management practices used in production of the commodity, including methods of pest risk mitigation or control programs; and

(ii) Identification of parties responsible for pest management and control.

(e) *Additional information.* None of the additional information listed in this paragraph need be provided at the same time as information required under paragraphs (a) through (d) of this section; it is required only upon request by APHIS. If APHIS determines that additional information is required in order to complete a pest risk analysis in accordance with international standards for pest risk analysis, we will notify the party submitting the request in writing what specific additional information is required. If this information is not provided, and is not available to APHIS from other sources, a request may be considered incomplete and APHIS may be unable to take further action on the request until the necessary additional information is submitted. The additional information may include one or more of the following types of information:

(1) *Contact information:* Address, phone and fax numbers, and/or e-mail address for local experts (e.g., academicians, researchers, extension agents) most familiar with crop production, entomology, plant pathology, and other relevant characteristics of the commodity proposed for importation.

(2) *Additional information about the commodity:* (i) Common name(s) in English and the language(s) of the exporting country;

(ii) Cultivar, variety, or group description of the commodity;

(iii) Stage of maturity at which the crop is harvested and the method of harvest;

(iv) Indication of whether the crop is grown from certified seed or nursery stock, if applicable;

(v) If grown from certified seed or stock, indication of the origin of the stock or seed (country, State); and

(vi) Color photographs of plant, plant part, or plant product itself.

(3) *Information about the area where the commodity is grown:* (i) Unique characteristics of the production area in terms of pests or diseases;

(ii) Maps of the production regions, pest-free areas, etc.;

(iii) Length of time the commodity has been grown in the production area;

(iv) Status of growth of production area (i.e., acreage expanding or stable); and

(v) Physical and climatological description of the growing area.

(4) *Information about post-harvest transit and processing:* (i) Complete description of the post-harvest processing methods used; and

(ii) Description of the movement of the commodity from the field to processing to exporting port (e.g., method of conveyance, shipping containers, transit routes, especially through different pest risk areas).

(5) *Shipping methods:* (i) Photographs of the boxes and containers used to transport the commodity; and

(ii) Identification of port(s) of export and import and expected months (seasons) of shipment, including intermediate ports-of-call and time at intermediate ports-of-call, if applicable.

(6) *Additional description of all pests and diseases associated with the commodity to be imported:* (i) Common name(s) of the pest in English and local language(s);

(ii) Geographic distribution of the pest in the country, if it is a quarantine pest and it follows the pathway;

(iii) Period of attack (e.g., attacks young fruit beginning immediately after blooming) and records of pest incidence (e.g., percentage of infested plants or infested fruit) over time (e.g., during the different phenological stages of the crops and/or times of the year);

(iv) Economic losses associated with pests of concern in the country;

(v) Pest biology or disease etiology or epidemiology; and

(vi) Photocopies of literature cited in support of the information above.

(7) *Current strategies for risk mitigation or management:* (i) Description of pre-harvest pest management practices (including target pests, treatments [e.g., pesticides], or other control methods) as well as evidence of efficacy of pest management treatments and other control methods;

(ii) Efficacy of post-harvest processing treatments in pest control;

(iii) Culling percentage and efficacy of culling in removing pests from the commodity; and

(iv) Description of quality assurance activities, efficacy, and efficiency of monitoring implementation.

(8) *Existing documentation:* Relevant pest risk analyses, environmental assessment(s), biological assessment(s), and economic information and analyses.

(f) *Availability of additional guidance.* Information related to the processing of requests to change the import regulations contained in this part may be found on the APHIS Web site at *http://www.aphis.usda.gov/ppq/pra/.*

(Approved by the Office of Management and Budget under control number 0579–0261)

Done in Washington, DC, this 23rd day of May 2006.

Charles D. Lambert,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E6–8238 Filed 5–26–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 780

RIN 0560–AG88

Appeal Procedures

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: In an interim rule that was published on July 27, 2005, and made effective on August 26, 2005, the Farm Service Agency (FSA) amended the regulations for informal agency appeals to make conforming and clarifying changes. This rule adopts the interim rule with some minor clarifying amendments.

DATES: *Effective Date:* This rule is effective June 29, 2006.

FOR FURTHER INFORMATION CONTACT: H. Talmage Day, Appeals and Litigation Staff, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW., AG STOP 0570, Washington, DC 20250–0570. Telephone: 202–690–3297. E-mail: *Tal.Day@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 27, 2005, the Farm Service Agency (FSA) published an interim final rule amending the FSA appeal regulations at 7 CFR part 780 (70 FR 43262–43270). The interim final rule became effective on August 26, 2005.

Public Comment

FSA received 20 comments from the public concerning the interim final rule: one comment from the lead plaintiff in class action litigation pending against FSA, one comment from class counsel in that litigation, one comment from a minority advocacy organization, one comment from a farm advocacy organization, two comments from farm advocates, one comment from an organization of recipients of grants under FSA's Certified Agricultural Mediation Program, 7 CFR part 785, and 13 comments from recipients of grants under that program. These comments and FSA's responses are as follows:

Regulatory Definitions

Four respondents made suggestions or questioned certain regulatory definitions. One respondent suggested that the regulation should define ''interested parties'' and ''third parties.'' The substance of this respondent's concern is that all interested and third parties uniformly be given notice and opportunity to participate in mediation. Current rules allow for sufficient and appropriate flexibility in introducing other parties to the mediation. No change to the regulations was found to be warranted.

Two respondents who have served as advocates in appeals suggested that the definition of ''appellant'' should include an appellant's authorized representative, noting a reference to authorized representatives in NAD rules. FSA believes that the change is unnecessary. This comment goes to the authority of authorized representatives to act for appellants, a point not addressed in the rule. NAD's regulatory definition encompassing appellants' representatives has significance in its rules because the NAD Procedure specifically preclude appellants' representatives from submitting requests for NAD hearings or for reviews of NAD hearing officers' determinations by the NAD Director that are ''not personally signed by the named appellant.'' *See* 7 CFR 11.6(b) and 11.9(a)(2). The procedures for agency informal appeals specify no circumstances where an ''authorized representative'' as defined in the interim final rule cannot act for an appellant. Unless the representative's authority is limited in writing by the participant, FSA does not intend to restrict a representative's ability to represent the participant in proceedings governed by part 780.

Two respondents expressed concern that the definition of ''agency record'' in the interim final rule conflicts with the definition of ''agency record'' in the NAD rules. FSA reviewed the corresponding definitions in the two rules and does not perceive a conflict. The definition of ''agency record'' in the NAD rules refers not to ''all records'' as suggested by one respondent, but only to records related ''to the adverse decision at issue.'' In any event, part 780 provides for excluding irrelevant matters. No change in the regulations is needed.

One respondent complained that use of the term ''covered programs'' in 7 CFR 780.6(a) and of ''covered'' in 7 CFR 780.6(c) of the interim final rule was ''cryptic'' and proposed that FSA list examples of such programs. FSA believes that the scope of the interim final rule and programs covered is adequately addressed in section 780.4 of the interim final rule. Section 780.4(a)(1) describes programs to which part 780 applies and section 780.4(a)(3) describes those programs as ''covered programs.''

Appeal Options

Five respondents expressed concern that the interim final rule effected a change in prior rules to require that participants in agricultural credit programs appeal to county and State committees. The respondents' concerns are unfounded. As set forth in section 780.6(b), appeals to county and State committees are not options available to participants in agricultural credit programs.

One respondent expressed concern that the interim final rule can be read as requiring that all agency appeal procedures be exhausted before an appeal to NAD. NAD rules cover NAD jurisdiction. Hence, this comment goes beyond the scope of the current rulemaking. NAD rules do require that decisions by subordinates of county committees must first be appealed to the county committee before any other appeal options are available. Also of note, FSA directives call for incorporating language in decision letters that specifies in detail how participants must be given notice of their options at each stage of decision-making in a covered program.

One respondent expressed concern that the rule will attenuate the appeals process, causing delay and adverse economic impact. For the reasons noted above, FSA also regards that concern as unfounded. Apart from the limitation precluding appeals directly to NAD from decisions of subordinates of county committees, the rule imposes no limitation on participants' option to appeal adverse decisions directly to NAD.

Three respondents from advocacy organizations, a coalition of recipients of certified mediation program grants under 7 CFR part 785, and five State recipients of certified mediation program grants under that part expressed concern that the respective listings of agency informal appeal procedures available in section 780.6 of the interim final rule implied that the options mentioned must be pursued in a particular order. FSA believes that the concerns are misplaced. As noted, pursuant to agency directives, FSA decision letters furnish notice of available appeal or review options that must be incorporated substantially verbatim in all decision letters to participants. The language identifies the options available to participants, but does not presume to advocate which, if any, option a participant should choose. The listings of options available in section 780.6 merely reflect the organization of the interim final rule.

Time Limitation for Filing of Appeal Requests

Two respondents affiliated with advocacy organizations and four State recipients of grants under the certified agricultural mediation program objected that the interim final rule reduces time for participants to request appeals from 30 to 23 days. FSA believes that this concern arises from a misreading of the ''mailing rule'' in § 780.15(e)(2) of the interim final rule. The interim final rule changed prior procedure, which required a participant to appeal within 30 days from the date of an adverse decision letter, so the time limitation to exercise appeal options would be the same for agency informal appeals and appeals to NAD, and would run from receipt of the decision. The rule allows 7 days for receipt. If actual receipt was earlier, the 30-day period runs from that date. No change in the regulation was made.

Non-Appealability of Determinations Under FSA State Executive Directors (SEDs) Special Relief Authority

Two respondents questioned why decisions on equitable relief under the special relief authority granted SEDs under section 1613(e) of the Farm Security and Rural Investment Act of 2002 (2002 Act) (Pub. L. 107–171; 7 U.S.C. 7996) are administratively final and not appealable to NAD. This is statutory. Section 1613(e) specifically vests this statutory authority in the SED and, by statute, it may not be exercised by other agency officials. An SED determination is subject to reversal only by the Secretary, who may not delegate that authority. NAD decides the proper extent of its own authority, however, as neither the NAD Director nor any agency reviewing authority may exercise or reverse the decision of an SED under this special relief authority, such a decision must be administratively final. Also, in contrast to NAD determinations, which are subject to judicial review, *see* 7 U.S.C. 6999, judicial review of SED exercises of the special relief authority granted in section 1613(e) is specifically precluded in section 1613(f). Any appeal to NAD from an SED's denial of relief under the special relief authority granted in section 1613(e) would, therefore, create a statutory conflict. However, denials of equitable relief under other authority in

programs where equitable relief is available are appealable to NAD.

Similarly, an SED's denial of equitable relief under the special relief authority provided in section 1613(e) does not preclude a participant from appealing the underlying adverse decision to NAD if the matter involves disputed issues of fact and is otherwise appealable to NAD.

Appealability of Farm Loan Requests Not Granted Solely Because of Lack of Funding

One respondent questioned the provision in section 780.5(a)(7) that denials because of lack of funding are not appealable. The respondent correctly observed that under the provisions of the Consolidated Farm and Rural Development Act (CONACT), as amended, requests for farm loans that are denied because of lack of funding are not final administrative decisions. Section 331A(a)(4)(A) (7 U.S.C. 1983a(a)(4)(A)) of the CONACT provides that loan requests that are to be disapproved only because of a lack of funding shall not be disapproved but shall be placed in pending status. The lack of finality is also grounds for denying the appeal. However, section 780.5(a)(7) covers other programs, too. Appeals where no relief is possible would include advisory rulings which go beyond the intended scope of these regulations.

Notice of Appeal Rights When Corrections Are Made

One respondent objected to use of the term ''appropriate notice'' in section 780.3(a), contending that participants must be given appeal rights when corrections are made. FSA agrees that certain corrections could be appealable as adverse decisions; however, that is unlikely to be the case as a general rule because corrections, when made, generally have the effect of bringing matters into accord with rules generally applicable in administration of a program. Appropriate notice in such cases may be notice of the correction that has been made. If the change involves no ''new'' decision, advising participants of appeal or review rights could merely create confusion when there could be no possibility for dispute of an issue of fact. FSA, therefore, believes that the term ''appropriate notice'' accurately reflects that circumstances may differ.

Timetable for Notice of an Adverse Decision

One respondent questioned whether the interim final rule requires FSA to give participants notice of their appeal rights along with a notice of an adverse decision and also questioned, as did one other respondent, whether FSA has any discretion to exceed the 10-working day goal for furnishing notice of an adverse decision. The respondent asserts no additional time is permitted because the statutory source of the 10-day provision. FSA agrees that appellants must be given notice of their appeal and review rights in a decision. As a matter of agency policy, mandatory forms for notice of appeal rights available under agency and NAD rules are set forth in agency directives. Accordingly, ''may'' in section 780.7(a) is changed to ''will.''

As for the 10-working day provision, the rule is consistent with the statutory provision but reflects that in certain cases more time may be required to issue an adverse decision that will be accurate and clear. Moreover, the operative date of the decision might be changed to restart the 10-day period. Delay does not shorten the time for a NAD appeal as that time runs from receipt of the notice as determined under NAD regulations.

Reviews of Non-Appealability Determinations by SEDs

Two respondents questioned whether the provision in section 780.5(b) for reviews of appealability determinations by the SED is an ''additional safeguard.'' The provision for appealability reviews by SED's is without prejudice to a participant's right to request an appealability review by NAD and is optional for participants. In addition, as protection for a participant's right to request an appealability review by NAD, the rule provides in section 780.5(c) that an SED's appealability determination is considered a new agency decision. The effect of this provision is to afford a participant a full 30 days from receipt of an SED's appealability determination to request an appealability review from NAD. As FSA's guidelines for determining whether decisions are appealable reflect the same standards as apply in NAD appeals, the main effect of the provision for appealability reviews by SED's is to increase the availability of agency appeals procedures to those who may wish to take advantage of those procedures.

Notice of Appeal Options

One respondent expressed concern that the rule make clear that agency appeals procedures are optional for participants and that participants are not required to request reconsideration of adverse decisions. FSA does not believe any changes to the rule are necessary to address this concern. Options are covered in the determination letters and can vary based on the circumstances. Nothing in the regulations improperly misclassifies an optional procedure as mandatory. Hence, no adjustment was made.

Availability of Agency Directives on the Internet

Two respondents observed that agency directives setting forth generally applicable interpretations of regulations should be available to the public on the Internet. FSA agrees that wide distribution of agency views is beneficial. FSA notices and handbooks are available at *http://www.fsa.usda.gov/pas*. However, no change in the appeal regulations is needed with respect to this comment on information policy.

Appealability of Decisions Based on Rules of General Applicability

One respondent contended that participants should be able to appeal decisions that rely on generally applicable interpretations of regulations. FSA believes that this comment misconstrues the function of the current part 780 administrative appeal process. Neither NAD's appeal process nor FSA's routine appeal process are means available to participants to dispute the validity of agency regulations or their generally applicable interpretations. These limitations do not preclude challenges to the validity of agency regulations and their interpretation in the courts. Nor do they prohibit petitioning policy making officials for a change in general instructions to be acted upon with such additional procedures and modifications as may be warranted.

Implementation of Decisions That Are Administratively Final

Two comments from advocacy organizations contend that all steps necessary to implement a decision must be taken within 30 calendar days after an agency decision becomes a final administrative decision, questioning the term ''to the extent practicable'' in the interim rule. FSA believes that the qualification is an appropriate recognition of what may be feasible depending upon the program that a decision concerns. In cases where a decision involves only a payment of money or a revised determination on program eligibility, implementation can ordinarily occur within 30 calendar days after the decision becomes final. However, if additional information is required from a participant before action can be taken or if other steps are required that cannot feasibly be accomplished within 30 calendar days,

additional time is required. FSA, therefore believes the text of section 780.16 accurately reflect what is statutorily required and is qualified appropriately so as not to be misleading to participants.

Prohibition on Personal Electronic Recordings of Agency Hearings or Other Administrative Review Proceedings

Commenters questioned the prohibition on personal recordings of appeal proceedings in § 780.13 of the interim final rule. The prohibition was inadvertently omitted in the interim final rule that was previously published in 1995. FSA regards this provision as technical and necessary to assure that any record of a proceeding is reliable and made under circumstances that will afford all parties equal access to the appeal record.

Duration of Mediation

The interim final rule incorporated into regulations the guidelines for mediation of program disputes that had been operative under the prior interim rule. In States without a certified agricultural mediation program that is a recipient of a grant under 7 CFR part 785, requests for mediation must be submitted to the SED. When a certified agricultural mediation program is operating in a State, mediation is made available through that program.

FSA received comments from 12 of the 34 State mediation programs receiving grants under part 785 and from an organization representing those grant recipients. The comments from each of these program recipients raised a number of issues stated, for the most part, in substantially identical language. FSA also received comments on the mediation provisions from two advocacy organizations.

Duration of Mediation

Seven of the commenting mediation programs stated that FSA should clarify section 780.9(b) to indicate that a single mediation may involve more than one session. The interim final rule does not preclude multiple sessions or other services as part of a mediation. Therefore, no change in the rule is necessary to accommodate this concern.

Confidentiality in Mediations

One advocacy organization commented that § 780.9(e), providing that mediations shall be confidential consistent with the purposes of the mediation, appeared to conflict with the definition of ''confidential'' in § 780.2. FSA does not believe that the provisions are in conflict. A similar provision for confidentiality in 7 CFR part 785 provides an exception in § 785.9 for purposes of evaluation, audit, and monitoring of certified agricultural mediation programs. FSA agrees with the respondents' observations regarding the importance of confidentiality in mediations. The provision for confidentiality in § 780.9(e) accordingly reflects that confidentiality as appropriate to effect the purposes of the mediation will be protected. Also, the suggestion of four other certified mediation programs that these regulations should be amended to make State law on confidentiality in mediation applicable is not adopted. The standards should be the same nationwide and these regulations reflect that desire.

One mediation program commented that, in the interest of confidentiality, notes by an agency representative during mediation should not be made part of the record that would be submitted to a higher reviewing authority if the mediation is followed by an appeal. FSA agrees with the substance of this comment and believes it is appropriate to incorporate this guideline into agency directives concerning mediation of agricultural program disputes. However, no change in the regulations is needed.

Two other mediation programs questioned procedures for communication by an agency representative in mediation with other FSA officials, one proposing that the consent of other parties should be required as a condition for such communications, the second disputing that any communications among agency officials could be valid and consistent with due process. Such communications are not, as such, addressed in the regulations. The absolute prohibition sought would be inappropriate as communication with other officials may be necessary to the agency conduct of the mediation and other business. Such a limitation would also be impracticable without providing a material benefit. Presumably, all intra-governmental communication will be relevant to the conduct of agency business.

Stay of Time Limitations During Mediation

Five respondents, including three certified agricultural mediation programs, objected that no provision in the interim final rule specifies the effect of mediation on time deadlines for appeals. Accordingly, § 780.15 is amended in this rule to provide that the time period for requesting appeal is tolled by mediation. Likewise, the amendment specifies that the time deadline for payment limitations in 7 CFR 1400.9 are extended. If following mediation there should be a new decision modifying the adverse decision that was mediated, the interim final rule provides a full 30-day period for a participant to exercise any remaining appeal options with respect to the modified decision. An adverse decision that is not modified as a result of mediation is not a new decision.

Waiver of Appeal Options and Withdrawal of Appeals

Six respondents, using substantially identical language, requested that FSA clarify the distinctions between waiver and withdrawal in §§ 780.7(b) and (d) concerning reconsideration, and §§ 780.10(b) and (c) concerning State committee appeals. Section 780.7(b) provides for waiver of reconsideration because reconsideration is available as an alternative to mediation. The rule is sufficiently descriptive. ''Waiver'' properly describes a pre-request disqualification. ''Withdrawal'' properly describes a post-request correction or removal. However, § 780.10(c) is amended to provide that deemed withdrawal of a request for a State committee hearing as a result of a mediation request will not preclude a subsequent request for a State committee hearing.

Contact Information for Certified Agricultural Mediation Programs in Adverse Decisions

One commenting recipient of a grant under part 785 proposed that § 780.9(f) concerning notice of the opportunity for mediation should be amended to include notice of a toll-free telephone number, e-mail address, and Web address for a certified agricultural mediation program, if available. Providing notice of a toll-free number and other means for communicating electronically with a mediation program will, as the respondent noted, facilitate participants' inquires about mediation services that may be available. Three other recipients of grants under part 785 proposed that participants be given notice of the toll-free telephone number for a certified agricultural mediation program, if available.

FSA notes that the rule requires that any request for mediation in an appeal under this rule must be submitted in writing on or before 30 days from the date an adverse decision is received. Contacts with a certified agricultural mediation program by means of a toll-free number are not effective to document when a request is submitted so as to monitor the 30-day limitation for a participant to exercise other appeal rights because that 30-day clock is

stayed from the time mediation begins until it closes. With regard to other means for participants to contact certified agricultural mediation programs, the rule provides sufficient flexibility to enable programs and States to work out procedures without need for revisions to the rule.

This respondent, and four other recipients of grants under part 785, also proposed that mediation programs should consistently be the designated contact to receive mediation requests in states using a certified mediation program. FSA believes that it is appropriate to provide in the rule for variations to meet local circumstances but also anticipates that a certified program will ordinarily be the designated point of contact in a State with a certified agricultural mediation program. As the rule anticipates that a certified agricultural mediation program will ordinarily be the point of contact, but provides for flexibility to accommodate unanticipated circumstances, no change in the rule is necessary.

The recipient of notice will be expected to maintain records of the date when a participant's written request for mediation is received. The records should include a date-stamped original of the participant's written request and a record of the date when a mediation is closed so that the running of or compliance with applicable limitation periods is supported by documentary evidence that may be reliably monitored by FSA, NAD, or others with the authority to monitor appeal procedures.

Participant's Submission of Copy of Adverse Decision With Mediation Request

Six recipients of agricultural mediation program grants under part 785 and an organization of agricultural mediation program grant recipients commented that requiring participants to furnish a copy of the subject adverse decision with a request for mediation is a hardship for participants. FSA notes that the NAD rules require participants requesting NAD hearings to include a copy of the adverse decision with their written request. FSA also notes the concern of many of these same respondents that participants in States with certified agricultural mediation programs should be uniformly instructed to contact the mediation program to request mediation. Requiring a participant to include a copy of the adverse decision seems particularly appropriate in that circumstance to minimize confusion, to provide a reliable check on the timeliness of the participant's request for mediation, and to ensure proper tracking of the request in relation to other appeal processes that a participant may have initiated. Accordingly, no change in the regulation was made.

Mediation as an Alternative Dispute Resolution Technique

As a matter of procedure, the interim final rule is neutral regarding mediation and other participant options for dispute resolution. FSA believes that options should be presented clearly so that participants understand their options and how they may be exercised. In this regard, two respondents questioned the emphasis in the preamble on the requirement that resolutions in mediation must conform to the statutes, regulations, and FSA's generally applicable interpretations of statutes and regulations governing a program as a distinctive feature of mediation of program disputes. FSA agrees with the respondents that mediators, as a general matter, may assist parties in exploring their interests, but does not agree that parties' interests may preempt regulatory or statutory constraints enabling a participant to obtain in mediation a result not legally obtainable by other means. These comments address only text in the preamble to the interim final rule and no amendment to the rule needs to be considered. Any change which would allow local override of national policy are not warranted and contrary to the public interest.

Authority of Agency Representative in Mediation

Two advocacy groups, four recipients of certified agricultural mediation program grants, and an organization of mediation program grant recipients commented that the rule should require that the decision-maker, rather than a designated agency representative, participate in the mediation. One of the respondents indicated that having members of a county committee attend mediation had been workable in some circumstances. FSA believes that it may be appropriate in some circumstances for the official who has issued a decision to attend a mediation session, but for decisions on matters that are delegated only to an SED, State Committees, or county committees, it is an impracticable commitment of resources to require as a general rule that the decision-maker attend a mediation. Also, such participation in mediation would conflict with a decision maker's decision-making role. The rule instead provides that proposed resolutions in mediation will be forwarded to the decision-maker for approval or implementation.

A concern was expressed in comments, in substantially identical language, by two advocacy groups, an organization of agricultural mediation program grantees, and nine recipients of agricultural mediation programs that approval of proposed agreements in mediation by officials with properly delegated authority is contrary to due process and arbitrary. FSA believes that the concern is misplaced. Contrary to the impression of one of these respondents, generally applicable interpretations of program regulations are established by National Office program managers in consultations with other officials and with counsel when appropriate, not by others.

As defined in the rule, mediation is a means to explore parameters for resolution consistent with program requirements in a setting where the mediator has no decision-making power. Under these circumstances, it is unreasonable to suggest that due process is compromised by a review of proposed dispute resolutions by officials with delegated authority who are accountable for administration of the subject programs consistent with national policy. FSA believes that mediation programs and mediators may need to clarify the purpose of mediation, including its limitations, when mediation occurs as an option in the FSA appeals process. The re-delegations of authority within FSA that these comments imply would create substantial risks of inconsistent results and compromised program integrity. Accordingly, the regulation is not changed in response to the comments. Any change that overrides national policy or standards would be fiscally irresponsible and contrary to the public interest.

Termination of Mediation by an SED

Two advocacy organizations questioned the provision in section 780.9(h) authorizing a State Executive Director to determine mediation to be at an impasse. The respondents argue that problems of mediation program mismanagement should be addressed with mediation program managers. FSA concurs that any problems arising in management of agricultural mediation programs must be addressed with the responsible program managers. The authority granted in the rule merely affords a means to deal with such problems as they affect specific mediations that could not otherwise be resolved under regulations to bring the mediations to closure. FSA believes the authority provided is necessary in the

rule, but does not anticipate that the authority granted to an SED under section 780.9(h) is authority that an SED would need to invoke routinely. Accordingly, the regulations are not changed.

Mediation in Advance of an Adverse Decision

In the preamble to the interim final rule, FSA noted that the rule does not establish guidelines for mediations that may occur in advance of any decision that is appealable under the rule. The preamble noted that in certain limited cases where only one issue would be in dispute and some resolution would seem feasible, mediation in advance of an adverse decision could be appropriate. An example would be mediation of a dispute among successors-in-interest with respect to an existing Conservation Reserve Program contract regarding their respective successor shares—an entirely private dispute in which all parties should have a mutual interest to resolve to continue receiving payments.

Seven recipients of agricultural mediation program grants and an organization of mediation program grant recipients commented that the rule should be amended to provide expressly for mediation in advance of an adverse decision. FSA believes that such an amendment is inappropriate because the rule concerns appeals from adverse decisions and rules and procedures for determining what decisions may be appealable. Mediation in advance of an adverse decision may be appropriate in certain cases. This rule, in § 780.9(a), clarifies when a party may request mediation of an adverse decision, but it does not preclude mediation in advance of an adverse decision in appropriate cases. Accordingly, the rule is not changed.

Miscellaneous

Also, these regulations have been amend to correct a reference to an Internet address.

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule is not significant for the purposes of Executive Order 12866; therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

This rule does not change the information collection requirements of any programs of FSA approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

As stated in the interim final rule, FSA has determined that there will not be a significant economic impact on a substantial number of small entities pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605 (b).

Executive Order 12372

These regulations are not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The provisions of this rule are not retroactive. The provisions of this rule preempt State and local laws to the extent such State and local laws are inconsistent. Generally, all administrative appeal provisions, including those published at 7 CFR part 11, must be exhausted before any action for judicial review may be brought in connection with the matters that are the subject of this rule.

Environmental Evaluation

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, and the FSA regulations for compliance with NEPA, 7 CFR parts 799 and 1940, subpart G. Due to this rule's administrative nature, no extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

List of Subjects in 7 CFR Part 780

Administrative practice and procedure, Agricultural commodities, Agriculture, Farmers, Federal aid programs, Loan programs, Price support programs, Soil conservation, Wetlands.

■ Accordingly, the interim rule amending 7 CFR part 780 which was published at 70 FR 43262 on July 27, 2005, is adopted as final with the following changes:

■ 1. The authority citation for part 780 continues to read as follows:

Authority: 5 U.S.C. 301 and 574; 7 U.S.C. 6995; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

■ 2. Amend § 780.7(a) to read as follows:

§ 780.7 Reconsideration.

(a) A request for reconsideration must be submitted in writing by a participant or by a participant's authorized representative and addressed to the FSA decision maker as will be instructed in the adverse decision notification.

* * * * *

■ 3. Amend § 780.9 by revising paragraph (f)(3) to read as follows:

§ 780.9 Mediation.

* * * * *

(f) * * *

(3) A listing of certified State mediation programs and means for contact may be found on the FSA Web site at *http://www.usda.gov/fsa/disputemediation.htm.*

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■ 4. Revise § 780.10(c) to read as follows:

§ 780.10 State committee appeals.

* * * * *

(c) If a participant requests mediation or requests an appeal to NAD before a request for an appeal to the State Committee has been acted upon, the appeal to the State Committee will be deemed withdrawn. The deemed withdrawal of a participant's appeal to the State Committee will not preclude a subsequent request for a State Committee hearing on appealable matters not resolved in mediation.

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■ 5. Amend § 780.15 by revising paragraph (c) and correcting the second sentence in paragraph (d) to read as follows:

§ 780.15 Time limitations.

* * * * *

(c) A participant requesting reconsideration, mediation or appeal must submit a written request as instructed in the notice of decision that is received no later than 30 calendar days from the date a participant receives written notice of the decision. A participant that receives a determination made under part 1400 of this title will be deemed to have consented to an extension of the time limitation for a final determination as provided in part 1400 of this title if the participant requests mediation.

(d) * * *A participant does not have the right to seek an exception under this paragraph.* * *

* * * * *

Signed at Washington, DC, on May 10, 2006.

Teresa C. Lasseter,

Administrator, Farm Service Agency.

[FR Doc. E6–8221 Filed 5–26–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV06–989–1 FIR]

Raisins Produced From Grapes Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Raisin Administrative Committee (Committee) for the 2005–06 and subsequent crop years from $11.00 to $7.50 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The Committee locally administers the Federal marketing order which regulates the handling of raisins produced from grapes grown in California (order). Assessments upon raisin handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* June 29, 2006.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California raisin handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable raisins beginning August 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the Committee for the 2005–06 and subsequent crop years from $11.00 to $7.50 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. Assessments upon handlers are used by the Committee to fund reasonable and necessary expenses of the program. When volume regulation is in effect, an administrative budget funded with handler assessments is developed, and a reserve pool budget funded with reserve pool proceeds is developed. Volume regulation was not implemented for the 2004–05 crop, but is applicable this year. As a result, Committee costs are apportioned between the two for 2005–06 and will be funded appropriately. The $7.50 per ton assessment rate should generate enough revenue to cover the Committee's administrative expenses. This action was recommended by the Committee at a meeting on August 15, 2005.

Sections 989.79 and 989.80, respectively, of the order provide authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

Section 989.79 also provides authority for the Committee to formulate an annual budget of expenses likely to be incurred during the crop year in connection with reserve raisins held for the account of the Committee. A certain percentage of each year's raisin crop may be held in a reserve pool during years when volume regulation is implemented to help stabilize raisin supplies and prices. The remaining ''free'' percentage may be sold by handlers to any market. Reserve raisins are disposed of through various programs authorized under the order. Reserve pool expenses are deducted