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following the filing date of the applicable record. Records shall be kept for such longer period of time as may be requested in writing by USDA representatives.

PART 784 [RESERVED]

PART 785—CERTIFIED MEDIATION PROGRAM

Sec.

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AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 1989; and 7 U.S.C. 5101–5104.

SOURCE: 67 FR 57315, Sept. 10, 2002, unless otherwise noted.

§ 785.1 General.

(a) States meeting conditions specified in this part may have their mediation programs certified by the Farm Service Agency (FSA) and receive Federal grant funds for the operation and administration of agricultural mediation programs.

(b) U.S. Department of Agriculture (USDA) agencies participate in mediations pursuant to agency rules governing their informal appeals processes. Where mediation of an agency decision by a Certified Mediation Program is available to participants in an agency program as part of the agency's informal appeal process, the agency will offer a participant receiving notice of an agency decision the opportunity to mediate the decision under the State's Certified Mediation Program, in accordance with the agency's informal appeals regulations in this chapter.

(c) USDA agencies making mediation available as part of the agency infor-

mal appeals process may execute memoranda of understanding with a certified mediation program concerning procedures and policies for mediations during agency informal appeals that are not inconsistent with this part or other applicable regulations. Each such memorandum of understanding will be deemed part of the grant agreement governing the operation and administration of a State certified mediation program receiving Federal grant funds under this part.

(d) A mediator in a Certified Mediation Program under this part has no authority to make decisions that are binding on parties to a dispute.

(e) No person may be compelled to participate in mediation provided through a mediation Certified Mediation Program under this part. This paragraph (e) shall not affect a State law requiring mediation before foreclosure on agricultural land or property.

[67 FR 57315, Sept. 10, 2002, as amended at 87 FR 13125, Mar. 9, 2022]

§ 785.2 Definitions.

Administrator means the Administrator, FSA, or authorized designee.

Certified Mediation Program means a program providing mediation services that has been certified in accordance with § 785.3.

Confidential mediation means a mediation process in which the mediator will not disclose to any person oral or written communications provided to the mediator in confidence, except as allowed by 5 U.S.C. 574 or § 785.9.

Covered persons means agricultural producers, their creditors (as applicable), persons directly affected by actions of the USDA, and any other persons involved in covered issues under § 785.4(d); for which mediation services are provided by a Certified Mediation Program.

Fiscal year means the period of time beginning October 1 of one year and ending September 30 of the next year and designated by the year in which it ends.

FSA means the Farm Service Agency of the U.S. Department of Agriculture, or a successor agency.

Mediation services means all activities relating to the intake and scheduling

of mediations; the provision of background and selected information regarding the mediation process; financial advisory and counseling services (as reasonable and necessary to prepare parties for mediation) performed by a person other than a Certified Mediation Program mediator; and mediation sessions in which a mediator assists disputing parties in voluntarily reaching mutually agreeable settlement of issues within the laws, regulations, and the agency's generally applicable program policies and procedures, but has no authoritative decision making power.

Mediator means a neutral individual who functions specifically to aid the parties in a dispute during a mediation process.

Qualified mediator means a mediator who meets the training requirements established by State law in the State in which mediation services will be provided or, where a State has no law prescribing mediator qualifications, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by the USDA, by an accredited college or university, or by one of the following organizations: State Bar of a qualifying State, a State mediation association, a State approved mediation program, or a society of professionals in dispute resolution.

Qualifying State means a State with a Certified Mediation Program currently certified by FSA.

[67 FR 57315, Sept. 10, 2002, as amended at 87 FR 13125, Mar. 9, 2022]

§ 785.3 Annual certification of a State's Certified Mediation Program.

To obtain certification from FSA for the Certified Mediation Program, the State must meet the requirements of this section.

(a) *New request for certification.* A new request for certification of a State mediation program must include descriptive and supporting information regarding the mediation program and a certification that the mediation pro-

gram meets certain requirements as prescribed in this section. If a State is also qualifying its mediation program to request a grant of Federal funds under the Certified Mediation Program, the State must submit with its request for certification additional information as specified in § 785.4.

(1) *Description of mediation program.* The State must submit a narrative describing the following with supporting documentation:

- (i) A summary of the program;
- (ii) An identification of issues available for mediation under the program;
- (iii) Management of the program;
- (iv) Mediation services offered by the program;
- (v) Program staffing and staffing levels;
- (vi) That the State's Certified Mediation Program ensures, in the case of other issues covered by the Certified Mediation Program, that:
 - (A) USDA receives adequate notification of those issues by the deadline specified in § 785.6(a)(1); and
 - (B) Persons directly affected by actions of USDA receive adequate notification of the Certified Mediation Program; and
- (vii) State statutes and regulations in effect that are applicable to the State's mediation program; and
- (viii) A description of the State program's education and training requirements for mediators including:
 - (A) Training in mediation skills and in USDA programs;
 - (B) Identification and compliance with any State law requirements; and
 - (C) Other steps by the State's program to recruit and deploy qualified mediators.
- (ix) Any other information requested by FSA;

(2) *Certification.* The Governor, or head of a State agency designated by the Governor, must certify in writing to the Administrator that the State's mediation program meets the following program requirements:

- (i) That the State's mediation program provides mediation services to covered persons with the aim of reaching mutually agreeable decisions between the parties under the program;
- (ii) That the State's mediation program is authorized or administered by

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an agency of the State government or by the Governor of the State;

(iii) That the State's mediation program provides for training of mediators in mediation skills and in all issues covered by the State's mediation program;

(iv) That the State's mediation program shall provide confidential mediation as defined in § 785.2;

(v) That the State's mediation program ensures, in the case of agricultural loans, that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program;

(vi) That the State's mediation program ensures, in the case of other issues covered by the mediation program, that persons directly affected by actions of the USDA receive adequate notification of the mediation program; and

(vii) That the State's mediation program prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status.

(b) *Request for re-certification by qualifying State.* If a State is a qualifying State at the time its request is made, the written request need only describe the changes made in the program since the previous year's request, together with such documents and information as are necessary concerning such changes, and a written certification that the remaining elements of the program will continue as described in the previous request.

[67 FR 57315, Sept. 10, 2002, as amended at 87 FR 13125, Mar. 9, 2022]

§ 785.4 Grants to States with a Certified Mediation Program.

(a) *Eligibility.* To be eligible to receive a grant, a State's Certified Mediation Program must:

(1) Be certified as described in § 785.3; and

(2) Submit an application for a grant with its certification or re-certification request as set forth in this section.

(b) *Application for grant.* A State requesting a grant will submit the following to the Administrator:

(1) Application for Federal Assistance, Standard Form 424 (available at <http://www.whitehouse.gov/omb/grants/>);

(2) A budget with supporting details providing estimates of the cost of operation and administration of the Certified Mediation Program. Proposed direct expenditures will be grouped in the categories of allowable direct costs under the Certified Mediation Program as specified in paragraph (c)(1) of this section;

(3) Other information pertinent to the funding criteria specified in § 785.7(b); and

(4) Any additional supporting information requested by FSA in connection with its review of the grant request.

(c) *Grant purposes.* Grants made under this part will be used only to pay the allowable costs of operation and administration of the components of a qualifying State's Certified Mediation Program that have been certified as specified in § 785.3(a)(2). Costs of services other than mediation services to covered issues and covered persons within the State are not considered part of the cost of operation and administration of the Certified Mediation Program for the purpose of determining the amount of a grant award.

(1) *Allowable costs.* Subject to applicable cost principles in 2 CFR part 200, subpart E, allowable costs for operations and administration are limited to those that are reasonable and necessary to carry out the State's Certified Mediation Program in providing mediation services for covered issues and covered persons within the State. Specific categories of costs allowable under the State's Certified Mediation Program include, and are limited to:

(i) Staff salaries and fringe benefits;

(ii) Reasonable fees and costs of mediators;

(iii) Office rent and expenses, such as utilities and equipment rental;

(iv) Office supplies;

(v) Administrative costs, such as workers' compensation, liability insurance, employer's share of Social Security, and travel that is necessary to provide mediation services;

(vi) Education and training of participants and mediators involved in mediation;

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(vii) Security systems necessary to assure confidentiality of mediation sessions and records of mediation sessions;

(viii) Costs associated with publicity and promotion of the program; and

(ix) Financial advisory and counseling services for parties requesting mediation (as reasonable and necessary to prepare parties for mediation) that are performed by a person other than a state mediation program mediator and as approved under guidelines established by the state mediation program and reported to FSA.

(2) *Prohibited expenditures.* Expenditures of grant funds are not allowed for:

(i) Purchase of capital assets, real estate, or vehicles and repair, or maintenance of privately-owned property;

(ii) Political activities;

(iii) Routine administrative activities not allowable under 2 CFR part 200, subpart E; and

(iv) Services provided by a State's Certified Mediation Program that are not consistent with the features of the Certified Mediation Program as specified in this part including advocacy services on behalf of a mediation participant, such as representation of a mediation client before an administrative appeals entity of the USDA or other Federal Government department or Federal or State Court proceeding.

(d) *Covered issues.* Covered issues include:

(1) Agricultural loans, regardless of whether the loans are made or guaranteed by USDA or made by a third party—mediation services must be provided; and

(2) The following issues for which mediation services may be provided to covered persons that are involved in one or more of the following:

(i) Wetlands determinations;

(ii) Compliance with farm programs, conservation programs, and the National Organic Program established under the Organic Foods Production Act of 1990;

(iii) Rural water loan programs;

(iv) Grazing on National Forest System lands;

(v) Pesticides;

(vi) Lease issues, including land leases and equipment leases;

(vii) Family farm transition;

(viii) Farmer-neighbor disputes;

(ix) Such other issues as the Secretary or the head of the Department of Agriculture of each participating State considers appropriate for better serving the agricultural community and persons eligible for mediation; or

(x) Credit counseling;

(A) Prior to the initiation of any mediation involving the USDA; or

(B) Unrelated to any ongoing dispute or mediation in which the USDA is a party.

[67 FR 57315, Sept. 10, 2002, as amended at 79 FR 75996, Dec. 19, 2014; 87 FR 13125, Mar. 9, 2022]

§ 785.5 Fees for mediation services.

A requirement that non-USDA parties who elect to participate in mediation pay a fee for mediation services will not preclude certification of a State's mediation program or its eligibility for a grant; however, if participation in mediation is mandatory for a USDA agency, a State's Certified Mediation Program may not require the USDA agency to pay a fee to participate in a mediation.

[87 FR 13125, Mar. 9, 2022]

§ 785.6 Deadlines and address.

(a) *Deadlines.* (1) To be a qualifying State as of the beginning of a fiscal year and to be eligible for grant funding as of the beginning of the fiscal year, the Governor of a State or head of a State agency designated by the Governor of a State must submit a request for certification and application for grant on or before August 1 of the calendar year in which the fiscal year begins.

(2) *Requests received after August 1.* FSA will accept requests for re-certifications and for new certifications of State mediation programs after August 1 in each calendar year; however, such requests will not be considered for grant funding under § 785.7(c) until after March 1.

(3) *Requests for additional grant funds during a fiscal year.* Any request by a State's Certified Mediation Program, that is eligible for grant funding as of the beginning of the fiscal year, for additional grant funds during that fiscal

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year for additional, unbudgeted demands for mediation services must be submitted on or before March 1 of the fiscal year.

(b) *Address.* The request for certification or re-certification and any grant request must be mailed or delivered to: Administrator, Farm Service Agency, U.S. Department of Agriculture, Stop 0501, 1400 Independence Avenue, SW., Washington, DC 20250-0501.

[67 FR 57315, Sept. 10, 2002, as amended at 87 FR 13125, Mar. 9, 2022]

§ 785.7 Distribution of Federal grant funds.

(a) *Maximum grant award.* A grant award shall not exceed 70 percent of the budgeted allowable costs of operation and administration of the State's Certified Mediation Program. In no case will the sum granted to a State exceed \$500,000 per fiscal year.

(b) *Funding criteria.* FSA will consider the following in determining the grant award to a qualifying State:

(1) Demand for and use of mediation services (historical and projected);

(2) Scope of mediation services;

(3) Service record of the State's Certified Mediation Program, as evidenced by:

(i) Number of inquiries;

(ii) Number of requests for and use of mediation services, historical and projected, as applicable;

(iii) Number of mediations resulting in signed mediation agreements;

(iv) Timeliness of mediation services; and

(v) Activities promoting awareness and use of mediation;

(4) Historic use of program funds (budgeted versus actual); and

(5) Material changes in the State program.

(c) *Disbursements of grant funds.* (1) Grant funds will be paid in advance, in installments throughout the Federal fiscal year as requested by a State's Certified Mediation Program and approved by FSA. The initial payment to a Certified Mediation Program in a qualifying State eligible for grant funding as of the beginning of a fiscal year will represent at least one-fourth of the State's annual grant award. The initial payment will be made as soon as practicable after certification, or re-

certification, after grant funds are appropriated and available.

(2) Payment of grant funds will be by electronic funds transfer to the designated account of each State's Certified Mediation Program, as approved by FSA.

(d) *Administrative reserve fund.* After funds are appropriated, FSA will set aside 5 percent of the annual appropriation for use as an administrative reserve.

(1) Subject to paragraph (a) of this section and the availability of funds, the Administrator will allocate and disburse sums from the administrative reserve in the following priority order:

(i) Disbursements to cover additional, unbudgeted demands for mediation services in qualifying States eligible for grant funding as of the beginning of the fiscal year;

(ii) Grants to qualifying States whose requests for new certification or re-certification were received between August 2 and March 1. A previously qualifying State that submits a request for re-certification received after August 1 may receive a grant award effective as of the beginning of the fiscal year. A newly qualifying State that submits a request for certification received after August 1 may receive a grant award effective March 31 of the fiscal year.

(iii) Any balance remaining in the administrative reserve will be allocated pro rata to Certified Mediation Program based on their initial fiscal year grant awards.

(2) All funds from the administrative reserve will be made available on or before March 31 of the fiscal year.

(e) *Period of availability of funds.* (1) States receiving Certified Mediation Program grant funds are encouraged to obligate award funds within the Federal fiscal year of the award. A State may, however, carry forward any funds disbursed to its Certified Mediation Program that remain unobligated at the end of the fiscal year of award for use in the next fiscal year for costs resulting from obligations in the subsequent funding period. Any carryover balances plus any additional obligated fiscal year grant will not exceed the lesser of 70 percent of the State's budgeted allowable costs of operation and administration of the State's Certified

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Mediation Program for the subsequent fiscal year, or \$500,000.

(2) Grant funds not spent in accordance with this part will be subject to de-obligation and must be returned to the USDA.

[67 FR 57315, Sept. 10, 2002, as amended at 87 FR 13126, Mar. 9, 2022]

§ 785.8 Reports by qualifying States receiving mediation grant funds.

(a) *Annual report by the State on its Certified Mediation Program.* No later than 30 days following the end of a fiscal year during which a qualifying State received a grant award under this part, the State must submit to the Administrator an annual report on its Certified Mediation Program. The annual report must include the following:

(1) A review of mediation services provided by the State's Certified Mediation Program during the preceding Federal fiscal year providing information concerning the following matters:

(i) A narrative review of the goals and accomplishments of the State's Certified Mediation Program in providing intake and scheduling of cases; the provision of background and selected information regarding the mediation process; financial advisory and counseling services, training, notification, public education, increasing resolution rates, and obtaining program funding from sources other than the grant under this part.

(ii) A quantitative summary for the preceding fiscal year, and for prior fiscal years, as appropriate, for comparisons of program activities and outcomes of the cases opened and closed during the reporting period; mediation services provided to clients grouped by program and subdivided by issue, USDA agency, types of covered persons and other participants; and the resolution rate for each category of issue reported for cases closed during the year;

(2) An assessment of the performance and effectiveness of State's Certified Mediation Program considering:

(i) Estimated average costs of mediation services per client with estimates furnished in terms of the allowable costs set forth in § 785.4(b)(1).

(ii) Estimated savings to the State as a result of having the State mediation program certified including:

(A) Projected costs of avoided USDA administrative appeals based on projections of the average costs of such appeals furnished to the State by FSA, with the assistance of the USDA National Appeals Division and other agencies as appropriate;

(B) In agricultural credit mediations that do not result from a USDA adverse program decision, projected cost savings to the various parties as a result of resolution of their dispute in mediation. Projected cost savings will be based on such reliable statistical data as may be obtained from State statistical sources including the State's bar association, State Department of Agriculture, State court system or Better Business Bureau, or other reliable State or Federal sources;

(iii) Recommendations for improving the delivery of mediation services to covered persons, including:

(A) Increasing responsiveness to needs for mediation services.

(B) Promoting increases in dispute resolution rates.

(C) Improving assessments of training needs.

(D) Improving delivery of training.

(E) Reducing costs per mediation.

(3) Such other matters relating to the program as the State may elect to include, or as the Administrator may require.

(b) *Audits.* Any qualifying State receiving a grant under this part is required to submit an audit report in compliance with 2 CFR part 200, subpart F.

[67 FR 57315, Sept. 10, 2002, as amended at 79 FR 75996, Dec. 19, 2014; 87 FR 13126, Mar. 9, 2022]

§ 785.9 Access to program records.

The regulations in 2 CFR 200.334 through 200.338 provide general record retention and access requirements for records pertaining to grants. In addition, the State must maintain and provide the Government access to pertinent records regarding services delivered by the State's Certified Mediation Program for purposes of evaluation, audit and monitoring of the State Certified Mediation Program as follows:

(a) For purposes of this section, pertinent records consist of: the names

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and addresses of applicants for mediation services; dates mediations opened and closed; issues mediated; dates of sessions with mediators; names of mediators; mediation services furnished to participants by the program; the sums charged to parties for each mediation service; records of delivery of services to prepare parties for mediation (including financial advisory and counseling services); and the outcome of the mediation services including formal settlement results and supporting documentation.

(b) State mediators will notify all participants in writing at the beginning of the mediation session that the USDA, including the USDA Inspector General, the Comptroller General of the United States, the Administrator, and any of their representatives will have access to pertinent records as necessary to monitor and to conduct audits, investigations, or evaluations of mediation services funded in whole or in part by the USDA.

(c) All participants in a mediation must sign and date an acknowledgment of receipt of such notice from the mediator. The State's Certified Mediation Program must maintain originals of such acknowledgments in its mediation files for at least 3 years.

[67 FR 57315, Sept. 10, 2002, as amended at 79 FR 75996, Dec. 19, 2014; 87 FR 13126, Mar. 9, 2022]

§ 785.10 Penalty for non-compliance.

(a) The Administrator is authorized to withdraw the certification of a State's Certified Mediation Program, terminate or suspend the grant to the State's Certified Mediation Program, require a return of unspent grant funds, a reimbursement of grant funds on account of expenditures that are not allowed, and may impose any other penalties or sanctions authorized by law if the Administrator determines that:

(1) The State's Certified Mediation Program, at any time, does not meet the requirements in this part for certification;

(2) The State's Certified Mediation Program is not being operated in a manner consistent with the features of the program as certified by FSA, with

the regulations in this part, or the grant agreement;

(3) Costs that are not allowed under § 785.4(b) are being paid out of grant funds;

(4) The mediation program fails to grant access to mediation records for purposes specified in § 785.8; or

(5) Reports submitted by a State on its Certified Mediation Program as required by § 785.8 are false, contain misrepresentations or material omissions, or are otherwise misleading.

(b) In the event that FSA gives notice to the State of its intent to enforce any withdrawal of certification or other penalty for non-compliance, USDA agencies will cease to participate in any mediation conducted by the State's Certified Mediation Program immediately upon delivery of such notice to the State.

[67 FR 57315, Sept. 10, 2002, as amended at 87 FR 13126, Mar. 9, 2022]

§ 785.11 Reconsideration by the Administrator.

(a) A State's Certified Mediation Program may request that the Administrator reconsider any determination that a State is not a qualifying State under § 785.3 and any penalty decision made under § 785.10. The decision of the Administrator upon reconsideration shall be the final administrative decision of FSA.

(b) Nothing in this part shall preclude action to suspend or debar a State's Certified Mediation Program or administering entity under 2 CFR parts 180 and 417 following a withdrawal of certification of the State's Certified Mediation Program.

[67 FR 57315, Sept. 10, 2002, as amended at 79 FR 75996, Dec. 19, 2014; 87 FR 13127, Mar. 9, 2022]

§ 785.12 Nondiscrimination.

The provisions of parts 15 and 15b of this title and part 90 of title 45 apply to activities financed by grants made under this part.

[67 FR 57315, Sept. 10, 2002, as amended at 87 FR 13127, Mar. 9, 2022]

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§ 785.13 OMB Control Number.

The information collection requirements in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0560-0165.

PART 786 [RESERVED]

PART 789—AGRICULTURE PRIORITIES AND ALLOCATIONS SYSTEM (APAS)

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SCHEDULE I TO PART 789—APPROVED PROGRAMS AND DELEGATE AGENCIES

AUTHORITY: 50 U.S.C. App. 2061–2170, 2171, and 2172; 42 U.S.C. 5195–5197h.

SOURCE: 80 FR 63898, Oct. 22, 2015, unless otherwise noted.

Subpart A—General

§ 789.1 Purpose.

This part provides guidance and procedures for use of the Defense Production Act priorities and allocations authority by the United States Department of Agriculture (USDA) with respect to food resources, food resource facilities, livestock resources, veterinary resources, plant health resources, and the domestic distribution of farm equipment and commercial fertilizer in this part. (The guidance and procedures in this part are consistent with the guidance and procedures provided in other regulations issued under Executive Order 13603. Guidance and procedures for use of the Defense Production Act priorities and allocations authority with respect to other types of resources are as follows: For all forms of energy, refer to the Department of Energy's Energy Priorities and Allocations System (EPAS) regulation in 10 CFR part 217; for all forms of civil