmarked no later than May 1 of the year for which the license is issued, in accordance with § 6.35(b). The fee for any license issued after May 1 of any quota year is due and payable in full by mail, postmarked no later than 30 days from the date of issuance of the license, in accordance with § 6.35(b). Fee payments shall be made by certified check or money order payable to the Treasurer of the United States.

(c) If the license fee is not paid by the final payment date, a hold will be placed on the use of the license and no articles will be permitted entry under that license. The Licensing Authority shall send a warning letter by certified mail, return receipt requested, advising the licensee that if payment is not mailed in accordance with § 6.35(b) or received within 21 days from the date of the letter, that the license 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.

(d) Licensees may elect not to accept certain licenses issued to them; however, the Licensing Authority must be so notified by mail, postmarked no later than the May 1, in accordance with § 6.35(b).

### § 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) will be published in the FEDERAL REGISTER. 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.

### § 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 letter, postmarked 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.

[65 FR 1298, Jan. 10, 2000]

### § 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 submissions required by mail in this subpart shall be by registered or certified mail, return receipt requested, with a postmarked receipt, with the proper postage affixed and properly addressed to the Dairy Import Licensing Group, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue SW., Washington DC 20250–1021.

[61 FR 53007, Oct. 9, 1996. Redesignated at 65 FR 1298, Jan. 10, 2000]

### § 6.37 Supersedure of Import Regulation 1, Revision 7.

This subpart will supersede the provisions of Import Regulation 1, Revision 7 heretofore in effect (§§ 6.20 through 6.33 and appendices 1 through 3 as contained in 7 CFR subtitle A revised as of January 1, 1996). With respect to any violation of the provisions of that regulation by a licensee prior to the effective date hereof, the provisions of that regulation will be deemed to continue in full force; however, the debarment and suspension of § 6.31 of this subpart shall apply with respect to any violation of that regulation.

[61 FR 53007, Oct. 9, 1996. Redesignated at 65 FR 1298, Jan. 10, 2000]

APPENDICES 1, 2, AND 3 TO SUBPART—DAIRY TARIFF-RATE IMPORT QUOTA LICENSING (QUANTITIES IN KILOGRAMS)*

| Article by additional U.S. note number and country of origin | Appendix 1 | Appendix 2 | Appendix 3 | |
|---|---|---|---|---|
| | | | Tokyo Round | Uruguay Round |
| **Non-Cheese Articles** | | | | |
| Butter (Note 6) | 5,592,278 | 1,384,722 | ..... | ..... |
| EU–15 | 81,153 | 15,008 | ..... | ..... |
| New Zealand | 124,709 | 25,884 | ..... | ..... |
| Other Countries | 63,105 | 10,830 | ..... | ..... |
| Any Country | 5,323,311 | 1,333,000 | ..... | ..... |
| Dried Skim Milk (Note 7) | 600,076 | 4,660,924 | ..... | ..... |
| Australia | 600,076 | ..... | ..... | ..... |
| Canada | ..... | 219,565 | ..... | ..... |
| Any Country | ..... | 4,441,359 | ..... | ..... |
| Dried Whole Milk (Note 8) | 3,175 | 3,318,125 | ..... | ..... |
| New Zealand | 3,175 | ..... | ..... | ..... |
| Any Country | ..... | 3,318,125 | ..... | ..... |
| Dried Buttermilk/Whey (Note 12) | 224,981 | ..... | ..... | ..... |
| Canada | 161,161 | ..... | ..... | ..... |
| New Zealand | 63,820 | ..... | ..... | ..... |
| Butter Substitutes containing over 45 percent of butterfat and/or butter oil (Note 14) | ..... | 6,080,500 | ..... | ..... |
| Any Country | ..... | 6,080,500 | ..... | ..... |
| Total: Non-Cheese Articles | 6,420,510 | 15,444,271 | ..... | ..... |

| Article by additional U.S. note number and country of origin | Appendix 1 | Appendix 2 | Appendix 3 | |
|---|---|---|---|---|
| | | | Tokyo Round | Uruguay Round |
| **Cheese Articles** | | | | |
| Cheese and substitutes for cheese (except cheese not containing cow's milk and soft ripened cow's milk cheese, cheese (except cottage cheese) containing 0.5 percent or less by weight of butterfat and articles within the scope of other import quotas provided for in this subchapter) (Note 16) | 23,832,227 | 7,638,504 | 9,661,128 | 7,496,000 |
| Argentina | 7,690 | ..... | 92,310 | ..... |
| Australia | 535,628 | 5,542 | 758,830 | 1,750,000 |
| Canada | 1,031,946 | 109,054 | ..... | ..... |
| Costa Rica | ..... | ..... | ..... | 1,550,000 |
| Czech Republic | ..... | ..... | ..... | 200,000 |
| EU–15 | 15,596,462 | 6,735,970 | 1,132,568 | 2,346,000 |
| Of which Portugal is | 127,536 | 1,773 | 223,691 | ..... |
| Israel | 79,696 | ..... | 593,304 | ..... |
| Iceland | 294,000 | ..... | 29,000 | ..... |
| New Zealand | 4,516,178 | 299,294 | 6,506,528 | ..... |
| Norway | 124,982 | 25,018 | ..... | ..... |
| Poland | 917,497 | 18,727 | ..... | 300,000 |
| Slovak Republic | ..... | ..... | ..... | 600,000 |
| Switzerland | 597,513 | 73,899 | 548,588 | 500,000 |
| Uruguay | ..... | ..... | ..... | 250,000 |
| Other Countries | 130,635 | 71,000 | ..... | ..... |
| Any Country | ..... | 300,000 | ..... | ..... |
| Blue-mold cheese (except Stilton produced in the United Kingdom) and cheese and substitutes for cheese containing, or processed from, Blue-mold cheese (Note 17) | 2,321,554 | 159,447 | ..... | 430,000 |
| Argentina | 2,000 | ..... | ..... | ..... |
| EU–15 | 2,319,553 | 159,447 | ..... | 300,000 |
| Chile | ..... | ..... | ..... | 80,000 |
| Czech Republic | ..... | ..... | ..... | 50,000 |
| Other Countries | 1 | ..... | ..... | ..... |
| Cheddar Cheese, and cheese and substitutes for cheese containing, or processed from, Cheddar cheese (Note 18) | 3,664,363 | 619,493 | 519,033 | 7,620,000 |
| Australia | 937,721 | 46,778 | 215,501 | 1,250,000 |
| Chile | ..... | ..... | ..... | 220,000 |
| Czech Republic | ..... | ..... | ..... | 50,000 |
| EU–15 | 57,168 | 205,832 | ..... | 1,000,000 |
| New Zealand | 2,543,600 | 252,868 | 303,532 | 5,100,000 |
| Other Countries | 125,874 | 14,015 | ..... | ..... |
| Any Country | ..... | 100,000 | ..... | ..... |
| American-type cheese, including Colby, washed curd and granular cheese (but not including Cheddar) and cheese and substitutes for cheese containing or processed from such American-type cheese (Note 19) | 2,865,287 | 300,266 | 357,003 | ..... |
| Australia | 839,370 | 41,628 | 119,002 | ..... |
| EU–15 | 190,758 | 163,242 | ..... | ..... |
| New Zealand | 1,671,294 | 90,705 | 238,001 | ..... |
| Other Countries | 163,865 | 4,691 | ..... | ..... |
| Edam and Gouda cheese, and cheese and substitutes for cheese containing, or processed from, Edam and Gouda cheese (Note 20) | 5,296,988 | 309,414 | ..... | 1,210,000 |
| Argentina | 119,003 | 5,997 | ..... | 110,000 |
| Czech Republic | ..... | ..... | ..... | 100,000 |
| EU–15 | 5,038,266 | 250,734 | ..... | 1,000,000 |
| Norway | 114,318 | 52,682 | ..... | ..... |
| Other Countries | 25,401 | 1 | ..... | ..... |
| Italian-type cheeses, made from cow's milk, (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz, and Goya—not in original loaves) and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves (Note 21) | 6,531,696 | 988,851 | 795,517 | 5,165,000 |
| Argentina | 3,962,921 | 162,562 | 367,517 | 1,890,000 |
| EU–15 | 2,555,775 | 826,225 | ..... | 700,000 |
| Poland | ..... | ..... | ..... | 1,325,000 |
| Romania | ..... | ..... | ..... | 500,000 |
| Uruguay | ..... | ..... | 428,000 | 750,000 |
| Other Countries | 13,000 | 64 | ..... | ..... |

| Article by additional U.S. note number and country of origin | Appendix 1 | Appendix 2 | Appendix 3 | |
|---|---|---|---|---|
| | | | Tokyo Round | Uruguay Round |
| Swiss or Emmenthaler cheese other than with eye formation, Gruyere-process cheese and cheese and substitutes for cheese containing, or processed from, such cheeses (Note 22) | 5,767,170 | 884,144 | 823,519 | 380,000 |
| EU–15 | 4,358,468 | 793,526 | 393,006 | 380,000 |
| Switzerland | 1,333,942 | 85,545 | 430,513 | ..... |
| Other Countries | 74,760 | 5,073 | ..... | ..... |
| Cheese and substitutes for cheese, containing 0.5 percent or less by weight of butterfat (except articles within the scope of other tariff-rate quotas provided for in this subchapter), and margarine cheese (Note 23) | 3,843,537 | 581,371 | 1,050,000 | ..... |
| EU–15 | 3,680,293 | 569,707 | ..... | ..... |
| New Zealand | ..... | ..... | 1,000,000 | ..... |
| Israel | ..... | ..... | 50,000 | ..... |
| Poland | 163,243 | 11,664 | ..... | ..... |
| Other Countries | 1 | ..... | ..... | ..... |
| Swiss or Emmenthaler cheese with eye formation (Note 25) | 18,267,179 | 4,030,152 | 9,557,945 | 2,620,000 |
| Argentina | 9,115 | ..... | 70,885 | ..... |
| Australia | 209,698 | ..... | 290,302 | ..... |
| Canada | ..... | ..... | 70,000 | ..... |
| Czech Republic | ..... | ..... | ..... | 400,000 |
| Hungary | ..... | ..... | ..... | 800,000 |
| EU–15 | 13,265,347 | 3,211,481 | 4,003,172 | 1,220,000 |
| Iceland | 149,999 | ..... | 150,001 | ..... |
| Israel | 27,000 | ..... | ..... | ..... |
| Norway | 3,206,405 | 448,905 | 3,227,690 | ..... |
| Switzerland | 1,314,340 | 369,765 | 1,745,895 | 200,000 |
| Other Countries | 85,275 | 1 | ..... | ..... |
| Total: Cheese Articles | 72,390,001 | 15,511,642 | 22,764,145 | 24,921,000 |

*Articles Subject to: Appendix 1, Historical Licenses; Appendix 2, Nonhistorical Licenses; and Appendix 3, Designated Importer Licenses for Quota Year 2001

[66 FR 21047, Apr. 27, 2001]

## Subpart—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.

### § 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 USC 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 AGRICULTURAL STABILIZATION AND CONSERVATION STATE, COUNTY AND COMMUNITY COMMITTEES

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7.31 Hearing in connection with appeals and requests for reconsideration to Deputy Administrator.
7.32 Findings, analysis, and recommendations of hearing officer.
7.33 Determination of the Deputy Administrator.
7.34 Custody and use of books, records, and documents.
7.35 Administrative operations.
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7.38 Retention of authority.

AUTHORITY: Secs. 4 and 8 of the Soil Conservation and Domestic Allotment Act, as amended; 49 Stat. 164 and 1149, as amended (16 U.S.C. 590d and 590h).

SOURCE: 52 FR 48512, Dec. 23, 1987, unless otherwise noted.

## § 7.1 Administration.

(a) The regulations of this part are applicable to the election and functions of community and county Agricultural Stabilization and Conservation (''ASC'') committee and the functions of State ASC committees (''community'', ''county'', and ''State committees'', respectively). State, county, and community committees shall be under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service (''ASCS'').

(b) State, county, and community committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of this part.

(c) The State committees shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part, or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee of the Administrator, from determining any question arising under this part, or from reversing or modifying any determination made by a State or county committee.

## § 7.2 General.

State, county, and community committees shall, as directed by the Secretary of a designee of the Secretary, carry out the programs and functions of the Secretary.

## § 7.3 Definitions.

The terms defined in part 719 of this title governing the reconstitution of farms shall also be applicable to this part.

### § 7.4 Selection of committee members.

State committee members shall be selected by the Secretary and shall serve at the pleasure of the Secretary. County and community committee members shall be elected in accordance with § 7.9 of this part.

### § 7.5 Eligible voters.

(a) Voters eligible to participate in:

(1) The direct election of county committee members and

(2) Community committee elections shall be persons who meet the requirements of paragraphs (b) and (c) of this section.

(b) Any person, regardless of race, color, religion, sex, age, or national origin, who has an interest in a farm as owner, operator, tenant, or sharecropper and who is of legal voting age in the State in which the farm is located, and any person not of such legal voting age who is in charge of the supervision and conduct of the farming operations on an entire farm, shall be eligible to vote for direct election of county committee members or community committee members if such person is eligible to participate with respect to the farm in any program administered by the county committee.

(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 shall also be eligible to vote.

(d) If an eligible voter is an entity other than an individual, the eligible voter's vote may be cast by a duly authorized representative of such entity, as determined by the Deputy Administrator, State and County Operations, ASCS (''Deputy Administrator'').

(e) Each county office shall have a list of eligible voters for each community within the county available for public inspection in advance of the community committee election.

(f) Each eligible voter shall 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 community in the county, such voter shall not be entitled to vote in more than one community in the county. There shall be no voting by proxy.

### § 7.6 Determination of elective areas.

(a) *Local administrative areas and communities.* (1) Except as provided in paragraph (b) of this section, there shall be three local administrative areas in each county. With respect to Alaska, the term ''county'' shall be the area so designated by the State committee.

(2) Each local administrative area shall have at least one community committee consisting of three members.

(3) The boundaries of the communities and local administrative areas shall be determined by the State committee after considering recommendations by the county committee.

(b) *Exceptions to general rule.* (1) A local administrative area may have more than one community committee if the county had more than three community committees on December 23, 1985.

(2) In counties with less than 150 producers, the county committee may reduce the number of communities to one.

(3) The Deputy Administrator may include more than one county or parts of different counties in a community if it is determined that there is an insufficient number of producers in an area to establish a slate of candidates for a community committee and hold an election.

(4) In counties which had less than three communities on December 23, 1985, the county committee may establish one community for the county.

(5) In any county where there is only one community, the community committee shall be the county committee.

(c) The county committee shall give public notice of the community boundaries in advance of the election.

### § 7.7 Calling of elections.

(a) Each election of community committee members shall be held on a date, or within a specified period of time, determined by the Deputy Administrator. Such date or period of time shall fall within a period beginning on or after July 1 and ending not later than December 30 each year. Each such election shall be held in accordance with instructions issued by the Deputy Administrator which shall be

available for examination in each county office.

(b) If the number of eligible voters voting in any election of community committee members is so small that the State committee determines that the result of the election does not represent the views of a substantial number of eligible voters, the State committee shall 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 community committee has not been held substantially in accordance with official instructions, the State committee shall declare such election void and call a new election.

### § 7.8 Conduct of community committee elections.

(a) The county committee serving at the time shall be responsible for the conduct of community committee elections in accordance with instructions issued by the Deputy Administrator.

(b) Elections shall not be associated with, or held in conjunction with, any other election or referendum conducted for any other purpose.

(c) The county committee shall give advance public notice of how, when, and where eligible voters may vote; when and where the votes will be counted; and the right to witness the vote counting.

(d) All nominees shall be notified in writing of the outcome of the election by the county executive director.

### § 7.9 Election of community committee members, delegates to local administrative area and county conventions, and county committee members.

(a) Where there are three local administrative areas as provided in § 7.6 of this part there shall be an election of community committee members and alternates for a term of three years, or until such person's successor is elected and qualified, in one of the local administrative areas so that the term of office of the community committee members and alternates within one of the local administrative areas will expire each year.

(b) Except as provided in paragraph (d) of this section, the eligible voters in a community shall elect every three years a community committee composed of three members and shall elect first and second alternates to serve as acting members of the community committee in the order elected in case of the temporary absence of a member, or to become a member of the community committee in the order elected in case of the resignation, disqualification, removal, or death of a member. An acting member of the community committee shall have the same duties and the same authority as a regular member of such committee. The election shall be conducted by mail ballot in all counties, except that the Deputy Administrator may authorize use of the meeting or polling place method in a specific county where such is deemed justified. Where elections are by mail or by polling place, the county committee shall give advance public notice that nominations may be made by petition. Election shall be by secret ballot and by plurality vote with each eligible voter having the option of writing in the names of candidates. Except as provided in paragraph (d) of this section and § 7.10(c) of this part, the three regular members of the community committee shall be the delegates to the local administrative area and county conventions and the first and second alternates to community committee shall also be, in that order, alternate delegates to the local administrative area and county conventions. A person may not serve as delegate if such person has been a member of the county committee for that county during the 90 days preceding the community committee election. Failure to elect the prescribed number of alternates at the regular election shall not invalidate such election or require a special election to elect additional alternates.

(c) In any county where there is only one local administrative area, the community committee shall be the county committee.

(d) Where there is only one community in the county, one committee person shall be elected to hold office for a term of 3 years, or until such person's successor is elected and qualified, so that the term of office of one committee member will expire in each

year. There shall also be elected annually a first alternate and second alternate to serve as acting members in the order elected in case of the temporary absence of a member or to become a member in the order elected in the case of resignation, disqualification, removal, or death of a member of the committee. In the event an alternate fills a permanent vacancy on the committee, such person shall assume the office until the next election or until the replaced committee member's successor is elected and qualified. An acting member shall have the same duties and authority as a regular member.

(e) In any county where there are three local administrative areas, the delegates elected pursuant to §7.9 (a) and (b) of this part shall meet in a local administrative area convention held before the close of the same calendar year in which they were elected to elect a county committee member and a first and second alternate. A first and second alternate shall serve as acting members of the committee in the order elected in case of the temporary absence of a member, or to become a member in the order elected in case of the resignation, disqualification, removal, or death of a member of the county committee. In the event an alternate fills a permanent vacancy on the county committee, such person shall assume the unexpired term of the county committee member who was replaced. An acting member of the county committee shall have the same duties and authority as a member. The Deputy Administrator may fix the exact convention date. Each delegate shall be entitled to only one vote on any ballot, and there shall be no voting by proxy. A majority of the delegates so elected and qualified to vote at the time of the convention shall constitute a quorum. Such convention shall be held to the extent practicable in the manner set forth in §7.10 of this part and in accordance with instructions issued by the Deputy Administrator.

[52 FR 48512, Dec. 23, 1987, as amended at 53 FR 23749, June 24, 1988]

### § 7.10 Conduct of county convention.

(a) The county committee serving at the time shall be responsible for designating the place at which the county convention will be held and for the conduct of the convention in accordance with instructions issued by the Deputy Administrator.

(b) The delegates to the county convention shall determine which county committee members shall be the county committee chairperson and county committee vice-chairperson.

(c) Each local administrative area shall have the same number of delegates at the county convention. If a portion of the delegates from a local administrative area are precluded from attending the county convention as the result of the limitation imposed by the preceding sentence, the delegates from such local administrative area shall elect those delegates who shall attend the county convention.

(d) County conventions shall not be associated with or held in conjunction with any other election or referendum conducted for any other purpose.

(e) The county committee shall give advance public notice of the county convention which shall be open to the public.

(f) The county executive director shall notify in writing all newly elected county committee members, alternates, and county committee members with unexpired terms of the election results.

### § 7.11 County committee members.

(a) County committee members elected in accordance with §7.9 of this part shall hold office for a term of three years or until a successor is elected and qualified.

(b) The county committee shall select a secretary who shall be the county executive director, other employee of the county committee, or the county agricultural extension agent for the county. If the county agricultural extension agent is not selected as secretary to the county committee, that person shall be an ex officio member of the county committee but shall not have the power to vote.

[52 FR 48512, Dec. 23, 1987, as amended at 53 FR 23750, June 24, 1988]

### § 7.12 Tie votes.

(a) Tie votes in community committee elections held by mail or polling place method shall be settled by

lot. Tie votes in such elections held by the meeting method which cannot be settled by further balloting on the same day shall be settled by lot. In counties with one local administrative area, a tie vote in determining the chairperson and vice chairperson of the county committee which cannot be settled by further balloting on the same day shall be settled by lot.

(b) In the county or local administrative area convention, tie votes which cannot be settled by further balloting on the same day shall be settled by lot.

**§ 7.13 Vacancies.**

(a) In case of a vacancy in the office of chairperson of county or community committee, the respective vice chairperson shall become chairperson; in case of a vacancy in the office of vice chairperson, the respective third member shall become vice chairperson; in case of a vacancy in the office of the third member, the respective first alternate shall become the third member; and in case of a vacancy in the office of the first alternate, the respective second alternate shall become the first alternate. When unanimously recommended by the three members of the county committee, as constituted under this paragraph and paragraph (c) of this section, and approved by the State committee, the offices of chairperson and vice chairperson of the county committee may be filled from such membership without regard to the order of succession prescribed in this paragraph or the action of the delegates to the county convention.

(b) In case of a vacancy in the panel of delegates to the local administrative area or county convention, the respective community committee alternates shall act as delegates.

(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 shall call a meeting of the delegates of the appropriate community committees to elect persons to fill such vacancies as exist in the membership of the county committee and in the panel of alternates, except as provided in § 7.28 of this part.

(d) In the event that a vacancy, other than one caused by temporary absence, occurs in the membership of the community committee and no alternate is available to fill the vacany, a special election shall be held to fill such vacancies as exist in the membership and in the panel of alternates.

**§ 7.14 Appeals.**

(a) Any eligible voter in the county may appeal to the county committee in writing or in person, or both:

(1) The eligibility or ineligibility of a person to vote,

(2) The eligibility of a person to hold office, and

(3) The validity of the community committee elections. Such appeal must be made within 15 days of the election date, except that appeals on a determination of eligibility of a person nominated by petition must be made within 7 days of the date of notification of ineligibility.

(b) Any eligible voter in the county may appeal to the State committee in writing, in person, or both:

(1) A county committee decision on an election appeal. An appeal of a county committee decision must be made within 15 days of the notification of the decision, and

(2) The validity of a county convention. An appeal on the validity of a county convention must be made within 15 days of the county convention.

**§ 7.15 Eligibility requirements of county committee members, community committee members, and delegates.**

(a) To be eligible to hold office as a county committee member, community committee member, a delegate, or an alternate to any such office, a person must meet the conditions set forth in this section.

(b) Such person must:

(1) Be eligible to vote in the local administrative area in which the election is held if proposed for county committee member or alternate, or in the community in which the election is held if proposed for community committee member or alternate;

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, be residing in the local administrative area in which the election is held if proposed for

county committee member or alternate, or be residing in the community in which the election is held if proposed for community committee member or alternate.

(ii) In cases where a State line, a county line, a local administrative area boundary, or a community boundary runs through a farm, eligible persons residing on such farm may hold office in the county or community in which the farm has been determined to be located for program participation purposes. In cases where a candidate has no farming interests in the local administrative area or community in which the person resides or only a token amount, as determined by the State committee, an eligible person may hold office when such person resides in the county and has farming interests in the local administrative area or community in which the person is a candidate.

(3) Not be ineligible under §7.27 of this part.

(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, community committee member, delegate, alternate to any such 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, community committee member, delegate, alternate of any such office, or as an employee of the county committee such 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) During the term of office, not be a full-time employee of the U.S. Department of Agriculture;

(8) If the office is that of county committee member, not be a sales agent or employee of the Federal Crop Insurance Corporation during the term of office;

(9) If the office is that of delegate to the local administrative area or county convention, not have been a county committee member for that county during the 90 days preceding the community election;

(10) If the office is that of county committee member, not be serving as a county committee member with one or more years following the current election remaining in the term of office; and

(11) If the office is that of county committee member, not have served three consecutive terms as county committee member just prior to the current election, except that:

(i) Any partial term served by an alternate who filled a permanent vacancy on the county committee, shall not count toward this three term limitation; and

(ii) In the case of a person elected to be a national officer or State president of the National Association of Farmer Elected Committeemen, the limitation shall be four consecutive terms.

[52 FR 48512, Dec. 23, 1987, as amended at 59 FR 15827, Apr. 5. 1994]

### § 7.16 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 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, community committee member, delegate, alternate to any such 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, community committee member, delegate, alternate to any such office, or as an employee of the county committee 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.

(d) The tenure of employment of any count executive director or other employee of the county committee shall be terminated as soon as any such person becomes ineligible for employment under the provisions of this section.

### § 7.17 Dual office.

(a) *County committee membership.* A member of the county committee may not be at the same time:

(1) A member of a community committee;

(2) A delegate to a local administrative area convention;

(3) A delegate to a county convention;

(4) The secretary to the county committee;

(5) A member of the State committee; or

(6) County executive director or any other county office employee.

(b) *Community committee membership.* A member of the community committee may not be at the same time:

(1) A member of a county committee;

(2) The secretary to the county committee;

(3) A member of the State committee; or

(4) County executive director or regular county office employee.

(c) *Delegate to conventions.* A delegate to the local administrative area or county convention may not be a member of the State committee.

### § 7.18 Terms of office of county and community members.

The term of office of county and community committee members and alternates to such office shall begin on a date fixed by the Deputy Administrator, which shall be after their election and not later than the first day in the next January. Before any such county committee members or alternate county committee members may take office, such person shall sign an oath of office 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. A term of office shall continue until a successor is elected and qualified as provided in §§ 7.8 and 7.9 of this part.

### § 7.19 Terms of office of delegates to the conventions.

The terms of office of delegates and alternates to the local administrative area and county conventions shall begin immediately upon their election and shall continue until their respective successors have elected and qualified.

### § 7.20 State committee duties.

The State committee, subject to the general direction and supervision of the Deputy Administrator, shall be generally responsible for carrying out in the State the agricultural conservation program, the production adjustment and price support programs, the acreage allotment and marketing quota programs, the wool and mohair incentive payment program, and any other program or function assigned by the Secretary or a designee of the Secretary.

### § 7.21 County committee duties.

(a) The county committee, subject to the general direction and supervision of the State committee, and acting through community committee members and other personnel, shall be generally responsible for carrying out in the county the agricultural conservation program, the production adjustment and price support programs, the acreage allotment and marketing quota programs, the wool and mohair incentive payment program, and any other program or function assigned by the Secretary or a designee of the Secretary.

(b) The county committee shall:

(1) Enter into leasing agreements for such office space as needed in accordance with official instructions.

(2) Employ the county executive director, subject to standards and qualifications furnished by the State committee, to serve at the pleasure of the county committee, except that incumbent directors shall not be removed other than in accordance with the provisions of §7.28 of this part until all members of the county committee have been in office for at least 90 days. There shall be no employment discrimination due to race, religion, color, sex, age, or national origin. 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 shall not become effective until the State committee and the Deputy Administrator have determined that dismissal was not because of such reasons;

(3) Direct the activities of the local committees elected in the county;

(4) Pursuant to official instructions, review, approve, and certify forms, reports, and documents requiring such action in accordance with such instructions;

(5) Recommend to the State committee needed changes in boundaries of community and local administrative areas;

(6) Make available to farmers and the public, information concerning the objectives and operations of the programs administered through the county committee;

(7) Make available to agencies of the Federal Government and others information with respect to the county committee activities in accordance with official instructions issued;

(8) Give public notice of the designation and boundaries of each community within the county not less than 50 days prior to the election of community committee members and delegates;

(9) Direct the giving of notices in accordance with applicable regulations and official instructions;

(10) Recommend to the State committee desirable changes in or additions to existing programs;

(11) Conduct such hearings and investigations as the State committee may request; and

(12) Perform such other duties as may be prescribed by the State committee.

### § 7.22 Community committee duties.

(a) The community committee shall be subject to the general direction and supervision of the county committee.

(b) The community committee shall:

(1) Serve as an advisor and consultant to the county committee;

(2) Periodically meet with the county committee and State committee to be informed on farm program issues;

(3) Communicate with producers on issues or concerns regarding farm programs;

(4) Report to the county committee, the State committee, and other interested persons on changes to, or modification of, farm programs recommended by producers;

(5) Perform such other functions as are required by law or as the Secretary or a designee of the Secretary may specify.

### § 7.23 Chairperson of the county committee duties.

The chairperson of the county committee or the person acting as the chairperson shall 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.

### § 7.24 Chairperson of the community committee duties.

The chairperson of the community committee or the person acting as the chairperson shall preside at meetings of the community committee, and perform such other duties as may be assigned by the county committee.

### § 7.25 County executive director duties.

(a) The county executive director shall 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 shall:

(1) In accordance with standards and qualifications furnished by the State committee, employ the personnel of the county office to serve at the pleasure of the county executive director. There shall be no employment discrimination due to race, religion, color, sex, age, or national origin. 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 shall 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;

(3) Serve as counselor to the local administrative area and county convention chairperson on election procedures; and

(4) Supervise, under the direction of the county committee, the activities of the communitiy committees elected in the county.

### § 7.26 Private business activity and conflicts of interest.

(a) No county committee member, community committee member, delegate, alternate to any such office, or county office employee shall at any time use such office or employment to promote any private business interest.

(b) County committee members, community committee members, delegates, or alternates, and any person employed in the county office shall be subject to the official instructions issued with respect to conflicts of interest and proper conduct.

### § 7.27 Political activity.

(a) No person may be a member of the county governing body or hold a Federal, State, or county office filled by an election held pursuant to law or be employed by any such office and also hold office as a county committee member, community committee member, delegate, alternate to such office, or be employed in any capacity, except, that members of school boards, soil conservation district boards, weed control district boards, or of similar boards are not ineligible to hold office or employment under this paragraph solely because of membership on such boards.

(b) No person may be a candidate for membership on the county governing body or for any Federal, State, or county office filled by an election held pursuant to law and hold office as a county committee member, community committee member, delegate, alternate to any such office, or be employed in any capacity, except, that candidates for school boards, soil conservation district boards, irrigation

district boards, drainage district boards, weed control district boards, or for similar boards are not ineligible to hold office or employment under this subsection solely because of candidacy for such boards.

(c) No person may be an officer, employee, or delegate to a convention of any political party or political organization and hold office as a county committee member, community committee member, delegate, alternate to any such office, or be employed in any capacity.

(d) The tenure of office of any county committee member, community committee member, delegate, alternate to any such office, or the employment of any employee, shall be automatically terminated as soon as any such person becomes ineligible for office of employment under the provisions of paragraph (a), (b), or (c) of this section.

(e) No county committee member, community committee member, delegate, or alternate to any such office, or any employee shall at any time engage in the following political activities:

(1) Solicit or receive any contributions (including the sale of tickets) for political party organizations or for a candidate for political office or for any other political purpose in any room or building used for the transaction of any Federal official business, or at any place from any other county committee member, community committee member, delegate, or alternate to any such office or employee.

(2) Use official authority or influence to discharge, remove, demote, or promote any employee, or threaten or promise to so do, for withholding or giving contributions (including the buying or the refusal to buy tickets) for political purposes, or for supporting or opposing any candidate or any political organization in any primary, general, or special election for political office.

(3) Use or direct or permit the use of any official space, equipment, materials, supplies, or personal services either to support or oppose any political office holder, candidate or party, or for any other political purpose.

(f) A county committee member or alternate to such office, an employee on any day when entitled to receive pay for services in performance of duties, or an employee who serves during a continuous period of 90 days or more and has a regular tour of duty established in advance at any time, shall not solicit, collect, receive, disburse, or otherwise handle contributions of money, pledges, gifts, or anything of value (including the sale of tickets) made for:

(1) Political party organizations;

(2) A candidate for political office in any primary, general, or special election, but excluding such activities on behalf of individual candidates in township and municipal elections; or

(3) Any other political purpose.

[52 FR 48512, Dec. 23, 1987; 53 FR 1441, Jan. 19, 1988]

### § 7.28 Removal from office or employment for cause.

(a) Any county committee member, community committee member, delegate to the local administrative area convention or the county convention, an alternate to any such office, county executive director, or any other county employee who: Fails to perform the duties of office; commits or attempts, or conspires to commit fraud; is incompetent; impedes the effectiveness of any program administered in the county; violates the provisions of § 7.27 (e) or (f) of this part; refuses to carry out or fails to comply with the equal opportunity and civil rights, including the equal employment policy, or who interferes with others in carrying out such policy; or violates official instructions, shall be suspended from office or employment. Any person who is under formal investigation for any of the above-cited reasons may be suspended. The suspension action may be taken by the county executive director with respect to any other employee, or by the county committee or State committee with respect to the county executive director or any other county employee and by the State committee with respect to any county committee member, community committee member, delegate to the local administrative area convention or the county convention, or any alternate to any such office. Any person suspended shall be given a written statement of the reasons for such action and be allowed 15

days from the date of mailing of the notice of suspension in which to advise the county committee, or the State committee if it made the suspension, in writing, in person, or both, why such person should be restored to duty.

(b) The county committee or the county executive director, or the State committee if it made the suspension, following such further investigation as is deemed necessary shall restore to duty or remove the suspended person. The county committee or county executive director may not restore a suspended person to duty without prior written approval of the State committee, and, if such approval is denied, shall promptly remove such person. Upon refusal or failure of the county committee or the county executive director to remove promptly the suspended person, the State committee shall remove such person. In the event further investigation develops reasons for the action taken, in addition to those disclosed in the suspension notice, the suspended person shall be given written notification of such additional reasons and allowed 15 days from the date of mailing of the notice of additional reasons for the suspension in which to advise why such person should be restored to duty. In the event a person under suspension submits a resignation, acceptance thereof shall not prevent a determination by the county committee or State committee that such person would have been removed had the person remained in the position. Such determination shall constitute removal within the meaning of §§ 7.27 (e) and 7.28(c) of this part. The person so removed shall be given written notification of any such determination and the reasons therefor.

(c) Any incumbent or former county committee member, community committee member, delegate to the local administrative area convention or the county convention, an alternate to any such office, county executive director, or any other county employee who during a term of employment: Fails or failed to perform the duties of employment; committed, attempted, or conspired to commit fraud; was incompetent; impeded the effectiveness of any program administered in the county; violated the provisions of § 7.27 (e) or (f) of this part; 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 violated official instructions, may be disqualified for future service or employment by the State committee. Before any such disqualification determination is made, the State committee shall undertake such investigation as it deems necessary, after which the State committee shall give the affected person a written statement of the determination for the proposed disqualification action. Such person shall have 15 days from the date of receipt of such determination to advise in writing, in person or both, why the action should not be taken. If any further investigation develops substantial additional reasons for disqualification, the person involved shall be given a written statement of such reasons and 15 days from the date of mailing in which to respond. The State committee may remove the disqualification for future service or employment only with prior approval of the Deputy Administrator.

(d) Any county committee member, community committee member, delegate to the local administrative area convention or the county convention, or any alternate to any such office, county executive director, or any other county employee, who, prior to taking such persons's present office: Committed, or attempted or conspired to commit fraud; or impeded the effectiveness of any program administered in the county, may be suspended. Any such person who is under formal investigation for any reason set forth in this section may be suspended. The proceedings under this paragraph shall be applied the same as provided in paragraph (a) of this section.

(e) If in the event of suspensions or vacancies there are less than two members, including alternates, available to serve on the county committee, the State committee shall designate a person to administer the programs in the county pending the exoneration or removal of those persons under investigation and, if removed, pending the election of new county committee members and alternates. Such person may be the remaining member or alternate

member of the committee if available. Any person named by the State committee to serve in such capacity shall have full authority to perform all duties regularly performed by a duly elected county committee.

### § 7.29 Delegation of authority to Deputy Administrator.

Notwithstanding the authority vested by this part in a State committee, a county committee, and the county executive director, the Deputy Administrator shall have authority to suspend and/or remove or disqualify for future service or employment, any county committee member, community committee member, delegate to the local administrative area convention or the county convention, an alternate to any such office, county executive director, or other county employee, for any and all of the reasons and causes authorizing such suspension, removal, and disqualification by the State committee, the county committee, or the county executive director. Any person suspended, removed or disqualified pursuant to this section shall be given a written statement of the reason for such action and shall be advised of the right of review as provided in §7.30 of this part.

### § 7.30 Right of review.

Any person dissatisfied with a determination of the county committee or county executive director may appeal in writing or in person or both, such determination to the State committee. Any person dissatisfied with a determination of the State committee may appeal such determination in writing to the Deputy Administrator. Any person dissatisfied with the determination of the Deputy Administrator made under §7.29 of this part may request a reconsideration of such determination by the Deputy Administrator. Any such appeal or request for reconsideration shall be made within 15 days from the date of the mailing of the determination with respect to which the appeal or request is filed. Except as provided in §7.31 of this part, such appeals and requests for reconsideration shall be determined on an informal basis. The person filing the appeal or request for reconsideration may present reasons, in writing or in person, or both, why the determination should be reversed or modified. Within 60 days after the reasons have been presented, such person shall be notified of the determination on appeal or reconsideration. The notification shall clearly set forth the basis for the determination. The determination of the Deputy Administrator is final and not subject to further administrative review.

### § 7.31 Hearing in connection with appeals and requests for reconsideration to Deputy Administrator.

Any person (the ''appellant'') filing an appeal with the Deputy Administrator, or a request for reconsideration of a determination made by the Deputy Administrator under §7.29 of this part, is entitled, at such person's election, to a hearing in connection therewith. If the appellant does not request a hearing, the appeal or reconsideration shall be handled in accordance with §7.30 of this part. If the appellant desires a hearing, such person shall so advise the Deputy Administrator. The hearing shall be conducted by the Deputy Administrator, or a designee of the Deputy Administrator, who shall serve as a hearing officer. The hearing shall be held at the time and place designated by the hearing officer. The appellant may appear personally or through or accompanied by a representative. The hearing officer shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the hearing officer shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the issues shall be received in evidence. Both the appellant and the agency representatives are entitled to produce witnesses and the appellant and agency representative shall be given an opportunity to cross-examine witnesses. The hearing officer shall inform the witnesses that they are subject to a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for making any false statements (18 U.S.C. 1001). The hearing officer shall cause a transcript to be made of the hearing and it shall be

made available to the appellant at actual costs.

### § 7.32 Findings, analysis, and recommendations of hearing officer.

If the hearing has been conducted by a designee of the Deputy Administrator, the hearing officer shall, within 60 days from date of receipt of the transcript transmit to the Deputy Administrator:

(a) The record of the hearing;

(b) The findings and analysis of the hearing officer; and

(c) A recommended determination.

### § 7.33 Determination of the Deputy Administrator.

Within 30 days after receipt of the findings, analysis, and recommendations of the hearing officer that are made under § 7.32 of this part, or within 60 days from the date of receipt of the transcript prepared under such section if the Deputy Administrator conducted the hearing, the Deputy Administrator shall make a final determination. The notification shall clearly set forth the basis for the determination. The determination of the Deputy Administrator is final and not subject to further administrative review.

### § 7.34 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, shall be the property of the Commodity Credit Corporation or the United States Department of Agriculture, as applicable, and shall be maintained in good order in the county office.

(b) For polling and mail type elections, ballots shall remain in sealed boxes until the prescribed date for counting. Following the counting of ballots in all types of elections, the ballots shall be placed in sealed containers and retained for 30 days unless otherwise determined by the State committee.

(c) The books, records, and documents referred to in paragraph (a) shall 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, county, and community 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.

### § 7.35 Administrative operations.

The administrative operations of county committees including but not limited to the following, shall be conducted, except as otherwise provided in these regulations, in accordance with official instructions issued: annual, sick, and other types of employee leave; location and use of the county committee office; the calling, and conduct of elections; and the maintenance of records of county and local committee meetings.

### § 7.36 Implementation.

Unless specifically provided in this part, the Deputy Administrator, State and County Operations, or the Deputy Administrator, Management, ASCS, is authorized to issue the instructions and procedures referred to herein which implement the provisions of this part.

### § 7.37 Applicability.

This part shall apply to each State of the United States.

### § 7.38 Retention of authority.

Nothing in this part shall preclude the Secretary, the Administrator, or the Deputy Administrator from administering any or all programs or exercising other functions delegated to the community committee, county committee, State committee, or any employee of such committees. 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 will full authority to carry on 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.
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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 Administrator of the Cooperative State Research, Education, and Extension Service, 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]

### § 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 Cooperative State Research, Education, and Extension Service, United States Department of Agriculture; the State Cooperative Extension Services; and the County Cooperative Extension Services.

*Cooperative State Research, Education, and Extension Service, United States Department of Agriculture* as used in this part means the Federal agency within the United States Department of Agriculture which administers Federal agricultural cooperative extension programs.

*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.

*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]

### § 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 Administrator of the Cooperative State Research, Education, and Extension Service 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 Administrator of the Cooperative State Research, Education, and Extension Service, 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 audiovisual 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]

### § 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 Administrator of the Cooperative State Research, Education, and Extension Service, United States Department of Agriculture, for approval.

(b) [Reserved]

[50 FR 31582, Aug. 2, 1985, as amended at 60 FR 52293, Oct. 6, 1995]

### § 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 Administrator of the Cooperative State Research, Education, and Extension Service, 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 commerical 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]

## PARTS 9–10 [RESERVED]

# PART 11—NATIONAL APPEALS DIVISION

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## Subpart A—National Appeals Divison Rules of Procedures

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.

### § 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 parts 1407 and 3017;

(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.

### § 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 Inapplicability of other laws and regulations.

(a) Reserved.

(b) The Federal Rules of Evidence, 28 U.S.C. App., shall not apply to proceedings under this part.

### § 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—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 AND WETLAND CONSERVATION

### Subpart A—General Provisions

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12.34 Paperwork Reduction Act assigned number.

AUTHORITY: 16 U.S.C. 3801 *et seq*.

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 functions and values of the Nation's wetlands.

### § 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.

*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.

*CSREES* means the Cooperative State Research, Education, and Extension Service, an agency of USDA which is generally responsible for coordinating the information and educational programs of USDA.

*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.

*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.

*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.

*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.

*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 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, and on December 23, 1985, did not support woody vegetation and met the following hydrologic criteria:

(i) Is inundated 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), or

(ii) If a pothole, playa, or pocosion, is ponded for 7 or more consecutive days during the growing season in most years (50 percent chance of more) or is saturated for 14 or more consecutive days during the growing season in most years (50 percent chance or more);

(5) *Farmed-wetland pasture* is wetland that was manipulated and managed for pasture or hayland prior to December 23, 1985, and on December 23, 1985, met the following hydrologic criteria:

(i) Inundated or ponded for 7 or more consecutive days during the growing season in most years (50) percent chance or more), or

(ii) Saturated for 14 or more consecutive days during the growing season in most years (50 percent chance or more);

(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 met the following hydrologic criteria:

(i) Inundation was less than 15 consecutive days during the growing season or 10 percent of the growing season, whichever is less, in most years (50 percent chance or more); and

(ii) If a pothole, playa or pocosin, ponding was less than 7 consecutive days during the growing season in most years (50 percent chance or more) and saturation was less than 14 consecutive days during the growing season most years (50 percent chance or more); or

(9) *Wetland*, as defined above in this section.

*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.

(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]

### § 12.3 Applicability.

(a) *Geographic scope.* The provisions of this part shall apply to all land, including Indian tribal land, in the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Island of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands.

(b) *Effective date.* The provisions of this part apply to all actions taken after July 3, 1996, and to determinations made after or pending on July 3, 1996, except to the extent that §12.5(a)(5) and 12.5 (b)(4) through (b)(8) specify retroactive application on December 23, 1985, and November 28, 1990, for certain actions and determinations regarding wetlands and converted wetlands. Actions taken and determinations made prior to July 3, 1996, are subject to regulations set forth in this part as of July 2, 1996, except as otherwise provided in this part. Further, to the extent that a person may be eligible for an exemption for an action taken before July 3, 1996, the action is subject to the provisions of this part.

### § 12.4 Determination of ineligibility.

(a) *Actions.* Except as provided in §12.5, 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 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.* A person determined to be ineligible under paragraph (a)(2) of this section shall be 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. A person determined to be ineligible under paragraph (a)(3) of this section for the conversion of a wetland shall be 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 functions and values 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) or (a)(3) 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 functions and values affected, the recovery time for full mitigation of the wetland functions and values, and the impact that a reduction in payments would have on the person's ability to repay a USDA farm loan shall be considered to 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 under a production flexibility contract, marketing assistance loans, and any type of price support or payment made available under the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714 et seq.), or any other Act;

(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 or 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).

(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) *Prior loans.* The provisions of paragraphs (a), (b), and (c) of this section do not apply to any loan described in paragraphs (d) or (e) of this section that was made prior to December 23, 1985.

(g) *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.

(h) *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]

### § 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 shall become ineligible under §12.4 as a result of the failure of such person to apply a conservation system on highly erodible land that was converted from native vegetation, i.e. rangeland or woodland, to crop production before December 23, 1985, if FSA determines such person has acted in good faith and without the intent to violate the provisions of this part and if NRCS determines that the person complies with paragraph (a)(5)(ii) of this section.

(ii) A person is who determined to meet the requirements of paragraph (a)(5)(i) of this section shall 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 applying the person's conservation plan. 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 years. 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 shall 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 shall 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, and if the person takes corrective action as directed by NRCS 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 years.

(iii) No person shall become ineligible under §12.4 as a result of failure to apply a conservation system with respect to highly erodible cropland that was converted from native vegetation, i.e., rangeland or woodland, to crop production after December 23, 1985, if such person has acted in good faith and without an intent to violate the provisions of this part. The person shall, 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 of not less than $500 nor more than $5,000 depending upon 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 deems appropriate.

(iv) 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 NRCS determines that such person is applying a conservation plan according to the schedule set forth 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.

(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 functions and values 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 functions and values 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 functions and values 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 functions and values 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 pilot 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, 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 functions and values; and

(F) Provides the equivalent functions and values 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 functions and values 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 functions and values 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 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—

(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 within an agreed to period, not to exceed 1 year, is implementing all practices in a mitigation plan.

(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]

### § 12.6 Administration.

(a) *General.* A determination of ineligibility for benefits in accordance with the provisions of this part shall 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 shall be made by the agency responsible for making such determinations, as provided in this section.

(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 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 Deputy Chief for Natural Resources Conservation Programs, 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) By 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.

(d) *Administration by CSREES.* The CSREES 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.

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996]

### § 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, 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.

### § 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.* (1) Except as provided in paragraph (a)(2) of this section, the ineligibility of a tenant or sharecropper for benefits (as determined under §12.4) shall 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.

(2) The provisions of paragraph (a)(1) of this section shall not be applicable

to a landlord 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.

(b) *Tenant or renter eligibility.* (1) The ineligibility of a tenant or renter may be limited to the program benefits listed in §12.4(c) accruing with respect to only the farm on which the violation occurred if:

(i) The tenant or renter 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; and

(ii) The owner of such farm refuses to apply such a plan and prevents the tenant or renter 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.

(2) If relief is granted under paragraph (b)(1) of this section, the tenant or renter must actively apply those conservation treatment measures that are determined to be within the control of the tenant or renter.

### §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.

## 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 which 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.

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996]

### § 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;

(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

(8) Conduct reviews of implementation and provide the Army Corps of Engineers, Environmental Protection Agency, and the U.S. Fish and Wildlife

Service an opportunity to participate in this review.

(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 of this part. Certification of a wetland determination shall be completed according to delineation procedures agreed to by the Army Corps of Engineers, the Environmental Protection Agency, the U.S. Fish and Wildlife Service and NRCS. 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 done on a tract basis and will be considered certified wetland determinations. A not-inventoried designation within a certified wetland is subject to change when the soil, hydrology, and vegetation evaluation is completed and identified as to type of wetland or as a non-wetland. This change from a not-inventoried designation to an approved wetland designation will be done at the request of the landowner or during a formal investigation of a potential violation.

(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. 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

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996]

### §12.31 On-site wetland identification criteria.

(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 Office of the Federal Register Information Center, 800 North Capitol Street NW., Suite 700, Washington, DC 20408. 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 List of Plant Species that Occur in Wetlands. The publication may be obtained upon request from the U.S. Fish and Wildlife Service at National Wetland Inventory, Monroe Bldg. Suite 101, 9720 Executive Center Drive, St. Petersburg, Florida 33702.

(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) *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.

(d) *Minimal effect determination.* For the purposes of §12.5(b)(1)(v) of this part, 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 wetland under consideration and other related wetlands in the area, and will be made through an on-site evaluation. 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.

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) of this part. 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 functions and values 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.

(e) *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.

### § 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 functions and values 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.

### § 12.34 Paperwork Reduction Act assigned number.

The information collection requirements contained in this regulation (7 CFR part 12) have been approved by the Office of Management and Budget under provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0560–0004.

## 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 non-cultivated 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

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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 under any such program, 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]

### § 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, for any program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under any such program.

(f) *Primary recipient* includes any recipient which is authorized or required to extend Federal financial assistance

to another recipient for the purpose of carrying out a program.

(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* includes any program, project, or activity for the provision of services, financial aid, or other benefits to individuals (whether provided through employees of the recipient of Federal financial assistance or provided by others through contracts or other arrangements with the recipient, and including work opportunities and cash or loan or other assistance to individuals), for the provision of facilities for furnishing services, financial aid or other benefits to individuals. The services, financial aid, or other benefits provided under a program receiving Federal financial assistance shall be deemed to include any services, financial aid, or other benefits provided with the aid of Federal financial assistance or with the aid of any non-Federal funds, property, or other resources required to be expended or made available for the program to meet matching requirements or other conditions which must be met in order to receive the Federal financial assistance, and to include any services, financial aid, or other benefits provided in or through a facility provided with the aid of Federal financial assistance or such non-Federal resources.

(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]

### § 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 activities or programs 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 programs and activities 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 program is not listed does not, of course, indicate that it is not covered by the regulations in this part. Moreover, the examples set forth with respect to any particular listed program 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 of 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]

### § 15.4 Assurances required.

(a) *General.* (1) Every application for Federal financial assistance to carry out a program to which these regulations apply, except a program 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, to carry out its program or activity involving 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 unless the applicant establishes, to the satisfaction of the Agency, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(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]

### § 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 programs covered by the regulations in this part, designated personnel will in their program 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 of any program under 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 under 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]

### § 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 Administration. The complaint shall be investigated in the manner determined by the Assistant Secretary for Administration and such further action taken by the Agency or the Secretary as may be warranted.

[50 FR 25687, June 21, 1985]

### § 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 programs 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]

### § 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, 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.

(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]

### § 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 under such program 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]

## APPENDIX TO SUBPART A—LIST OF USDA–ASSISTED PROGRAMS

Programs administered by the U.S. Department of Agriculture in which Federal financial assistance is rendered, include but are not limited to the following:

| Program | 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.*). |

| Program | Authority |
|---|---|
| 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.*). |
| **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. |

| Program | Authority |
|---|---|
| **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. |
| **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. |

| Program | Authority |
|---|---|
| 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). |
| 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. |

| Program | Authority |
|---|---|
| 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. |
| 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]

## 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

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APPENDIX

AUTHORITY: Title IX of the Education Amendments of 1972, Pub. L. 92–318, as amended by sec. 3 of Pub. L. 93–568, 88 Stat. 1855 and sec. 412 of Pub. L. 94–482, 90 Stat. 2234 (except secs. 904 and 906 thereof); 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

SOURCE: 44 FR 21610, April 11, 1979, unless otherwise noted.

## Subpart A—Introduction

### § 15a.1 Purpose and effective date.

The purpose of this part is to effectuate title IX of the Education Amendments of 1972, as amended by Public Law 93–568, 88 Stat. 1855 and Public Law 94–482, 90 Stat. 2234 (except sections 904 and 906 of those Amendments) 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.2 Definitions.

As used in this part, the term:

(a) *Title IX* means title IX of the Education Amendments of 1972, Public Law 92–318, as amended by section 3 of Public Law 93–568, 88 Stat. 1855 and section 412 of Public Law 94–482, 90 Stat. 2234 (except sections 904 and 906 thereof); 20 U.S.C. 1681, 1682, 1683, 1685, 1686.

(b) *Department* means the Department of Agriculture, and includes each of its

operating agencies and other organizational units.

(c) *Secretary* 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.

(d) *Federal financial assistance* means any of the following, when authorized or extended under a law administered by the Department:

(1) A grant or loan of Federal financial assistance, including

(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 of any interest therein at nominal consideration, or at consideration reduced for the purpose of assisting the recipient, or in recognition of public interest to served thereby, or permission to use Federal property or any interest therein without consideration.

(5) Any other contract, agreement, or arrangement which has as one of its purposes the provision of assistance to any education program or activity, except a contract of insurance or guaranty.

(e) *Recipient* means the State or political subdivision thereof, of 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 which operates an education program or activity which receives or benefits from such assistance, including any subunit, successor, assignee, or transferee thereof.

(f) *Applicant* means one who submits an application, request, or plan required to be approved by a Department official, or by a recipient, as a condition to becoming a recipient.

(g) *Educational institution* means a local educational agency (L.E.A.) as defined by section 801(f) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 881), a preschool, a private elementary or secondary school, or an applicant or recipient of the type defined by paragraph (h), (i), (j), or (k) of this section.

(h) *Institution of graduate higher education* means an institution which:

(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; or

(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.

(i) *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 which certifies credentials or offers degrees, but which may or may not offer academic study.

(j) *Institution of professional education* means an institution (except any institution of undergraduate higher education) which 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 United States Commissioner of Education.

(k) *Institution of vocational education* means a school or institution (except an institution of professional or graduate or undergraduate higher education) which 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 fulltime study.

(l) *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.

(m) *Admission* means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, participation, or matriculation in or at an education program or activity operated by a recipient.

(n) *Student* means a person who has gained admission.

(o) *Transition plan* means a plan subject to the approval of the United States Commissioner of Education pursuant to section 901(a) of the Education Amendments of 1972, under which an educational institution operates in making the transition from being an educational institution which admits only students of one sex to being one which admits students of both sexes without discrimination.

(p) *Educational recipient* means an educational institution as defined in §15a.2(g) and every other recipient which has education as a significant purpose.

(q) *Education program or activity* means:

(1) Every program or activity operated by an educational recipient; and

(2) Every program or activity operated by other recipients where a significant purpose of the finanical assistance is education,

(r) *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.

### §15a.3 Remedial and affirmative action and self-evaluation.

(a) *Remedial action.* If the Secretary 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 Secretary 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 to overcome the effects of conditions which resulted in limited participation therein by persons of a particular sex. Nothing herein shall be interpreted to alter any affirmative action obligations which a recipient may have under Executive Order 11246.

(c) *Self-evaluation.* Each recipient 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 non-academic personnel working in connection with the recipient's education program or activity;

(2) Modify any of these policies and practices which do not or may not meet the requirements of this part; and

(3) Take appropriate remedial steps to eliminate the effects of any discrimination which 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 the effective date of this part or completion of the evaluation required under paragraph (c) of this section, whichever is longer, and shall provide

to the Secretary upon request, a description of any modifications made pursuant to paragraph (c)(1) of this section and of any remedial steps taken pursuant to paragraph (c)(3) of this section.

### § 15a.4 Assurance required.

(a) *General.* Every application for Federal financial assistance for any education program or activity shall as condition of its approval contain or be accompanied by an assurance from the applicant or recipient, satisfactory to the Secretary, 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 Secretary 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.3(a) to eliminate existing discrimination on the basis of sex or to eliminate the effects of past discrimination whether occurring prior or subsequent to the submission to the Secretary of such assurance.

(b) *Transfers of property.* If a recipient sells or otherwise transfers property financed in whole or in part with Federal financial assistance to a transferee which 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 subpart B.

(c) *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 assurances 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.

(d) *Form.* The Secretary will specify the form of the assurances required by paragraph (a) of this section and 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.5 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, as amended; title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.);* the Equal Pay Act (29 U.S.C. 206 and 206(d); 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 which 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 which 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 which receives or benefits from Federal financial assistance.

(d) *Effect of compliance with HEW regulations.* If a recipient is covered by the title IX regulations issued by HEW, 45 CFR part 86, and has already complied with the HEW requirements corresponding to §§15a.3(c), 15a.4(a), 15a.7 (a) and (b), and 15a.8 (a) and (b), then the requirements of those sections need not be duplicated in order to comply with this part. However, if the requirements have not been applied to all programs funded by this Department, then

the requirements will have to be met as to those programs.

### § 15a.6 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.7 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 which 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 which would be prohibited by this part.

### § 15a.8 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 which 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 Secretary 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 and activities extends to employment therein and to admission thereto unless subpart C does 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.7 or to the Secretary.

(2) Each recipient shall make the initial notification required by paragraph (a)(1) of this section within 90 days of the effective date of this part or of the date this part first applies to such recipient, whichever comes later, which notification shall include publication in:

(i) Local newspapers,

(ii) newspapers and magazines operated by such recipient or by student, alumnae, or alumni groups for or in connection with such recipient; and

(iii) memoranda or other written communications distributed to every student and employees 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 which 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 this paragraph which suggests, by text or illustration, that such recipient treats applicants, students, 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) 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 require such representatives to adhere to such policy.

## Subpart B—Coverage

### § 15a.11 Application.

Except as provided in this subpart, this part 15a applies to every recipient and to each education program or activity operated by such recipient which receives or benefits from Federal financial assistance.

### § 15a.12 Educational institutions controlled by religious organizations.

(a) *Application.* This part does not apply to an educational institution which is controlled by a religious organization to the extent application of this part would not be consistent with the religious tenets of such organization.

(b) *Exemption.* An educational institution which wishes to claim the exemption set forth in paragraph (a) of this section shall do so by submitting in writing to the Secretary a statement by the highest ranking official of the institution identifying the provisions of this part which conflict with a specific tenet of the religious organization.

### § 15a.13 Military and merchant marine educational institution.

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 marines.

### § 15a.14 Membership practices of certain organizations.

(a) *Social fraternities and sororities.* This part does not apply to the membership sororities which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954, 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, the Young Women's Christian Association, 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 voluntary youth service organizations which are exempt from taxation under section 501(a) of the Internal Revenue Code of 1954 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.15 Exempt activities.

(a) These regulations shall not apply to:

(1) Any program or activity of the American Legion undertaken in connection with the organization or operation of any Girls State Conference, Girls Nation Conference, Boys State Conference, Boys Nation Conference, or

(2) The selection of students to attend any such conference.

(b) These regulations shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex.

(c) These regulations shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

### § 15a.16 Admission.

(a) Admission to educational institutions prior to June 24, 1973, are not covered by this part.

(b) *Administratively separate units.* For the purpose only of this section, §§ 15a.17 and 15a.18, and subpart C, each administratively separate unit shall be deemed to be an educational institution.

(c) *Application of subpart C.* Except as provided in paragraphs (c) and (d) of this section, subpart C applies to each recipient. A recipient to which subpart C applies shall not discriminate on the basis of sex in admission or recruitment in violation of that subpart.

(d) *Educational institutions.* Except as provided in paragraph (e) of this section as to recipients which are educational institutions, subpart C applies 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.* Subpart C does not apply to any public institution of undergraduate higher education which traditionally and continually from its establishment has had a policy of admitting only students of one sex.

### § 15a.17 Education institutions eligible to submit transition plans.

(a) *Applications.* This section applies to each educational institution to which subpart C applies which:

(1) Admitted only students of one sex as regular students as of June 23, 1972; or

(2) Admitted only students of 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 subpart C unless it is carrying out a transition plan approved by the United States Commissioner of Education as described in §15a.18, which plan provides for the elimination of such discrimination by the earliest practicable date but in no event later than June 23, 1979.

### § 15a.18 Transition plans.

(a) *Submission of plans.* An institution to which §15a.17 applies and which 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 United States Commissioner of Education, a transition plan shall:

(1) State the name, address, and Federal Interagency Committee on Education (FICE) 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.17 applies shall result in treatment of applicants to or students of such recipient in violation of subpart C 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.17 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 which emphasize the institution's commitment to enrolling students of the sex previously excluded.

## Subpart C—Discrimination on the Basis of Sex in Admission and Recruitment Prohibited

### § 15a.21 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 this subpart applies, except as provided in §§ 15a.17 and 15a.18.

(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 this subpart applies 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 which 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 which 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 this subpart applies:

(1) Shall not apply any rule concerning the actual or potential parental, family, or marital status of a student or applicant which 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 which so discriminates or excludes;

(3) 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.22 Preference in admission.

A recipient to which the subpart applies shall not give preference to applicants for admission, on the basis of attendance at any educational institution or other school or entity which 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 this subpart.

### § 15a.23 Recruitment.

(a) *Nondiscriminatory recruitment.* A recipient to which this subpart applies 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.3(a), and may choose to undertake such efforts as affirmative action pursuant to § 15a.3(b).

(b) *Recruitment at certain institutions.* A recipient to which this subpart applies shall not recruit primarily or exclusively at education institutions, schools or entities which 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 this subpart.

## Subpart D—Discrimination on the Basis of Sex in Education Programs and Activities Prohibited

### § 15a.31 Education programs and activities.

(a) *General.* Except as provided elsewhere in the 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 which receives or benefits from Federal financial assistance. This subpart does not apply to actions of a recipient in connection with admission of its students to an education program or activity of (1) a recipient to which subpart C does not apply, or (2) an entity, not a recipient, to which subpart C would not apply if the entity were a recipient.

(b) *Specific prohibitions.* Except as provided in this subpart, 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 or behavior, sanctions, or other treatment;

(5) Discriminate against any person in the application of any rules of appearance;

(6) Apply any rule concerning the domicile or residence of a student, or applicant, including eligibility for in-State fees and tuitions;

(7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;

(8) 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, which are designed to provide opportunities to study abroad, and which are awarded to students who are already matriculating at or who are graduates of the recipient institution, provided a recipient educational institution which administers or assists in the administration of such scholarships, fellowships, or other awards which 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) *Programs not operated by recipient.* (1) This paragraph applies to any recipient which requires participation by any applicant, student, or employee in any education program or activity not operated wholly by such recipient, or which facilitates, permits, or considers such participation as part of or equivalent to an education program or activity operated by such recipient, including participation in education 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 which this part would prohibit such recipient from taking; and (ii) shall not facilitate, require, permit, or consider such participation if such action occurs.

### § 15a.32 Housing.

(a) *General.* 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 provided by such recipient.

(2) 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 provided to students of one sex, when compared to that provided to students of the other sex, is as a whole: (i) Proportionate in quantity and (ii) comparable in quality and cost to the student. A recipient may render such assistance to any agency, organization, or person which provides all or part of such housing to students only of one sex.

### § 15a.33 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.34 Access to course offerings.

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.

(a) 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 this regulation. With respect to physical education classes and activities at the secondary and postsecondary 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 this regulation.

(b) 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.

(c) 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.

(d) 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 which do not have such effect.

(e) Portions of classes in elementary and secondary schools which deal exclusively with human sexuality may be conducted in separate sessions for boys and girls.

(f) Recipients may make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex.

### § 15a.35 Access to schools operated by L.E.A.s.

A recipient which 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.36 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 which 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 which 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.37 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 which 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 which provides assistance to any of such recipient's students in a manner which discriminates on the basis of sex; or

(3) Apply any rule or assist in application of any rule concerning eligibility for such assistance which 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 which 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 designed for a member of that student's sex.

(c) *Athletic scholarships.* (1) To the extent that a recipient awards athletic scholarships or grants-in-aids, 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) Separate athletic scholarships or grants-in-aid for members of each sex may be provided as part of separate athletic teams for members of each sex to the extent consistent with this paragraph and §15a.41.

### § 15a.38 Employment assistance to students.

(a) *Assistance by recipient in making available outside employment.* A recipient which 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 which discriminates on the basis of sex in its employment practices.

(b) *Employment of students by recipients.* A recipient which employs any of its students shall not do so in a manner which violates subpart E.

### § 15a.39 Health and insurance benefits and services.

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 which would violate subpart E if it were provided to employees of the recipient. This section shall not prohibit a recipient from providing any benefit or service which may be used by a different proportion of students of one sex than of the other, including family planning services. However, any recipient which provides full coverage health service shall provide gynecological care.

### § 15a.40 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 which 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 in the normal education program or activity so 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 which 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 instructional program in the separate program is comparable to that offered to non-pregnant students.

(4) 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 which 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 which 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 so 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 which she held when the leave began.

### § 15a.41 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 the 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.* A recipient which 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 Secretary will consider, among other factors:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;

(2) The provision of equipment and supplies;

(3) Scheduling of games and practice time;

(4) Travel and per diem allowance;

(5) Opportunity to receive coaching and academic tutoring;

(6) Assignment and compensation of coaches and tutors;

(7) Provision of locker rooms, practice and competitive facilities;

(8) Provision of medical and training facilities and services;

(9) Provision of housing and dining facilities and services;

(10) Publicity.

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 Secretary 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 which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the elementary school level shall comply fully with the section as expeditiously as possible but in no event later than one year from the effective date of this regulation. A recipient which operates or sponsors interscholastic, intercollegiate, club or intramural athletics at the secondary or post-secondary 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 this regulation.

### § 15a.42 Textbooks and curricular material.

Nothing in this regulation 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 and Activities Prohibited

### § 15a.51 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 which receives or benefits from 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 which 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 this subpart, 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 which 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 this subpart 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.52 Employment criteria.

A recipient shall not administer or operate any test or other criterion for any employment opportunity which 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.53 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 in the past so discriminated, 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 which 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 this subpart.

### § 15a.54 Compensation.

A recipient shall not make or enforce any policy or practice which, 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 which are performed under similar working conditions.

### § 15a.55 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 which 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.61.

### § 15a.56 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.54.

(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 which does not provide either for equal periodic benefits for members of each sex or 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 which establishes different optional or compulsory retirement ages based on sex or which otherwise discriminates in benefits on the basis of sex.

### § 15a.57 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 which 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.* A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and 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 which 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 which 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.58 Effect of State or local law or other requirements.

(a) *Prohibitory requirements.* The obligation to comply with this subpart is not obviated or alleviated by the existence of any State or local law or other requirement which imposes prohibitions or limits upon employment of members of one sex which are not imposed upon members of the other sex.

(b) *Benefits.* A recipient which 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.59 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.60 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.61 Sex as a bona-fide occupational qualification.

A recipient may take action otherwise prohibited by this subpart 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 which 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—Procedures (Interim)

### § 15a.71 Interim procedures.

For the purposes of implementing this part during the period between its effective date and the final issuance by the Department of a consolidated procedural regulation applicable to title IX and other civil rights authorities administered by the Department, the procedural provisions applicable to title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference. These procedures may be found at 7 CFR 15.5—15.11 and 7 CFR 15.60 *et seq*.

APPENDIX TO SUBPART F

Programs covered by Title IX include, but are not limited to, the following:

1. Community Facilities Program. 7 U.S.C. 1926(a)(1).
2. Permits for use of National Forests. 16 U.S.C. 497; 16 U.S.C. 432; 7 U.S.C. 1011(c), (d).
3. Permits for use of Government-owned improvements and land used therewith by other than individuals at a nominal charge. 16 U.S.C. 580d.
4. Revenue sharing payment to States: (a) Payment of 25 percent of National Forest receipts to States for schools and roads. 16 U.S.C. 500. (b) Payment to New Mexico and Arizona of proportion of National Forest receipts for common-school fund. Sections 6 and 24, Act of June 20, 1910. 36 Stat. 557, 562, 573. (c) Payment of 25 percent of net revenues from Title III, Bankhead-Jones Farm Tenant Act, lands to counties for school and road purposes. 7 U.S.C. 1012.
5. Technical assistance in forest management. 16 U.S.C. 568c, 568d.
6. General forestry assistance. Annual Appropriation Acts commencing with the Department Appropriation Act of 1905; Organic Act of 1862, 7 U.S.C. 2201.
7. Financial assistance to private timber organizations to carry out timber development programs. 40 U.S.C. 204.
8. Advance of funds for cooperative research. 16 U.S.C. 581i-l.
9. Research cooperation. 16 U.S.C. 581 *et seq*.
10. Grants for research. 7 U.S.C. 450i.
11. Food Distribution Program. 7 U.S.C. 612c, 1431; 42 U.S.C. 1755, 1758, 1761; 42 U.S.C. 1777.
12. National School Lunch Program. 42 U.S.C. 1751 *et seq*.
13. Special Milk Program. 42 U.S.C. 1772.
14. School Breakfast Program. 42 U.S.C. 1773.
15. Special Food Service Program for Children. 42 U.S.C. 1761.
16. Special Supplemental Food Program for Women, Infants, and Children. 42 U.S.C. 1786.
17. Cash grants to States for nutrition education. 42 U.S.C. 1787, 1788.
18. Advisory services studies for farmers cooperatives. 7 U.S.C. 451–457.
19. Cooperative Agricultural Extension Service. 7 U.S.C. 341–349; D.C. Code 31–1609.
20. Resource Conservation and Development Program. 16 U.S.C. 590a.
21. Educational Aspects of Agricultural Marketing Act, 7 U.S.C. 1623–1624.
22. Hatch Act research programs. 7 U.S.C. 361a-i.
23. Experiment Station Research Facilities. 7 U.S.C. 390a-k.
24. McIntire-Stennis Cooperative Forestry Research Program. 16 U.S.C. 582a-582a-7.
25. Rural Development and Small Farm Research and Education Program, 7 U.S.C. 2661 *et seq*.
26. Youth Conservation Corps. 16 U.S.C. 1701 *et seq*.
27. Young Adult Conservation Corps. 29 U.S.C. 993 *et seq*.
28. Agricultural Research and Education Grants Program. 7 U.S.C. 3151 *et seq*.
29. National Food and Human Nutrition Research and Extension Program. 7 U.S.C. 3171 *et seq*.
30. Animal Health and Disease Research Program. 7 U.S.C. 3191 *et seq*.
31. The 1890 Land-Grant College Funding Program. 7 U.S.C. 3221 *et seq*.
32. Solar Energy Research and Development Program. 7 U.S.C. 3241, 3261–62, 3271.

# PART 15b—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

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APPENDIX A TO PART 15B—LIST OF USDA-ASSISTED PROGRAMS

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 and 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 tailored to specific programs. Subpart G is procedural.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990]

### § 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* means programs receiving 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.

[47 FR 25470, June 11, 1982, as amended at 55 FR 52139, Dec. 19, 1990]

### §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;

(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 programs or activities 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 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 or benefits from 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 or benefiting from 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) *Programs limited by Federal law.* The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program 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.

### § 15b.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Secretary, that the program 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.

### § 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 and 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.

### § 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 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 had the discrimination not occurred, or (iii) with respect to handicapped persons presently in the program, 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.

### § 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 assisted by this Department.

## Subpart B—Employment Practices

### § 15b.11 Applicability.

This subpart applies to all 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]

### § 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 apprenticeship programs.

(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 social or recreational programs; 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.

### § 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.

(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, factors to be considered include:

(1) The overall size of the recipient's program 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.

### § 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—Program Accessibility

### § 15b.16 Applicability.

This subpart applies to all 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]

### § 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) *Program accessibility.* A recipient shall operate each assisted program or activity so that the program or activity, when viewed in its entirety, 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 offer programs and activities to qualified handicapped persons in the most intergrated setting appropriate to obtain the full benefits of the program.

(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 program accessibility can only be accomplished through substantial modifications which would result in a fundamental alteration in the nature of the program, 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) In the case of historic preservation programs, program accessibility means that, when viewed in its entirety, a program 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 program 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 program accessibility. Because the primary benefit of an historic preservation program is the experience of the historic property itself, in taking steps to achieve program accessibility, recipients shall give priority

to those means which make the historic property, or portions thereof physicially accessible to handicapped individuals.

(2) Where program accessibility cannot be achieved without causing a substantial impairment of significant historic features, the Secretary may grant a waiver of the program accessibility requirement. In determining whether program 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; 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 program accessibility 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.

### § 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 and 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]

### § 15b.21 Location and notification.

A recipient that operates a public elementary or secondary education program 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.

### § 15b.22 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program 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 in or refer such person to a program other than the one that it operates 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 to a program not operated by the recipient as its means of carrying out the requirements of this subpart, payment for the costs of the program. 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 in or refers such person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program 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 placement in a public or private residential program is necessary to provide a free appropriate public education to a handicapped person because of their handicap, the program, 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 such a program 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.

### § 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 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 a regular or special education program 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.

### § 15b.25 Procedural safeguards.

A recipient that operates a public elementary or secondary education program 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.

### § 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 programs and

activities 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 in these activities.

(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).

### §15b.27 Extension education.

(a) *General.* A recipient to which this subpart applies that operates an extension education program or activity receiving assistance from this Department may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity. A recipient shall take into account the needs of such persons in determining the benefits or services to be provided under the program or activity.

(b) *Program delivery sites.* (1) Where existing extension office facilities are inaccessible, recipients may make program 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 program 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 program benefits 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 program 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 program benefits 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) *Program materials.* Recipients shall make program 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.

### § 15b.28 Private education programs.

(a) A recipient that operates a private elementary or secondary education program receiving assistance from this Department may not, on the basis of handicap, exclude a qualified handicapped person from such program 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.

## Subpart E—Postsecondary Education

### § 15b.29 Applicability.

Subpart E applies to public and private postsecondary education programs and 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]

### § 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 program or activity 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 and activities in the most integrated setting appropriate.

### § 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 program or 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 in its program, 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 under the education program or activity operated by the recipient 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.

### § 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 discrimate 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 programs and activities 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.

## Subpart F—Other Programs and Activities

### § 15b.36 Applicability.

Subpart F applies to programs and activities, 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]

### § 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 opportuntiy 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 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.

### § 15b.40 Food services.

(a) Recipients which operate food service programs assisted by this Department 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.

### § 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 a multifamily rental housing program.

(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 program 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 program 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 program 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 accessbile and (2) consideration of approval to commit project reserve account funds for minor modifications in order to make existing facilities accessible.

## 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 USDA-ASSISTED PROGRAMS

Programs administered by the U.S. Department of Agriculture in which Federal financial assistance is rendered, include but are not limited to the following:

| Program | 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. |

| Program | 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. |

| Program | Authority |
|---|---|
| 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. |
| 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. |

| Program | Authority |
|---|---|
| 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. |
| 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. |

| Program | 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. |

# PART 15d—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE

Sec.
15d.1 Purpose.
15d.2 Discrimination prohibited.
15d.3 Compliance.
15d.4 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 Discrimination prohibited.

(a) No agency, officer, or employee of the United States Department of Agriculture shall, on the ground of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, or disability, or because all of part of an individual's income is derived from any public assistance program, 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 United States Department of Agriculture.

(b) No person shall be subjected to reprisal for opposing any practice prohibited by this part or for filing a complaint or participating in any other manner in a proceeding under this part.

## § 15d.3 Compliance.

The Director of the Office of Civil Rights shall evaluate each agency's efforts to comply with this part and shall make recommendations for improving such efforts.

## § 15d.4 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 on his or her own, or through an authorized representative, a written complaint alleging such discrimination. No particular form of complaint is required. 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 Director of the Office of Civil Rights or his or her designee. Any person who complains of discrimination under this part in any fashion shall be advised of his or her right to file a complaint as herein provided.

(b) All complaints under this part should be filed with the Director of the Office of Civil Rights, United States Department of Agriculture, Washington, D.C. 20250, who will investigate the complaints. The Director of the Office of Civil Rights will make final determinations as to the merits of complaints under this part and as to the corrective actions required to resolve program complainants. The complaint will be notified of the final determination on his or her complaint.

(c) Any complaint filed under this part alleging discrimination on the basis of disability will be processed under 7 CFR part 15e.

# 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

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Sec.

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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.

*ASA* means the Assistant Secretary for Administration.

*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.

## 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.

### § 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 OCR 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. OCR also may refer your eligible complaint for a formal investigation by the OCR, 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 OCR will not settle the complaint and explain to you your options, including your right to pursue formal proceedings before an ALJ under subpart D. If the complaint is successfully resolved or settled, the Director will issue a final determination disposing of the matter.

### § 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 ASA 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.

### § 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 ASA. The ASA also may review the proposed determination on his or her own initiative. If the ASA 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.

### § 15f.17 What happens before the hearing?

(a) *Do I need to file another answer or pre-hearing brief?* You may file a pre-hearing 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 ASA. The ASA also may review the proposed determination on his or her own initiative. If the ASA 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.

### § 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 [RESERVED]

## PART 17—SALES OF AGRICULTURAL COMMODITIES MADE AVAILABLE UNDER TITLE I OF THE AGRICULTURAL TRADE DEVELOPMENT AND ASSISTANCE ACT OF 1954, AS AMENDED

Sec.

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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 subauthorization.

*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.
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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.
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APPENDIX I 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, and 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, 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.

(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 Canada 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 1.

(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]

### § 20.5 Announcements.

Commodities for which reports are required under these regulations are set forth in appendix 1 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 and ticker 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 1 to this part and amendments thereto and in the announcements through press and ticker service.

### § 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 make an initial report by transmitting the information contained in the report forms by the use of telephone or electronic transmission. The required form must be subsequently submitted in accordance with § 20.6(k)(2).

(1) *United States origin sales only.* (i) Total quantity of outstanding export sales from the previous report by country of destination.

(ii) Quantity of 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 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 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 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 must be received in the office specified in § 20.10 no later than 5:00 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]

### §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 compiled and made available to the public daily. 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]

### §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:

Foreign Agricultural Service, Export Sales Reporting Division, U.S. Department of Agriculture, Washington, DC 20250.

[Amdt. 4, 45 FR 8562, Feb. 8, 1980]

### §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 I TO PART 20—COMMODITIES SUBJECT TO REPORTS, 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 | do | do | Do. |
| Wheat, hard red spring | do | do | Do. |
| Wheat, white | do | do | Do. |
| Wheat, durum | do | do | Do. |
| Wheat products, all wheat flours (including clears), bulgur, semolina, farina, and rolled, cracked, and crushed wheat. | do | do | Do. |
| Barley, unmilled | do | do | Do. |
| Corn, unmilled | do | Sept. 1 | Aug. 31. |
| Rye, unmilled | do | June 1 | May 31. |
| Oats, unmilled | do | do | Do. |
| Grain sorghums, unmilled | do | Sept. 1 | Aug. 31. |
| Soybeans | do | Sept. 1 | Aug. 31. |
| Soybean oil cake and meal | do | 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. | do | do | Do. |
| Flaxseed | do. | June 1 | May 31. |
| Linseed oil, including raw, boiled | do | do | Do. |
| Sunflowerseed oil, including: crude (including degummed), once refined, sunflowerseed salad oil (including refined and further processed by bleaching, deodorizing, or winterizing), hydrogenated. | do | Oct. 1 | Sept. 30. |
| Cottonseed | do | Aug. 1 | July 31. |
| Cottonseed oil cake and meal | do | Oct. 1 | Sept. 30. |
| Cottonseed oil, including: crude, once refined, cottonseed salad oil (refined and further processed by bleaching, deodorizing, or winterizing), hydrogenated. | do | do | Do. |
| Cotton, American pima, raw, extra long staple | Running bales | Aug. 1 | July 31. |
| Cotton, upland, raw, staple length 1 1/16 in and over | do | do | Do. |
| Cotton, upland, raw, staple length 1 in up to 1 1/16 in | do | do | Do. |
| Cotton, upland, raw, staple length under 1 in | do | do | Do. |
| Rice, long grain, brown (including parboiled) | Metric tons | do | Do. |
| Rice, medium, short and other classes, brown (including parboiled). | do | do | Do. |
| Rice, long grain, milled (including parboiled) | do | do | Do. |
| Rice, medium, short and other classes, milled (including parboiled). | do | do | Do. |
| 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, excluding wet blues, cut into croupons, crops, dossets, sides, butts or butt bends (hide equivalent). | Number | Jan. 1 | Dec. 31. |
| Cattle hides and skins—Cattle, calf and kip, excluding wet blues, in cuts not otherwise specified. | 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. |

[Amdt. 1, 41 FR 19951, May 14, 1976, as amended by Amdt. 5, 45 FR 24440, Apr. 10, 1980; Amdt. 6, 45 FR 83192, Dec. 18, 1980; 46 FR 32228, June 22, 1981; 48 FR 13955, Apr. 1, 1983; 51 FR 30203, Aug. 25, 1986; 62 FR 10412, Mar. 7, 1997]

EFFECTIVE DATE NOTE: At 66 FR 38526, July 25, 2001, appendix 1 was amended by adding an entry for ''Beef, fresh, chilled or frozen: muscle cuts of beef'', effective August 24, 2001. At 66 FR 44291, Aug. 23, 2001, the effective date for this addition was delayed to January 11, 2002. For the convenience of the user, the added text is set forth below:

APPENDIX 1 TO PART 20—COMMODITIES SUBJECT TO REPORTS, UNITS OF MEASURE TO BE USED IN REPORTING, AND BEGINNING AND ENDING DATES OF MARKETING YEARS

| Commodity to be reported | Units of measure to be used in reporting | Beginning of marketing year | End of marketing year |
|---|---|---|---|
| * * | * * | * | |
| Beef, fresh, chilled or frozen: muscle cuts of beef. | Metric tons | Jan. 1 | Dec. 31. |

# 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

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22.102 Summary of authorities.
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## Subpart B—Roles and Responsibilities of Federal Government

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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 the Assistant 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 Assistant Secretary for Rural Development 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 Assistant 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 Administrators of the Extension Service and the Cooperative State Research Service for extension and research programs respectively, 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.

### § 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 Extension Service and the Cooperative State Research Service. 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.

**§ 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—BOARD OF CONTRACT APPEALS, DEPARTMENT OF AGRICULTURE

### Subpart A—Organization and Functions

Sec.

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### Subpart B—Rules of Procedure

24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

APPENDIX TO SUBPART B—RULE OF PROCEDURE

AUTHORITY: 5 U.S.C. 301; 15 U.S.C. 714b, 714g, and 714h; 16 U.S.C. 551; 40 U.S.C. 486(c); 41 U.S.C. 601–613.

SOURCE: 60 FR 56207, Nov. 7, 1995, unless otherwise noted.

## Subpart A—Organization and Functions

### § 24.1 General.

The Board of Contract Appeals, United States Department of Agriculture (referred to as the ''Board'') is an agency of the Department established by the Secretary of Agriculture in accordance with the requirements of the Contract Disputes Act of 1978 (41 U.S.C. 601–613). The provisions of 5 U.S.C. 551–559 (Administrative Procedure Act) are not applicable to proceedings before the Board except for the requirements under 5 U.S.C. 552 respecting public information, agency rules, opinions, orders, and records.

### § 24.2 Composition of the Board.

The Board consists of a Chair, Vice Chair, and other members, all of whom are attorneys at law duly licensed by a state, commonwealth, territory, or the District of Columbia. The Board members are designated Administrative Judges. The Chair shall manage the business and operations of the Board, assign cases to members, and establish panels for cases. Except as provided in Rule 12.2, the Small Claims (Expedited) Procedure, and Rule 12.3, the Accelerated procedure, decisions of the Board will be rendered by a panel of three Administrative Judges, and the decision of the majority of the panel will constitute the decision of the Board. The Vice Chair shall perform the functions of the Chair upon request of the Chair or in the event of absence or unavailability of the Chair to act.

### § 24.3 Presiding Administrative Judge.

The Chair acts as presiding Administrative Judge, or designates a member of the Board or an examiner to so act, in each proceeding. The Presiding Administrative Judge or the examiner has power to:

(a) Rule upon motions and request;

(b) Adjourn the hearing from time to time and change the time and place of hearing;

(c) Administer oaths and affirmations and take affidavits;

(d) Receive evidence;

(e) Order the taking of depositions;

(f) Admit or exclude evidence;

(g) Hear oral argument on facts or law;

(h) Consolidate appeals filed by two or more appellants; and

(i) Do all acts and take all measures necessary for the maintenance of order at the hearing and the efficient conduct of the proceeding.

In cases considered by the Board under §24.4(b), (c), and (d) the Chair is hereby delegated authority to request subpoenas pursuant to 5 U.S.C. 304.

### § 24.4 Jurisdiction.

(a) *Contract Disputes Act.* Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601–613), the Board shall consider and determine appeals from decisions of contracting officers relating to contracts entered into on or after March 1, 1979, and, at the contractor's election, contracts entered into prior to March 1, 1979, with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter. For purposes of this paragraph (a) the term ''contracts'' shall mean express or implied contracts made by the Department of Agriculture, agencies of the Department, or by any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal, for:

(1) The procurement of property, other than real property in being;

(2) The procurement of services;

(3) The procurement of construction, alternation, repair, or maintenance of real property; or

(4) The disposal of personal property.

(b) *Federal Crop Insurance Corporation.* The Board shall have jurisdiction of appeals of final administrative determinations of the Corporation pertaining to standard reinsurance agreements under 7 CFR 400.169(d). Decisions of the Board shall be final within the Corporation and the Department.

(c) *Suspension and debarment.* (1) The Board shall have jurisdiction to hear and determine the issue of suspension or debarment, and the period thereof, on an appeal by a person suspended or debarred by:

(i) An authorized official of the Department of Agriculture under 48 CFR 409.470; or

(ii) An authorized official of the Commodity Credit Corporation under 7 CFR part 1407.

(2) In addition, the Board shall have jurisdiction to hear and determine the issue of debarment, and the period thereof, on an appeal by a timber purchaser debarred by an authorized official of the Forest Service under 36 CFR 223.138.

(3) Decisions of the Board shall be final within the Department.

(d) *Contract Work Hours and Safety Standards Act.* The Board shall have jurisdiction to act for the head of the agency in appeals of the administrative determinations of liquidated damages under the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), 40 U.S.C. 330.

### § 24.5 Time for filing notice of appeal.

A notice of appeal under §24.4(a), (c)(1)(i), or (c)(1)(ii) shall be filed within 90 days from the date of receipt of a contracting officer's or suspending or debarring official's decision. A notice of appeal under §24.4(b) shall be filed within 90 days from the date of receipt of the Corporation's final determination. A notice of appeal under §24.4(c)(2) shall be filed within 30 days from the date of receipt of the debarring official's decision. A notice of appeal under §24.4(d) shall be filed within 60 days from the date of withholding of liquidated damages. The time for filing a notice of appeal shall not be extended by the Board.

### § 24.6 Board location and address.

The Board of Contract Appeals is located in Washington, DC. All correspondence and all documents to be

filed with the Board should be addressed to the Board of Contract Appeals, United States Department of Agriculture, Washington, DC 20250–0600. The Board's telephone number is 202–720–7023; the Board's facsimile number is 202–720–3059.

### § 24.7 Public information.

(a) The records of the Board are open to the public for inspection and copying at the Office of the Board. Decisions and rulings of the Board shall be published from time to time and copies made available to the public upon request at cost of duplication except that the Board shall, in its discretion, have authority to make copies of decisions and rulings available at no charge in accordance with Department policy, appendix A to 7 CFR part 1, subpart A. Hearings before the Board shall be open to the public.

(b) Information that is to be made available for public inspection and copying under provisions of 5 U.S.C. 552(a)(2) and 7 CFR 1.5 may be obtained at the office of the Board. The address of the Board is set forth in § 24.6. Except for such information as is generally available to the public, requests should be in writing and submitted in accordance with 7 CFR 1.6 and paragraphs (c) and (d) of this § 24.7.

(c) Facilities for copying are available at the office of the Board.

(d) Facilities for inspection and copying are available during established office hours for the Board, usually 8:30 a.m. to 5:00 p.m. Monday through Friday. The Department of Agriculture has established a schedule of fees for copies of information. The Board charges for copies of records in accordance with the Department fee schedule, appendix A to 7 CFR part 1, subpart A.

(e) The Vice Chair is authorized to receive requests for records submitted in accordance with 7 CFR 1.6(a), and to make determinations regarding whether to grant or deny requests for records exempt from mandatory disclosure under the provisions of 5 U.S.C. 552(b). This official is authorized to

(1) Extend the ten-day administrative deadline for reply pursuant to 7 CFR 1.14,

(2) Make discretionary releases pursuant to 7 CFR 1.17(b) of records except from mandatory disclosure, and

(3) Make determinations regarding the charging of fees.

(f) Appeals from denials of request submitted under paragraph (e) of this section shall be submitted in accordance with 7 CFR 1.6(e) to the Chair, Board of Contract Appeals, United States Department of Agriculture, Washington, DC 20250–0600. The Chair shall determine whether to grant or deny the appeal and shall also make all necessary determinations relating to an extension of the twenty-day administrative deadline for reply pursuant to 7 CFR 1.14, discretionary release pursuant to 7 CFR 1.17(b) of records exempt from mandatory disclosure under 5 U.S.C. 552(b), and the charging of appropriate fees.

### § 24.8 Rules of procedure.

The Chair of the Board shall prescribe its Rules of Procedure and publish such Rules in subpart B of this part 24 and may prescribe and so publish amendments from time to time. The Rules of Procedure and any amendments thereto shall be consistent with this subpart.

### § 24.9 Definitions.

*Board* means the Board of Contract Appeals established under this subpart.

*Contract* means any agreement entered into by the Department or its agencies or authorized officials with any person having the legal effect of a contract between the Department and such person.

*Contracting officer* means any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto and includes the authorized representative of the contracting officer, acting within the limits of his/her authority.

*Days* means calendar days. Except as otherwise provided by law, in computing any period of time prescribed by the rules in this part or any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but

the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday, in which even the period shall run to the end of the next business day. If mailing is required, the date of the postmark shall be treated as the date action was taken.

*Department* means the United States Department of Agriculture.

*Government attorney* means the attorney of the Department designated to handle a particular appeal on behalf of the contracting officer.

*Person* means any individual, partnership, public or private corporation, association, agency or other legal entity.

## Subpart B—Rules of Procedure

### § 24.21 Rules of Procedure of Agriculture Board of Contract Appeals—AGBCA.

(a) *Preface to Rules. Time, computation and extensions.* All time limitations specified for various procedural actions are computed as maximums and are not to be fully exhausted if the action described can be accomplished in a lesser period. Where appropriate and justified, however, extensions of time will be granted. All requests for extensions of time by either party shall be in writing and state good cause for the requested extension. The Board may grant such extensions on good cause shown except that the Board shall not extend the time prescribed under § 24.5 for taking an appeal.

(b) *Ex parte communications.* No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members or to ex parte communication concerning the Board's administrative functions or procedures.

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RULES—PRELIMINARY PROCEDURES

*Rule 1. Appeals, How and When Taken*

(a) *Notice of Appeal—90 days.* Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days

from the date of receipt of a contracting officer's decision. A copy of the notice of appeal shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) *Failure to Issue CO Decision—60 days—$100,000 or less.* Where the contractor has submitted a claim of $100,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure of the contracting officer to issue a decision.

(c) *Failure to Issue CO Decision—Reasonable Time—More than $100,000.* Where the contractor has submitted a certified claim in excess of $100,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this Rule 1, citing the failure to issue a decision.

(d) *Stay Pending Final CO Decision.* Upon docketing of appeals filed pursuant to paragraphs (b) or (c) of this Rule 1, the Board may, at its option, stay further proceedings pending issuance of a final decision by the contracting officer within such period of time as is determined by the Board.

*Rule 2. Notice of Appeal. Contents of*

A notice of appeal should indicate that an appeal is being taken and should identify the contract (by number), the department and agency or bureau involved in the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal should be signed by the appellant (the contractor making the appeal), or by the appellant's duly authorized representative or attorney. The Complaint referred to in Rule 6 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a Complaint.

*Rule 3. Docketing of Appeals*

When a notice of appeal in any form has been received by the Board, it shall be docketed promptly. Notice in writing shall be given to the appellant, with a copy of these rules and information on Alternative Dispute Resolution. Notice in writing shall be given also to the contracting officer and to the Office of the General Counsel.

*Rule 4. Preparation, Content, Organization, Forwarding, and Status of Appeal File*

(a) *Duties of Contracting Officer.* Within 30 days of receipt of a letter from the Board transmitting the Complaint, the contracting officer shall assemble and transmit to the Board through agency channels and appeal file, and shall transmit copies thereof to the appellant and the Government attorney. The appeal file shall consist of all documents pertinent to the appeal, including:

(1) The decision from which the appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans, and drawings;

(3) All correspondence between the parties relevant to the appeal; including the letter or letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered relevant to the appeal.

(b) *Duties of the Appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall transmit to the Board any documents not contained therein which the appellant considers relevant to the appeal, and shall transmit copies of such documents to the Government attorney and the contracting officer.

(c) *Organization of Appeal File.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy Documents.* Upon request by either party, the Board may waive the requirement to furnish to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when inclusion would be burdensome. At the time a party files with the Board a document as to which such a waiver has been granted such party shall notify the other party that the document or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of Documents in Appeal File.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document or documents reasonably in advance of hearing, or if there is no hearing, of settling the record. If such objection is made the Board shall remove the document or documents from the appeal file and permit the party offering the document to move its admission as evidence either prior to hearing or prior to closing the record if there is no hearing, in accordance with Rules 13 and 20.

(f) *Dispensing with Appeal File Requirements.* Notwithstanding the foregoing, the filing of the Rule 4 (a) and (b) documents may be dispensed with by the Board either upon request of the appellant in the notice of appeal or thereafter upon stipulation of the parties.

*Rule 5. Dismissal for Lack of Jurisdiction*

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party. However, the Board may defer its decision on the motion pending hearing on both the merits and the motion. The Board shall have the right to any time and on its own initiative to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

*Rule 6. Pleadings*

(a) *Appellant—Complaint.* Except as provided in Rule 12.2(b) and Rule 12.3(b), within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and two copies of a Complaint setting forth simple, concise and direct statements of each of its claims. Appellant shall also set forth the basis, with appropriate reference to contract provisions, of each claim and the dollar amount claimed, to the extent known. This pleading shall fulfill the generally recognized requirements of a Complaint, although no particular form is required. Upon receipt of the Complaint, the Board shall serve a copy of it upon the Government and the contracting officer. Should the Complaint not be filed within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth its Complaint and the Government shall be so notified.

(b) *Government—Answer.* Within 30 days from receipt of the Complaint, or the aforesaid notice from the Board, the Government shall prepare and file with the Board an original and one copy of an Answer thereto. The Answer shall set forth simple, concise, and direct statements of Government's defenses to each claim asserted by appellant, including any affirmative defenses available, and shall be served on the appellant and the contracting officer. Should the Answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

*Rule 7. Amendments of Pleadings or Record*

The Board upon its own initiative or upon application by a party may order a party to make a more definite statement of the Complaint or Answer, or to reply to an Answer. The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet such evidence.

*Rule 8. Hearing Election*

After filing of the Government's Answer or notice from the Board that it has entered a general denial on behalf of the Government, each party shall advise whether it desires a hearing as prescribed in Rules 17 through 25, or whether it elects to submit its case on the record without a hearing, as prescribed in Rule 11.

*Rule 9. Prehearing Briefs*

Based on an examination of the pleadings, and its determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to Rule 8. If the Board does not require prehearing briefs either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

*Rule 10. Prehearing or Presubmission Conference*

(a) *Conference.* Whether the case is to be submitted pursuant to Rule 11, or heard pursuant to Rules 17 through 25, the Board may upon its own initiative, or upon the application of either party, arrange a telephone conference or call upon the parties to appear before an Administrative Judge or examiner of the Board of a conference to consider:

(1) Simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings to facilitate discovery;

(4) Limitation of the number of expert witnesses, or avoidance of similar cumulative evidence;

(5) The possibility of agreement disposing of any or all of the issues in dispute; and

(6) Such other matters as may aid in the disposition of the appeal.

(b) *Written Results of Conference.* The Administrative Judge or examiner of the Board shall make such rulings and orders as may be appropriate to achieve settlement by agreement of the parties or to aid in the disposition of the appeal. The results of pretrial conferences, including any rulings and orders, shall be reduced to writing by the Administrative Judge or examiner and this writing shall thereafter constitute a part of the record.

*Rule 11. Submission Without a Hearing*

Either party may elect to waive a hearing and to submit its case upon the record before the Board, as settled pursuant to Rule 13. Submission of a case without hearing does not receive the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answer to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with Rule 23.

*Rule 12. Optional SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures*

Notwithstanding any other provisions of these Rules of Procedure, the SMALL CLAIMS (EXPEDITED) and ACCELERATED procedures shall be available solely at the election of the appellant.

*Rule 12.1. Elections to Utilize SMALL CLAIMS (EXPEDITED) and ACCELERATED Procedures*

(a) *SMALL CLAIMS (EXPEDITED)—$50,000 or less.* In appeals where the amount in dispute is $50,000 or less, the appellant may elect to have the appeal processed under a SMALL CLAIMS (EXPEDITED) procedure requiring decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.2.

(b) *ACCELERATED—$100,000 or less.* In appeals where the amount in dispute is $100,000 or less, the appellant may elect to have the appeal processed under an ACCELERATED procedure requiring decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election. The details of this procedure appear in Rule 12.3.

(c) *Time for Election.* The appellant's election of either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure may be made by written notice within 60 days after receipt of notice of docketing the appeal unless such period is extended by the Board for good cause. The election may not be withdrawn except with permission of the Board and for good cause.

(d) *Board Determines Amount in Dispute.* In deciding whether the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure is applicable to a given appeal, the Board shall determine the amount in dispute.

*Rule 12.2. The SMALL CLAIMS (EXPEDITED) Procedure*

(a) *Time Periods for Proceedings.* In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the following time periods shall apply: (1) Within ten days from the Government's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure, the Government shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any; remaining documents required under Rule 4 shall be submitted in accordance with times specified in that rule unless the Board otherwise directs;

(2) Within 15 days after the Board has acknowledged receipt of appellant's notice of election, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties: (i) Identify and simplify the issues; (ii) establish a simplified procedure appropriate to the particular appeal involved; (iii) determine whether the appellant wants a hearing, and if so, fix a time and place therefore; (iv) require the Government to furnish all the additional documents relevant to the appeal, and (v) establish an expedited schedule for resolution of the appeal.

(b) *Decisions—120 Days).* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or if no hearing is scheduled, to close the record on a date that will allow decisions within the 120-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 120-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) *Form of Decisions.* Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in the Judge's discretion, at

the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

(d) *No Precedent—Not Appealable.* A decision against the Government or the contractor shall have no value as precedent, and in the absence of fraud shall be final and conclusive and may not be appealed or set aside.

*Rule 12.3. The ACCELERATED Procedure*

(a) *Time Periods for Proceedings.* In cases proceeding under the ACCELERATED procedure, the parties are encouraged, to the extent possible consistent with adequate presentation of their factual and legal positions, to waive pleadings, discovery, and briefs. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules, including Rule 4, as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure, any may reserve 30 days for preparation of the decision.

(b) *Decisions—180 Days.* Pleadings, discovery and other prehearing activity will be allowed only as consistent with the requirement to conduct the hearing on the dates scheduled, or if no hearing is scheduled, to close the record on a date that will allow decision within the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules, as necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(c) *Form of Decisions.* Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge with the concurrence of the Chair or a Vice Chair or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. Alternatively, in cases where the amount in dispute is $50,000 or less as to which the ACCELERATED procedure has been elected and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, at the conclusion of the hearing and after entertaining such oral arguments as deemed appropriate, render on the record oral summary findings of fact, conclusions, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a typed copy of such oral decision for record and payment purposes and to establish the starting date for the period for filing a motion for reconsideration under Rule 29.

*Rule 12.4. Motions for Reconsideration in Rule 12 Cases*

Motions for Reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the original 120-day or 180-day limit, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this Rule.

*Rule 13. Settling the Record*

(a) *Components of the Record.* The record upon which the Board's decision will be rendered consists of the documents furnished under Rules 4 and 12, to the extent admitted in evidence, and the following items, if any: pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearings exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will, at all reasonable times, be available for inspection by the parties at the office of the Board.

(b) *Closing Dates for Inclusion of Material.* Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight Given to Evidence.* The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

*Rule 14. Discovery—Depositions*

(a) *General Policy and Protective Orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order required to protect a party or person from annoyance, embarrassment, or undue burden or expense. Those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When Depositions Permitted.* After an appeal has been docketed and Complaint filed, the parties may mutually agree, or the Board may, upon application of either party,

order the taking of 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 or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on Depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Board.

(d) *Use as Evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the deponent given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions to supplement the record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

(f) *Subpoenas.* Where appropriate, a party may request the issuance of a subpoena under the provisions of Rule 21.

*Rule 15. Interrogatories to Parties, Admission of Facts, and Production and Inspection of Documents*

After an appeal has been docketed and Complaint filed with the Board, a party may serve on the other party: (a) Written interrogatories to be answered separately in writing, signed under oath and answered or objected to within 30 days; (b) a request for the admission of specified facts and the authenticity of any documents, to be answered or objected to within 30 days after service (the factual statements and the authenticity of the documents to be deemed admitted upon failure of a party to respond to the request); and (c) a request for the production, inspection and copying of any documents or objects not privileged, which reasonably may lead to the discovery of admissible evidence. Any discovery engaged in under this Rule shall be subject to the provisions of Rule 14(a) with respect to general policy and protective orders and of Rule 33 with respect to sanctions.

*Rule 16. Service of Papers Other Than Subpoenas*

(a) *Service of Papers.* Papers shall be served personally or by certified mail, return receipt requested, addressed to the Board or to the party upon whom service is to be made. Parties shall furnish three copies of Complaints directly to the Board. Parties shall furnish two copies of Answers and briefs directly with the Board, with one copy being served on the opposing party and the Board's copies containing a notation to that effect. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board that a copy has been so furnished. Subpoenas shall be served as provided in Rule 21.

(b) *Facsimle Transmissions.* Facsimile transmissions to the Board and the parties are permitted. Parties are expected to submit their facsimile machine numbers with their filings. The Board's facsimile number is (202) 720–3059. The filing of a document by facsimile transmission occurs upon receipt by the Board of the entire printed submission. Parties are specifically cautioned that deadlines for the filing of appeals will not be extended merely because the Board's facsimile machine is busy or otherwise unavailable at the time the filing is due. A document submitted by facsimile should be followed by a copy of the document sent by U.S. Postal Service or other delivery method.

HEARINGS

*Rule 17. Where and When Held*

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, Rule 12 requirements, and other pertinent factors. On request on motion by either party and for good cause, the Board may, in its discretion, adjust the date of a hearing.

*Rule 18. Notice of Hearings*

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduled hearings, the Board will consider the desires of the parties and the requirement for just and inexpensive determination of appeals without unnecessary delay.

*Rule 19. Unexcused Absence of a Party*

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in Rule 11.

*Rule 20. Hearings: Nature; Examination of Witnesses*

(a) *Nature of Hearings.* Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and the Government may offer such evidence

as they deem appropriate and as would be admissible under the Federal Rules of Evidence. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may require evidence in addition to that offered by the parties.

(b) *Examination of Witnesses.* Witnesses before the Board will be examined orally under oath or affirmation, unless the presiding Administrative Judge or examiner shall otherwise order. If the testimony of a witness is not given under oath, the Board may advise the witness that his statements may be subject to the provisions of 18 U.S.C. 287 and 1001, and any other provision of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

*Rule 21. Subpoenas for CDA Appeals*

(a) *General.* For appeals under §24.4(a), upon written request of either party filed with the recorder, or on the initiative of the Administrative Judge to whom a case is assigned, or who is otherwise designated by the Chair, such Administrative Judge may issue a subpoena requiring:

(1) Testimony at a deposition—the deposing of a witness in the city or county where such witness resides or is employed or transacts business in person, or at another location convenient for such witness that is specifically determined by the Board;

(2) Testimony at a hearing—the attendance of a witness for the purpose of taking testimony at a hearing; and

(3) Production of books and papers—in addition to (1) or (2), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary Cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party witnesses and production of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for Subpoenas.*

(1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to Quash or Modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; Issuance.*

(1) Every subpoena shall state the name of the Board and the title of the appeal, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may, in the Judge's discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.*

(1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law; however, where the subpoena is issued on behalf of the Government, money payments need not be tendered in advance of attendance.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or Refusal to Obey a Subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is

found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

*Rule 21.1. Subpoenas for Non-CDA Appeals*

For appeals under §§24.4(b), (c), and (d), the Chair has authority by delegation from the Secretary to request the appropriate United States Attorney to apply to the appropriate United States District Court for the issuance of subpoenas pursuant to 5 U.S.C. 304.

*Rule 22. Copies of Papers*

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

*Rule 23. Posthearing Briefs*

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge or examiner at the conclusion of the hearing.

*Rule 24. Transcript of Proceedings*

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Waiver of transcript may be especially suitable for hearings under Rule 12.2. Transcripts or copies of the proceedings shall be made available by the Board to the Government attorney. Appellant may order transcripts of the proceedings from the contract reporter at the hearing.

*Rule 25. Withdrawal of Exhibits*

After a decision has become final, the Board may, upon request and after notice to the other party, in its discretion permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

*Rule 26. The Appellant*

An individual appellant may appear before the Board in person; a corporation by one of its officers; and a partnership or joint venture by one of its members; or any of these by an attorney at law duly licensed in any state, commonwealth, territory, the District of Columbia, or in a foreign country. An attorney representing an appellant shall file a written notice of appearance with the Board.

*Rule 27. The Government*

Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board, and notice thereof will be given appellant or appellant's attorney in the form specified by the Board from time to time. Whenever appellant and the Government counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal. However, if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

MISCELLANEOUS

*Rule 28. Decisions*

Decisions of the Board will be made in writing and authenticated copies of the decision will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions (except those required for good cause to be held confidential and not cited as precedents) shall be open for public inspection at the offices of the Board in Washington, D.C. Decisions of the Board will be made solely upon the record, as described in Rule 13.

*Rule 29. Motion for Reconsideration*

A motion for reconsideration may be filed by either party. It shall set forth specifically the grounds relied upon to sustain the motion. The motion shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

*Rule 30. Dismissal Without Prejudice*

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. Where the suspension has continued, or may continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause for suspension has been removed. Unless either party or the Board acts within three years, or such shorter time as ordered by the Board, to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

*Rule 31. Dismissal for Failure to Prosecute or Defend*

Whenever a record discloses the failure of either party to file documents required by

these rules, respond to notices of correspondence from the Board, comply with orders of the Board or otherwise indicates an intention not to continue the prosecution of defense of an appeal, the Board may, in the case of a default by the appellant, issue an order to show cause why the appeal should not be dismissed or, in the case of a default by the Government, issue an order to show cause why the Board should not act thereon pursuant to Rule 33. If good cause is not shown, the Board may take appropriate action.

*Rule 32. Remand From Court*

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board shall consider the reports and enter special orders governing the handling of the remanded case. To the extent the court's directive and tie limitations permit, such orders shall conform to these rules.

*Rule 33. Sanctions*

If any party fails or refuses to obey an order issued by the Board, the Board may then make such order as it considers necessary to the just and expeditious conduct of the appeal.

*Rule 34. Alternative Dispute Resolution*

Upon joint motion or with the consent of both parties, the Board may permit the use of methods of Alternative Dispute Resolution (ADR). The Board shall notify parties of the availability of ADR methods by transmitting information with its notice of docketing (Rule 3).

*Rule 35. Application for Attorneys' Fees and Expenses Under the Equal Access to Justice Act*

The Equal Access to Justice Act (EAJA), 5 U.S.C. 504, allows payment of attorneys' fees and expenses to certain prevailing parties in administrative adjudications with the Government unless the Government's position was substantially justified. Rules governing applications for fees and expenses under EAJA can be found in 7 CFR 1.180 *et seq.*

# PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

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AUTHORITY: 5 U.S.C. 301, 26 U.S.C. 1391.

SOURCE: 63 FR 19114, Apr. 16, 1998, unless otherwise noted.

## Subpart A—General Provisions

### § 25.1 Applicability and scope.

(a) *Applicability.* This part sets forth 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) and the Taxpayer Relief Act of 1997, title IX, subtitle F (Round II).

(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.

### § 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.

*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.

*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.

*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 eligible for tax incentives and credits established by subchapter U of the Internal Revenue Code (26 U.S.C. 1391 *et seq.*), and for certain consideration by Federal programs such as the EZ/EC SSBG program established pursuant to section 2007 of title XX of the Social Security Act (42 U.S.C. 1397f).

*Designation date* means December 21, 1994 in the case of Round I designations and, in the case of Round II designations, the date designation is made by the Secretary.

*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.

*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.

*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).

*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.

*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.

### § 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 applicable Notice Inviting Applications. 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. The number of Champion Communities is limited to the number of applicants which are not designated.

(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.

### § 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 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 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]

### § 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 and Round II 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*—(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 and Round II 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*—(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 both Round I and Round II 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, up to 3 noncontiguous developable sites not exceeding 2,000 acres in the aggregate) must separately meet the poverty criteria set forth 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.

**§§ 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.

(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.

### § 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 as published in the FEDERAL REGISTER, and must contain complete and accurate information.

### § 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, 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 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.

### § 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) *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.

(b) *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.

### § 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]**

# PART 26 [RESERVED]

# FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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# Material Approved for Incorporation by Reference

**(Revised as of January 1, 2002)**

The Director of the Federal Register has approved under 5 U.S.C. 552(a) and 1 CFR Part 51 the incorporation by reference of the following publications. This list contains only those incorporations by reference effective as of the revision date of this volume. Incorporations by reference found within a regulation are effective upon the effective date of that regulation. For more information on incorporation by reference, see the preliminary pages of this volume.

**7 CFR (PARTS 1–26)**
**OFFICE OF THE SECRETARY OF AGRICULTURE**

| | 7 CFR |
|---|---|
| **Soil Conservation Service, U.S. Department of Agriculture** | |
| P.O. Box 2890, Washington, DC 20013 | |
| ''Hydric Soils of the United States, 1985'' | 12.31(a)(3) |

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