

60 FR 67298-01, 1995 WL 763209(F.R.)

RULES and REGULATIONS

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Farm Service Agency

Natural Resources Conservation Service

Rural Business-Cooperative Service

Rural Housing Service

Rural Utilities Service

7 CFR Parts 1, 11, 12, 400, 614, 620, 623, 631, 632, 634, 663, 701, 702, 752, 780, 781, and 1900

National Appeals Division Rules of Procedure

Friday, December 29, 1995

***67298** AGENCY: Office of the Secretary, National Appeals Division, USDA.

ACTION: Interim final rule.

SUMMARY: On May 22, 1995 (60 FR 27044), the National Appeals Division (NAD) in the Office of the Secretary published a proposed rule to implement Title II, Subtitle H, of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103-354, 7 U.S.C. 6991 et seq., by setting forth procedures for program participant appeals of adverse decisions by United States Department of Agriculture (USDA) agency officials to NAD. The deadline for receipt of comments was June 21, 1995. On June 28, 1995 (60 FR 32922) the Office of the Secretary published an extension of the deadline for receipt of comments until July 6, 1995. From the period May 22 to July 6, 1995, forty-six timely public comments were received in response to the proposed rulemaking. Based on these comments, including concerns regarding the need for an additional comment period on the proposed rules and the need for a comment period on USDA agency conforming rules, but mindful of the immediate need for published rules, the Secretary now issues these rules on an interim final basis. These rules also include conforming changes to the former appeal rules of USDA agencies whose adverse decisions are now subject to NAD review.

DATES: Part 11 of this interim rule is effective January 16, 1996. With the exception of §11.9, part 11 of this rule is applicable as to agency adverse decisions and NAD appeals for which hearings have not been held. Section 11.9 of this interim rule is applicable immediately as to all pending requests for Director review and is applicable retroactively to all requests for Director ***67299** review made on or after October 20, 1994.

Amendments made by this interim rule to all other parts of title 7 of the Code of Federal Regulations are effective January 16, 1996 and are applicable on January 16, 1996 as to any adverse technical determinations or decisions made by an applicable agency.

Written comments via letter, facsimile, or Internet are invited from interested individuals and organizations, and must be received on or before March 28, 1996.

ADDRESSES: Comments should be sent to L. Benjamin Young, Jr., Office of the General Counsel, Research and Operations Division, AgBox 1415, United States Department of Agriculture, Washington, DC 20250-1415; fax number: 202/720-5837; Internet: hqdomain.lawpo.young(A)sies.wsc.ag.gov.

FOR FURTHER INFORMATION CONTACT: L. Benjamin Young, Jr. at the above address or 202/720-4076.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under [E.O. 12866](#), and it has been determined that it is not a “significant regulatory action” rule because it will not have an annual effect on the economy of \$100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof, and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in [E.O. 12866](#).

Regulatory Flexibility Act

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. 96-534, as amended ([5 U.S.C. 601](#) et seq.).

Paperwork Reduction Act

USDA has determined that the provisions of the Paperwork Reduction Act, as amended, 44 U.S.C., chapter 35, do not apply to any collections of information contained in this rule because any such collections of information are made during the conduct of administrative action taken by an agency against specific individuals or entities. [5 CFR 1320.4\(a\)\(2\)](#).

Background and Purpose

On December 27, 1994 (see [59 FR 66,517](#)), the Secretary of Agriculture noticed that the NAD was established pursuant to Title II, Subtitle H of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Public Law No. 103-354, [7 U.S.C. 6991](#) et seq. (“the Act”). NAD was assigned responsibility for all administrative appeals formerly handled by the National Appeals Division of the former Agricultural Stabilization and Conservation Service (ASCS) and by the National Appeals Staff of the former Farmers Home Administration (FmHA), appeals arising from decisions of the former Rural Development Administration (RDA) and the former Soil Conservation Service (SCS), appeals arising from decisions of the successor agencies to the foregoing agencies established by the Secretary, appeals arising from decisions of the Commodity Credit Corporation (CCC) and the Federal Crop Insurance Corporation (FCIC), and such other administrative appeals arising from decisions of agencies and offices of USDA as may in the future be assigned by the Secretary.

This rule sets forth the jurisdiction of the NAD, and the procedures appellants and agencies must follow upon appeal of adverse decisions by covered USDA program “participants” as defined in detail in the new [7 CFR](#) part 11. In addition, since the Act changes existing formal administrative appeals procedures for some agencies while allowing participants a choice of pursuing informal appeals with an agency first or appealing directly to NAD, this rule also makes conforming amendments to the existing appeal procedures of the USDA agencies whose adverse decisions will be appealable to NAD under the new [7 CFR](#) part 11.

For the purposes of convenience, this preamble and the changes to USDA regulations are divided as follows:

Item	Subject	Contact
I	Authentication of Records	B. Young 202/720-4076.
II	NAD Rules of Procedure	B. Young 202/720-4076.

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|-----|---|----------------------------|
| III | Natural Resources Conservation Service (NRCS) Appeal Rules | S. Penn 202/720-6521. |
| IV | Commodity Credit Corporation (CCC), Federal Crop Insurance Corporation (FCIC), and Farm Service Agency (FSA) Appeal Rules | A. Grundeman 202/720-4591. |
| V | Rural Business-Cooperative Service (RBS), Rural Housing Service (RHS), and Rural Utilities Service (RUS) Appeal Rules | A. Grundeman 202/720-4591. |
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I. Authentication of Records

This rule amends the provisions of USDA regulations regarding authentication of official records to provide that the Director of NAD may authenticate documents in NAD records for USDA.

II. NAD Rules of Procedure

Forty-six timely comments were received by July 6, 1995 in response to the requests for comment on the proposed NAD rule. In response to these comments, a number of changes have been made to the rules; however, USDA has opted not to publish the revised rules for an additional comment period. USDA does recognize the need for further public comment on these rules. USDA therefore is issuing this rule on an interim final basis for three specific reasons.

First, a tension exists between the desire of Congress and the USDA to make this a farmer-friendly appeals process and the necessity of establishing an appeals procedure that comports with due process and results in determinations that will withstand scrutiny in the Federal courts. At the same time, it is important that the appeals procedure allow for ease of administration by NAD in a time of scarce and decreasing Federal resources. These problems are reflected in disagreements among the commenters as to how some of the most detailed procedures should be implemented. These tensions should not be resolved presumptively in a final rule. Therefore, promulgation of an interim rule will allow USDA to receive more feedback *67300 and make adjustments with the aid of experience.

Second, several commenters expressed concern over the fact that conforming amendments to individual agency appeal rules were not published with the proposed rule. Additionally, these conforming amendments will result in more substantive changes to agency rules than originally were anticipated by USDA at the time the proposed rules were published. For example, FSA now has decided to combine appeal procedures for the former ASCS, the former FmHA, and FCIC programs that it now administers under the Act. These new agency appeal procedures will set forth how participants may use the “informal hearings” option provided in section 275 of the Act.

Third, legislative changes may occur during consideration of the Farm Bill in 1996 that will necessitate changes to the NAD rules of procedure. By publishing this as an interim rule, the USDA establishes a process for current operations while leaving the rulemaking door open for timely adoption of rules necessary to implement possible legislative changes.

The following explanation is given for those sections of the proposed rule that were heavily commented on or appeared to be misunderstood:

[7 CFR § 11.1](#)

§11.1 Definitions.

Adverse decision. Two commenters noted problems with the proposed definition of “adverse decision” with respect to such decisions resulting from a failure of the agency to act. The proposed rule had by definition provided that an adverse decision results when an agency failed to act or make a decision within timeframes prescribed by agency program regulations. The two commenters noted that in some cases statutes prescribed timeframes and that in others the regulations prescribed no timeframes. In the latter case, one of the commenters suggested that USDA use a “reasonable”

time in the absence of a prescribed timeframe. The amended definition provides that an adverse decision results when an agency fails to act within prescribed statutory or regulatory timeframes, or, in the case where there are no such timeframes specified, within a reasonable time.

Agency. All former and current agencies of the USDA whose adverse decisions are covered by this part have been added in response to a comment noting the lack of parallel treatment between inclusion of old and new agency names and the need to assist individuals unfamiliar with the new names.

USDA also has added language to cover certain programs administered by RUS because, as one commenter correctly noted, they are former programs of RDA that by definition in the Act are covered by NAD. This is accomplished by excluding from NAD purview all RUS programs authorized under the Rural Electrification Act and the Rural Telephone Bank Act.

Agency record, case record, and hearing record. Seven commenters had questions regarding the definitions of “agency record,” “case record,” and “hearing record.” These definitions were carefully nested within one another in order to construe the language of the Act in a logical manner.

Section 278(c) of the Act requires that NAD determinations be made “based on information from the case record, laws applicable to the matter at issue, and applicable regulations published in the Federal Register.” Section 277(a) of the Act, however, also makes reference to the fact that the Director and the Hearing Officer are to have access to the “case record” of an adverse decision upon initial filing of an appeal. Section 278(b) also makes reference to the “case record” that the Director must review as well as the record from the hearing. Clearly, the “case record” in the latter two provisions cannot be the same “case record” referred to in section 278(c), or else NAD determinations would have to be made without reference to the record developed in the hearing itself.

USDA faced the task of construing these seemingly contradictory statutory provisions in a complementary manner. This was done by creating a definitional framework based upon section 271(4) of the Act that defines “case record” to include “all the materials maintained by the Secretary related to an adverse decision.” As in most cases where the Secretary is named in a statute, “Secretary” here is interpreted to mean not the person of the Secretary but rather the Secretary and all subordinate officials of USDA to whom the Secretary has delegated statutory authority. Construed in this manner, “case record” includes any and all materials held by USDA that relate to an adverse decision at any given moment during the administrative appeal process. What the term “case record” includes when used in the statute thus changes based upon the level of the appeal process in which it is used.

For purposes of clarity in the rule, a new term needed to be created to distinguish the “case record” presented by the agency to the Hearing Officer, the record developed by the Hearing Officer in the hearing (sec. 278(b)) and eventually forwarded to the Director, and the “case record” upon which the determination is based. This is accomplished in the rule by defining documents furnished by the agency to the Hearing Officer upon the initial filing of the appeal as the “agency record” that by rule is deemed admitted as evidence in the hearing, by defining evidence presented at the hearing, the transcript of the hearing itself, and post-hearing submissions as the “hearing record,” and finally by explicitly incorporating both the “agency record” and the “hearing record” into the definition of “case record” upon which NAD determinations are made. “Case record” construed in this fashion also includes “the request for review, and such other arguments or information as may be accepted by the Director” (sec. 278(b)) in the Director review phase of NAD appeals because they would be included as materials maintained by the Secretary.

Director. Three commenters objected to the proposed rule definition and other provisions that would allow the Director to delegate the authority of the Director to subordinate individuals within NAD. The primary rationale for the objections was that this would mean that someone without the credentials and qualifications required by the statute for the Director would be exercising the statutory authority of the Director.

USDA rejected changing this provision for two reasons. First, even though the authority for certain actions may be delegated, such actions are still taken in the name of the Director. The Director, in other words, still exercises the final authority. Second, given the anticipated volume of appeals to be filed with NAD, it is not practical or efficient to require that the Director personally perform all actions specified for the Director by name in the Act.

Division. One commenter suggested that the proposed rule was in error in specifying that the Division was established by this part instead of the Act itself. Section 272(a) of the Act provides that “[t]he Secretary shall establish” NAD, not that the NAD “is established.” Therefore, action by the Secretary was required to establish NAD.

Equitable relief. Two commenters suggested that the proposed rule definition of equitable relief needed to be better defined. USDA chose not to define equitable relief further because the meaning of such relief varies from program to program covered under these rules, depending on the language of the program statutes. The guiding intent *67301 behind the drafting of these rules was to ensure that they were written as broadly and flexibly as possible so that they do not need to be amended each time an agency amends its substantive program regulations.

Ex parte communication. One commenter suggested this definition needed to include post-hearing requests for Director review and requests regarding the appealability of adverse decisions. The definition here was changed to include an oral or written communication “to any officer or employee of the Division.” As explained below, further changes were made regarding ex parte communications to ensure that the prohibition on such communications covered all NAD proceedings and employees.

Implement. Three comments were received suggesting changes to this definition. In combination with §11.11 of the rule, USDA feels that this language reflects the statutory definition and need not be changed.

Participant. One commenter suggested that, rather than defining “participant” by listing programs and statutes under which an individual may not bring an appeal before NAD, a separate list of non-appealable decisions should be added to the regulation. This approach was considered, as was listing the programs from which adverse decisions could be appealed to NAD, but the statutory language did not support these approaches. “Adverse decision” is defined too broadly in the statute to limit by regulation. Further, nonappealability of decisions is limited only to matters of general applicability under section 272(d) of the Act. Conversely, Congress explicitly gave the Secretary authority to define “participant” (sec. 271(9)) and therefore the approach reflected in the rule was chosen.

Seven substantive comments were made regarding the definition of “participant” in the proposed rule. Two commenters suggested that the definition should be expanded to include the requirement that, for certain guaranteed loan programs of the former Farmers Home Administration (FmHA), both the applicant/borrower and the lender should be required to appeal jointly. Since any decision to deny a guaranteed loan would affect both the applicant/borrower and the lender, USDA agrees that both parties must appeal any such adverse decision and the rule has been revised to reflect this requirement. However, only the lender will be able to appeal the denial or reduction of a final loss payment to that lender.

One commenter expressed concern that the language “right to participate in” did not clearly include an applicant. Therefore, USDA has added “who has applied for” to the definition.

One commenter suggested that the wording of the definition technically could exclude someone from appealing to NAD if, for example, they had filed a tort claim against USDA. As a “participant” in a tort claim, they would not be included as a “participant” for purposes of a NAD appeal. To clarify that this is not the case, USDA has amended the introductory phrase before the list of programs to read: “The term does not include persons whose claim(s) arise under:”.

Finally, three comments were received from representatives of reinsured companies, that is, crop insurance companies whose insurance contracts with producers are reinsured by the FCIC. The reinsured companies objected to the language including participants affected by decisions of reinsured companies in the definition of “participants.” As originally proposed, the language would have allowed participants to appeal reinsured company decisions to NAD.

The reinsured companies objected to this language on several grounds. First, they noted that while FCIC was included in the definition of “agency” in section 271(1) of the Act, reinsured companies were not. Thus, the proposed rule attempted to include private companies as government agencies contrary to the language of the Act. Second, the reinsured companies argued that promulgation of this language by USDA in the final rule would breach the terms of the Standard Reinsurance Agreements between USDA and the reinsured companies, as well as alter the legal terms of reinsured company policies with thousands of insureds. Third, the number of policy decisions made by reinsured companies that would be open to appeal to NAD under the proposed language would overwhelm NAD with thousands of appeals. Finally, the reinsured companies argued that the intent of the Act in including FCIC in the definition of “agency” was to provide appeal rights for participants in crop insurance programs for a narrow range of decisions still committed to FCIC after crop insurance reform, i.e., decisions regarding yield and coverage that are based on FCIC actuarial data or decisions where an individual is found ineligible to participate in the Federal crop insurance program.

In response to these comments, USDA has dropped decisions of reinsured companies as decisions that participants may appeal under this part. The exclusion of disputes between reinsured companies and FCIC from the definition of participant in the final rule also means that all disputes between reinsured companies and FCIC likewise are excluded from the jurisdiction of NAD. Contract disputes between reinsured companies and FCIC will be appealable to the USDA Board of Contract Appeals as provided in its rules. Non-contract related decisions of FCIC that are adverse to reinsured companies may be settled with the agency or by resort to legal action in a court of competent jurisdiction.

Additional definitions. Two commenters suggested that a definition for “mediation” be added. The use of mediation or other forms of alternative dispute resolution (ADR) by program participants is a matter of choice for the participants themselves. Since the type of mediation or ADR used by a participant and the agency is not a jurisdictional issue for purposes of determining whether an appeal is properly before NAD, NAD has no control over whatever means the participant and agency employ. Accordingly, USDA has declined to attempt to define mediation or ADR for purposes of this part.

[7 CFR § 11.2](#)

§11.2 General statement.

No comments were received in response to this section. USDA has made two changes to this section upon further review. First, language has been added to reflect the statutory provision that NAD, although independent, is subject to the general supervision and policy direction of the Secretary. Second, a statement has been added to make clear that exhaustion of the procedures for Hearing Officer review of an adverse decision under this part is required before a program participant may seek judicial review of an adverse decision. This additional language does not deprive participants of their right to seek review under any judicial exceptions to required exhaustion of administrative procedures.

[7 CFR § 11.3](#)

§11.3 Applicability.

Six commenters generally contended that the NAD appeal procedures should apply to appeals arising after October 13, 1994, and not October 20, 1994 as specified in the proposed rule. The commenters' rationale for the October 13 date is that the Act was effective as of that date. One commenter also discussed the legal ability of the Department to make the rule effective retroactively.

USDA has decided to delete the effective date subsection from this ***67302** section because it inaccurately indicated an intent to make this entire rule retroactive. Instead, the effective date of this rule is appropriately set forth in the EFFECTIVE DATE section of this Federal Register document.

Two additional changes have been made to this section. First, wetland or highly erodible land determinations have been added to the list of examples of agency adverse decisions to clarify that these decisions are included.

Second, a new subsection has been added to address confusion, reflected in some comments, that exists over the jurisdiction of NAD over agency programs. NAD Hearing Officers are not administrative law judges. NAD has no jurisdiction over questions of law or the appropriateness of agency regulations. It simply decides the factual matter of whether an agency complied with such laws and regulations in rendering an adverse decision. The limitation added here makes clear that NAD may not be used by program participants for the purpose of challenging the validity of USDA regulations issued pursuant to statutory authority.

[7 CFR § 11.4](#)

§11.4 Inapplicability of other laws and regulations.

Section 277 of the Act provides an elaborate appeals scheme for particular programs of USDA, including provisions for hearings, the issuance of subpoenas, and even ex parte communications. Section 277(a)(2)(A) of the Act in fact explicitly incorporates the definition of an ex parte communication from the Administrative Procedure Act (APA) ([5 U.S.C. 551\(14\)](#)) as if the APA stands outside of, and is not applicable to, NAD proceedings. In view of this statutory language, and in the absence of Congressional intent otherwise, USDA has concluded that the provisions of the APA generally applicable to agency adjudications ([5 U.S.C. 554, 555, 556, 557, & 3105](#)) do not apply to NAD proceedings. Furthermore, because NAD proceedings are not required to be conducted under [5 U.S.C. 554](#), USDA also concludes the Equal Access to Justice Act, [5 U.S.C. 504](#), does not apply to NAD proceedings. [Ardestani v. I.N.S., 112 S.Ct. 515, 519 \(1991\)](#).

Another issue is the applicability of the Federal Rules of Evidence to NAD proceedings. Congress intended that these proceedings be farmer-friendly so that farmers would not be required to hire attorneys to use the NAD appeal process. Therefore, USDA concluded that the Federal Rules of Evidence should not apply to NAD proceedings.

One commenter suggested USDA also should eliminate any ambiguity with respect to the applicability of the Federal Rules of Civil Procedure, which was referred to in one respect in what was §11.7(a)(2)(vi) of the proposed rule. The situation with respect to the Rules of Evidence, however, is unique in that attempts have been made in NAD hearings to apply the Federal Rules of Evidence as generally accepted rules of evidence, necessitating an explicit statement of policy in the rules. The same problems have not arisen with respect to the Federal Rules of Civil Procedure; therefore, USDA does not feel that it is necessary to state explicitly that those rules do not apply.

[7 CFR § 11.5](#)

§11.5 Informal agency hearings and exhaustion.

This section of the proposed rule drew 29 comments, more than any other. Some comments suggested that the exhaustion requirement for FSA county committees was contrary to statute, while others were concerned because the section did not provide for exhaustion to the FSA state committee. A number of commenters were confused by the sequence of events for informal hearings, mediation, and NAD appeals outlined in this section. Providers of mediation services particularly were concerned that all appellants be notified of mediation rights, and that mediation occur at the lowest level of the appeal process. A number of commenters expressed concern about the inconsistent use of the terms “informal hearings,” “informal appeal,” and “informal review.”

With respect to the comments regarding agency notice of adverse decisions and appeal rights, USDA has determined to handle such notice outside the parameters of this rule. As a matter of Department policy, agencies will be expected

to notify participants of their appeal rights and their right to choose mediation or ADR, where available, when they issue an adverse decision.

In light of the other comments, this section has been revised significantly. Only the term “informal review” will be used throughout the section. Given this consistent use, USDA finds it unnecessary to define this term.

Before appealing to NAD, participants may elect to request an informal review of an adverse decision by the agency. However, in the case of adverse decisions made by officials under the authority of FSA county and area committees, participants will be required to undergo informal review before the county or area committee before appealing the adverse decision to NAD. After receiving the mandatory informal review by the county or area committee, the participant then may seek informal review of that decision by the State committee or appeal directly to NAD. For purposes of this section, USDA interprets a decision at each level of agency informal review as a new adverse decision for purposes of calculating the timeliness of a participant's appeal to NAD under §11.6 of the rules.

When a participant requests such mediation, the 30-day period within which the participant may request a hearing under §11.6(b)(1) will stop running until such time as the mediation or ADR is concluded. Unlike with informal review, however, the conclusion of mediation is not viewed as a new agency adverse decision. At that point, the participant will have the balance of the 30-day period to appeal to NAD, or to seek informal review as outlined above. The 30-day period will function in effect as a statute of limitations; it will be up to the agency, not NAD, to raise the jurisdictional issue before NAD as to the fact that a participant's appeal is untimely.

Treatment of mediation or ADR in this manner means that the conclusion of mediation or ADR will not be treated as an adverse decision. Conversely, as indicated above, a decision at each level of the informal review process will be treated as an adverse decision for determining when the 30-day period for an appeal to NAD begins to run.

Example

A FSA program participant receives an adverse decision from a county executive director. He cannot appeal to NAD. He must first pursue an informal review with the county committee. The county committee upholds the original adverse decision. Program participant now has three choices: (1) Within 30 days, choose mediation or ADR; (2) Within 30 days, appeal to NAD; or (3) Within the lesser of 30 days, or the time period specified in FSA informal review regulations, request an informal review by the State Committee. Participant chooses mediation after 10 days. Mediation fails. Participant has the balance of 20 days (i.e., 30 days minus 10 days) to appeal to NAD after the conclusion of mediation or he may request review by the State Committee in accordance with FSA regulations. If he appeals to NAD, the agency bears the burden of proving untimeliness of the appeal to NAD, i.e., if the participant took 25 days, 5 days in excess of his remaining 20, to appeal to NAD, the agency must demonstrate this to NAD. If he requests an informal review by the State Committee, the participant will have 30 days to appeal any adverse decision made by the State Committee to NAD.

[7 CFR § 11.6](#)

***67303 §11.6 Director review of agency determination of appealability and right of participants to Division hearing.**

USDA has revised the format of this section so that it follows the logical progression from a Director determination of appealability, where made necessary because of an agency determination that an adverse decision is not appealable, to the appeal itself.

[Section 11.6\(a\)](#) ([§11.6\(b\)](#) in the proposed rule) provides the rules for requesting Director review of the determination of appealability. Two commenters suggested that the proposed language that the Director use “any information he determines necessary” in making a determination was too broad. These commenters felt the information to be considered should be defined, and that the allowance of any information the Director deemed necessary made the process appear secretive if the ex parte prohibition did not apply to this stage of the appeal process.

USDA has revised this subsection to reflect the language of the statute and not specify anything regarding what information the Director may or may not use.

Two commenters desired changes in the references to Deputy and Associate Directors to reflect titles currently used in the NAD internal structure. USDA has substituted “subordinate official other than a Hearing Officer” in the place of Deputy and Associate Directors to preserve the flexibility of the Director to organize NAD internally without reference to regulatorily defined titles. This change also responds to a comment that requests that the Director be allowed to delegate this responsibility as far down as possible to accomplish such a mission efficiently. Hearing Officers were excluded from such delegation because the delegation of such authority down to Hearing Officers facially contradicted the statute and could represent a potential conflict of interest for Hearing Officers who must justify resource requirements based on the burden of their caseload.

USDA rejected comments suggesting that this delegation is improper under the statute, or that participants should be given the right to challenge the credentials of the subordinate reviewing official. Nothing in the statute requires that the Director personally must review every request for a determination of appealability that may be filed. The Director, as in the case of any agency official, remains ultimately responsible for any decision undertaken by a subordinate. Therefore, USDA sees no reason why this statute should be read any differently than any other statute where, absent a specific statutory prohibition, USDA and other executive branch agencies have allowed for delegation of decision-making authority by officials whose qualifications have been set by statute.

With respect to this subsection as proposed, two commenters also expressed concern that it did not specify the timing for filing an appeal once the Director reversed an agency determination that an adverse decision was not appealable. USDA added language in what is now subsection (b) to specify that the 30 days for appeal of adverse decisions shall run from the date the participant receives notice of the adverse decision or receives notice of the Director's determination that an adverse decision is appealable.

Subsection (b) (§11.6(c) in the proposed rule) provides rules for appealing adverse decisions to NAD. In addition to the change noted above, two additional changes were made to this section. First, seven commenters suggested that it is inappropriate in any circumstances to apply a “should have known” standard as a deadline for appeals in cases of agency inaction. They argued that this shifted the burden from the agency to the participant for policing the agency's failure to follow its own regulations; one commenter argued that the agency remained in continuing violation for failure to act within its own deadlines.

USDA disagrees with these commenters. A failure to act by the agency at some point becomes ripe for appeal and the statute clearly also provides that at a point past 30 days from an adverse decision an appellant loses the right of appeal. USDA finds no intention on the part of Congress to extend a participant's right of appeal indefinitely, particularly when agency regulations define a specified period in which a decision is to be made. However, to add flexibility to the “should have known” standard in the latter situation, USDA has changed the regulation to require that a participant must request a hearing within 30 days after the participant “reasonably” should have known that the agency had not acted within the timeframes specified by program regulations.

The second change made to the proposed rule regarding the request for a hearing is to require a participant to send a copy of the request for a hearing to the agency, and allow a participant the option to send a copy of the adverse decision being appealed to the agency as well. In either case, failure of the participant to send such copies to the agency is not jurisdictional and therefore will not be grounds for dismissal of an appeal.

Agency officials often make many decisions a year with respect to some individual participants. In such cases, it is not always immediately apparent which decision a participant has appealed at a given time. USDA adds this provision to promote efficiency in the appeals process by encouraging full airings of appeals before the Hearing Officer. Sending

the agency a copy of the decision will discourage agency requests for Director review because the agency did not have adequate notice of the appeal or the decision that was being appealed.

[7 CFR § 11.97](#) [CFR § 11.2](#)

With respect to the language in the proposed [§11.9\(c\)](#), several other comments were rejected. Two commenters suggested that, since the “should have known” standard is being used, participants should not be required to exhaust administrative remedies prior to judicial review when appeals are taken from cases where agencies have failed to act. The statement added to [§11.2](#) and discussed above makes clear that USDA considers exhaustion of an appeal to the Hearing Officer mandatory prior to seeking judicial review, regardless of the basis for the appeal.

One commenter suggested that the regulation should state clearly that a decision becomes final after the 30-day time period for requesting a hearing is missed and that this timeframe may not be waived. USDA believes such a provision unnecessary; if a participant does not request the hearing within 30 days, the participant will not be allowed to have a hearing. USDA considers the 30-day requirement for filing an appeal to be jurisdictional in nature; thus, NAD has no authority under the Act to hear an appeal unless filed within the 30-day time period as required.

On the other hand, USDA does not view the requirements of section 274 of the Act to be jurisdictional for NAD. That section requires an agency to provide participants with written notice of the adverse decision and appeal rights within 10 working days of the adverse decision. One commenter suggested that the proposed rule be revised to state that the 30-day timeframe for requesting a hearing does not begin to run until the participant receives complete appeal rights, presumably as provided for in section 274. While section 274 of the Act places a requirement on agencies, it has no bearing on the authority of NAD to hear an appeal by a participant. To read section 274 literally as suggested also would mean conversely that a participant achieves no standing to ***67304** appeal an adverse decision to NAD until the participant receives a notice of appeal rights. USDA therefore rejects this comment and instead determines that the time period for requesting an appeal begins to run on “the date on which the participant first received notice of the adverse decision” as provided in section 276(b) of the Act.

New subsection (c) retains language from the proposed subsection (a) regarding the requirement for participants to authorize representation by others in writing to USDA. Eight commenters addressed both this specific requirement and the requirement in other parts of this subsection that a participant must “personally” request a Director determination of appealability and an appeal to a Hearing Officer.

The intention behind this requirement is to ensure that participants are fully aware of the implications of actions being taken on their behalf in the appeals process. By requiring that they personally sign requests for Director review of appealability, requests for hearing, and requests for Director review of Hearing Officer determinations ([§11.9\(a\)](#)), participants will be taking personal responsibility for such actions when represented by another. Authorized representatives also will be required to keep participants informed in order to get their signature authorizing proceeding to each new phase of a NAD appeal. USDA's concern is to ensure that participants are giving informed consent to the decisions undertaken in their behalf by their representatives, and, by requiring execution of a declaration of representation, that NAD is assured that purported representatives are who they actually claim to be. While USDA could curb potential abuses by licensed attorneys by complaints to state bars, USDA has no check on the actions of representatives who are not attorneys other than through provisions such as those promulgated here. The burdens imposed on participants and representatives are light—the language for the declaration can be obtained from NAD and signed documents can be submitted by mail or by facsimile transmission.

Finally, four commenters felt that it was inappropriate for an appellant to state why the adverse decision is wrong because it was too early in the process to state a position or it may lead some participants to think that they need an attorney to bring an appeal. USDA disagrees. The word “wrong” was used here precisely to avoid any requirement that a participant state why a decision was “erroneous” or “did not conform to published law or regulation” or similar language. Those latter variations could be interpreted as legalistic, but USDA believes that at this initial stage the participant at least can

tell NAD what is wrong with the decision that causes one to appeal it. This initial position is not binding, but rather provides NAD with a little bit more information that will allow for efficient administration of appeals. For example, if a participant feels discriminated against in the administration of a program, a statement to this effect at this stage may allow NAD to direct that person to the appropriate forum of USDA for consideration of civil rights complaints.

[7 CFR § 11.7](#)

§11.7 Ex parte communications.

The proposed rule included a paragraph on ex parte communications in [§11.7\(a\)](#) under the section regarding Division hearings. Two commenters expressed concerns in response to this proposed paragraph, the proposed definition of ex parte communication, and the proposed subsection on Director review of agency determinations of nonappealability, suggesting that the ex parte prohibition should apply to more than just the hearing phase of the NAD appeal process. One of these commenters also noted that the ex parte prohibition also should apply to all employees of the Division.

Initially, USDA drafted the proposed regulation in parallel to the statute that stated the ex parte prohibition in the section of the Act on hearings. After reviewing the comments and the statutory language, and in order to foster a perception of fairness and equal treatment in the NAD appeals process, USDA has determined to apply the ex parte prohibition from the point at which the appeal is filed under section [§11.6\(b\)](#) through the issuance of a final determination by the Director under [§11.9](#).

To do this, a new [§11.7](#) was created to make clear that the ex parte prohibition applies to more than just the hearing phase of the NAD process, and that it applies to any officer or employee of the Division. However, USDA rejected the comment that suggested that the ex parte prohibition apply to requests for Director review of appealability. The Director should be entitled to greater flexibility in contacting the agency and the USDA Office of the General Counsel to obtain information useful in making determinations as to whether particular adverse decisions are matters of general applicability. Additionally, the ex parte prohibition does not apply to Director reconsideration under [§11.11](#) unless the Director decides to grant the request for reconsideration.

[7 CFR § 11.8](#)

§11.8 Division hearings.

Proposed [§11.7](#) has been renumbered [§11.8](#). The majority of comments on this section involved the perceived onerous burden on appellants of virtually requiring verbatim transcripts of hearings, the allegedly unreasonable time deadlines that could be set more flexibly by the Hearing Officer, the requirements for sending various notices to the appellant, the need for allowing good cause exceptions for absences, the need for actual documents to be submitted to Hearing Officers to make the hearing more efficient, the need to stress telephone hearings, the wisdom of continuing current NAD practice of telephonic pre-hearing conferences, the need to give additional parties the right to participate in the appeal, the need to reduce or waive the perceived unreasonable requirement that the requesting party pay for costs of witness travel and subsistence fees, and the ambiguity of the use of the word “personally.”

A number of changes have been made in response to comments and upon further reflection by USDA. The changes, or rejection of comments, are described below:

—Proposed [§11.7\(a\)\(1\)](#) (now [§11.8\(a\)\(1\)](#)) is revised to require the agency to provide the appellant a copy of the agency record upon request of the appellant; this requirement is a restatement of that requirement already included in the proposed rule at [§11.7\(b\)\(1\)](#) that also has been amended as [§ 11.8\(b\)\(1\)](#) in the final rule to require that such record be furnished to the appellant within 10 days of agency receipt of request for the record rather than “promptly” as proposed;

—A Hearing Officer will be required to obtain the concurrence of the Director prior to issuing a subpoena;

—Comments suggesting that an appellant have access to his or her entire file under this part were rejected, but the definition of “agency record” was expanded above;

—The requirement that a request for subpoena be submitted 14 days ahead of the hearing was retained but a requirement that such a subpoena must be issued 7 days prior to the hearing was added;

—Parties requesting a subpoena will have to pay only the “reasonable” travel and subsistence costs of a witness; USDA rejected all comments suggesting that the requirement that a party pay for all witnesses subpoenaed be deleted or that USDA should pay for such witnesses where the appellant was unable to pay; *67305 USDA also limited its payment for the costs associated with the appearance of a USDA employee to such situations where an employee's role as a witness arises out of his or her performance of official duties;

—The requirement for submission of certain documents to the Hearing Officer 28 days prior to the hearing is deleted; instead, the Hearing Officer may set a “reasonable” deadline for submission of such documents;

—The required pre-hearing submission of documents is limited to those documents not contained in the agency record that the appellant plans on introducing at the hearing;

—The amount of time for the Hearing Officer's notice of the date, time, and place of the hearing is reduced from 21 days to 14 days prior to the hearing, and the Hearing Officer also may take into account the convenience of the agency in picking a hearing site;

—A pre-hearing conference will be required and will be conducted by telephone unless otherwise agreed to by all parties and the Hearing Officer;

—The notice of the right to obtain the official record shall go to all parties, and all parties shall have the same participation rights in the actual hearing;

—The text of the proposed paragraph §11.7(c)(4)(iii) is deleted and replaced with new text in §11.8(c)(5)(iii) that makes a tape recording by the Division the official record of the proceeding unless a party requests a verbatim transcript, in which case that party must furnish a certified copy of the transcript to the Hearing Officer for the purpose of constituting the official record and must allow other parties to purchase that transcript from the transcription service;

—The authority of the Hearing Officer to cancel a hearing in the absence of a party is limited to such cases where the absent party fails to appear without good cause;

—The ability of the Hearing Officer to add additional evidence to the record in the absence of a party at a hearing is clarified;

—The section clarifies that a notice of determination must be sent by the Hearing Officer to the individual participant appealing the adverse decision, i.e. the “named” appellant, as well as the authorized representative of that person; and

—The Hearing Officer shall send, with the notice of determination, a copy of the procedures for a request for filing for Director review under §11.9.

[7 CFR § 11.9](#)

§11.9 Director review of determinations of Hearing Officers.

Fifteen commenters submitted comments on this section, which appeared as §11.8 in the proposed rule. Some of these comments, such as those objecting to the use of the word “personally,” the request for the procedures of this section to be sent to the appellant with the Hearing Officer notice of determination, and the extension of the ex parte prohibition to Director review, have been handled as described above.

One comment suggesting that the agency head be allowed to delegate his or her authority to request Director review was rejected. On this point, USDA's position is that an agency request for Director review should only be exercised where the Hearing Officer has issued a determination that clearly is not supported by a preponderance of the evidence or is

contrary to law. To avoid flooding NAD with agency requests for review, retaining the agency head, or the person acting in such capacity, as the only person allowed to request review assures that only the most meritorious and serious NAD decisions will be forwarded by an agency for Director review.

A number of comments concerned the perceptions that all parties are not able to respond to requests for Director review, that the Director is not addressing all arguments in the rush to meet the statutory deadlines for issuing determinations, and that no provision is made for how new evidence introduced at this stage is to be handled. In response to these concerns, a number of changes were made.

First, a request for Director review shall include specific reasons why the appellant believes the Hearing Officer's determination is wrong. Given the limited time period for agency response and the limited time period for Director review, the appellant should be required to do something more than simply submit a copy of the Hearing Officer's determination with a note saying that they appeal. As explained above, the term "wrong" is used specifically to avoid legalistic connotations. USDA simply asks that appellants express in their own terms what they find wrong with determinations. However, agencies here are held to a higher standard in order to assure efficient use of NAD resources. Agencies in their requests must state specific reasons why the determination of the Hearing Officer is erroneous, including citation of statutes or regulations that the agency believes the determination violates.

Second, USDA has added language requiring that a party seeking Director review of the Hearing Officer's determination submit a copy of the request for review simultaneously to all other parties to the appeal. A new subsection also provides those non-submitting parties 5 days from receipt of the request for Director review to submit written responses to the request. Added language makes clear that the Director may consider such responses in reaching a determination. However, if new evidence is submitted in such a request, new language authorizes the Director to remand all or a portion of the determination to the Hearing Officer for consideration of that new evidence. USDA rejected the comment that such a remanded determination should go back to a new Hearing Officer. The Hearing Officer making the original determination has the best knowledge of the case to make an efficient consideration of new evidence in the absence of some credible evidence of personal bias.

Third, the deadlines set by the Act for the Director to issue a final determination or to remand to the Hearing Officer may be unrealistic at any given time because of caseload or the complexities of a particular appeal. Although USDA believes the failure to meet these deadlines does not deprive the Director of jurisdiction to reach a determination or issue a remand order, it fully intends to follow such deadlines to the extent possible in order to deliver fairly considered determinations of the Director that will withstand judicial review. Hastily rendered determinations that fail to develop an adequate decision for judicial review do not benefit either USDA or appellants. Therefore, while USDA has added no provision affirmatively authorizing the Director to extend the period for issuance of determinations, USDA recognizes that it may be necessary for the Director to do so in individual cases in order to facilitate a fair and equitable resolution of the appeal. Equitable, in this sense, refers to equal participation in and consideration of parties' submissions in the Director review process.

Finally, the Director will review the determination of the Hearing Officer to determine whether the Hearing Officer's determination is supported by substantial evidence. If any additional information submitted in the Director review process is used as a basis for the Director's final determination, the Director shall note the reasons for use of such new information in the final determination.

With respect to this section, one commenter also suggested that if a Hearing Officer does not have the power to reverse a denial of equitable relief (in ***67306** effect, to award equitable relief) then this part should provide a shortcut past the Hearing Officer to the Director. The position of USDA is that the statute provides the Director with authority in appropriate cases to award equitable relief, and that no different procedural steps are required to implement that

authority. However, a record developed by a Hearing Officer is necessary for the Director to determine whether such relief is appropriate.

[7 CFR § 11.10](#)

§11.10 Basis for determinations.

One commenter cited this section (proposed [§11.9](#)) as the appropriate place for stating that NAD is bound by prior findings of fact by an agency or NAD with respect to a particular appellant in another matter. While it is not the intention of USDA to implement NAD as part of a formal legal system based on large bodies of caselaw, USDA agrees that a Hearing Officer should not issue a contrary factual determination regarding the same appellant in a different matter where that factual determination was directly addressed in the other matter.

Two commenters suggested in essence that the basis of determinations should be limited to issues raised by the decision of the agency and that the Hearing Officer or Director may not decide adversely to the appellant on issues not decided adversely to the appellant by the agency. USDA finds nothing in the statute to support anything other than a de novo review of agency decisions by NAD. The parties or NAD may raise any new issue as long as it conforms to the facts and law and regulations.

Four commenters expressed concern that the language “generally applicable interpretations” in what is now [§11.10\(b\)](#) of the rule would make agency handbooks, manuals, and directives binding in a way that permits wholesale violations of the Act. These commenters point to section 278(c) of the Act that the commenters assert was enacted specifically to prevent agencies from using such materials by reference only to statutes and “regulations published in the Federal Register” as the basis for NAD determinations.

USDA uses this language here to make clear again that NAD is not a forum for appellants to challenge agency statutes, regulations, or the generally applicable interpretations of those statutes and regulations. Some generally applicable interpretations actually may have been published once as a notice in the Federal Register, others may be based on caselaw interpreting a particular program provision in a particular Federal court jurisdiction or state court jurisdiction for programs in which state law is the applicable law. Still other generally applicable statements may be based on the previous advice of the Office of the General Counsel regarding a statute or regulation that constitutes the official legal position of USDA. In any of these described cases, for example, NAD could not ignore the generally applicable statements and base its determinations on legal interpretations that it is not authorized by the Act to make.

[7 CFR § 11.11](#)

§11.11 Reconsideration of Hearing Officer or Director determinations.

Upon further review, USDA has determined that the Director has limited inherent authority to reconsider final determinations of the Director even though provisions for such authority have not been specifically stated in the Act. Therefore, this new section sets forth standards for reconsideration of a Director's final determination.

[7 CFR § 11.12](#)

§11.12 Effective date and implementation of final determinations of the Division.

Several commenters suggested that this section needed more clarification as to the applicable dates, or, alternatively, that the Hearing Officer or Director should state what those dates are in the final determination. USDA finds further amendment of this section unnecessary at this time, given the variety of programs appealable to NAD and the responsibility of agencies for implementation of NAD and program decisions.

It is the position of USDA with respect to implementation, however, that: (1) Implementation of a NAD decision only requires an agency to move to the next step of agency consideration of a benefit or application; (2) in keeping with the language of the Act, the applicable date of the decision is the date of the decision of the body from which the NAD appeal is brought; and (3) agencies, in accord with their regulations, may consider changes in the condition of the participant in the implementation of any NAD final determination.

[7 CFR § 11.13](#)

§11.13 Judicial review.

Two commenters suggested that appeals arising from an agency's failure to act should be excluded from this exhaustion requirement. USDA finds no support in the Act for such an exception. One commenter also suggested an amendment to include judicially recognized exceptions to the administrative exhaustion requirement. Since those exceptions are part of common law, and are thus changeable and subject to conflicting judicial interpretation, USDA finds inappropriate the addition of such exceptions to the regulation.

[7 CFR § 11.14](#)

§11.14 Filing of appeals and computation of time.

Two commenters expressed concerns that individuals residing in different time zones would have less time to appeal if Eastern time was used as a defining time for submission of filings required by this rule. In response, USDA has changed the deadline to 5:00 p.m. local time at the office of the Division to which the filing is submitted. Common practice now is for NAD or the agency, in its notice of appeal rights, to specify regional NAD offices where documents are to be submitted. USDA's change in this provision is acknowledgement of that practice and permits flexibility. However, USDA does not think that this permits participants on the East Coast to evade the purposes of this rule by filing documents with West Coast NAD offices in order to meet the 5:00 p.m. deadline.

III. Natural Resources Conservation Service (NRCS) Appeal Rules

This portion of the interim-final rule sets forth the regulations for the handling of program participant requests for mediation or informal hearings of adverse technical determinations and decisions made by NRCS officials. Specifically, this rule amends part 614 to implement section 275 of the Act which requires NRCS to afford participants the opportunity for an informal hearing or mediation (where available), when requested, before they file an appeal of adverse decisions with NAD.

These procedures are applicable to requests for mediation or informal hearings within the following program areas:

- (1) Highly erodible land conservation.
- (2) Wetland Conservation.
- (3) Wetland Technical determinations, including wetland technical determinations made by NRCS officials not related to a request for USDA program benefits.
- (4) Conservation Reserve Program.
- (5) Wetlands Reserve Program.
- (6) Great Plains Conservation Program.
- (7) Rural Abandoned Mine Program.
- (8) Colorado River Basin Salinity Control Program.
- (9) Resource Conservation and Development Program.
- (10) Emergency Wetland Reserve Program.

(11) Agricultural Water Quality Incentives Program.

(12) Environmental Easement Program.

*67307 (13) Forestry Incentives Program.

(14) Water Bank Program.

(15) Long term cost-sharing agreements under Public Law 83-566 and Public Law 78-534 watershed projects.

(16) Any other program which subsequently incorporates these procedures through reference to this part within its program regulations.

Part 614 as revised establishes two major categories of decisions made by NRCS officials for which landowners and participants may seek reconsideration or appeal: 1) those technical determinations of NRCS officials that may be appealed to NAD after appeal to the FSA county or area committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act ([16 U.S.C 590h\(b\)\(5\)](#)); and 2) other decisions made by NRCS.

The current regulations in 7 CFR part 614 were published as a final rule on July 24, 1986, pursuant to Title XII of the Food Security Act of 1985, P.L. 99-198, [16 U.S.C. 3801](#) et seq. (Title XII). Those regulations set forth the procedures under which an owner or operator could seek reconsideration of, or appeal from, certain decisions made by NRCS officials regarding eligibility for participation in the Conservation Reserve Program, as authorized by Subtitle D of Title XII, or regarding the applicability of the compliance requirements of the highly erodible land and wetland conservation provisions of subtitles B and C of title XII, respectively.

The Reorganization Act specified that, until such time as an adverse decision is referred to the NAD for consideration, FSA county or area committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act ([16 U.S.C 590h\(b\)\(5\)](#)) would have jurisdiction over any appeal resulting from adverse technical determinations made under Title XII, including an adverse decision involving technical determinations made by NRCS. Thus the subject matter of the current part 614 has been incorporated into subpart B of the revised part 614 which sets forth the informal appeal process for appeals of title XII technical determinations made by NRCS to FSA county committees as required by the Reorganization Act.

Subpart C of the revised part 614 consolidates appeal procedures for all other existing NRCS programs in part 614. Appeals for the following additional programs are now also covered by part 614: 7 CFR Part 623, Emergency Wetland Reserve Program; 7 CFR Part 631, Great Plains Conservation Program; 7 CFR Part 632, Rural Abandoned Mine Program; 7 CFR Part 634, Rural Clean Water Program; [7 CFR Part 663](#), Wellton-Mohawk Irrigation Improvement Program, and 7 CFR Part 702, Colorado River Basin Salinity Control Program; 7 CFR Part 701 subpart-Forestry Incentives Program; and 7 CFR Part 752, Water Bank program.

Subpart A of part 614 includes general provisions applicable to informal appeals under both subparts B and C.

Appeal provisions for 7 CFR parts 12, [620](#), 623, 631, 632, 634, [663](#), 701, 702, and 752 are revised to make reference to part 614 for NRCS appeal procedures.

IV. Commodity Credit Corporation (CCC), Federal Crop Insurance Corporation (FCIC), and Farm Service Agency (FSA) Appeal Rules

The interim final rule makes amendments to 7 CFR parts 400 and 780 to maintain and revise the informal appeals process for adverse decisions of the FSA regarding Federal crop insurance, CCC, and FSA programs. The procedures

for appeals under both parts will be consolidated in part 780. The revised part 780 sets forth regulations for requesting informal hearings or mediation in accordance with section 275 of the Act.

Part 780 includes procedures for the handling of appeals of NRCS technical determinations to FSA county and area committees.

Part 780 also includes procedures for the mandatory appeal of certain FSA adverse decisions to such committees as required by [7 CFR 11.5\(a\)](#) of the NAD rules of procedure.

This rule also amends part 781 to conform the hearing procedures to that of part 780.

V. Rural Housing Service (RHS), Rural Business-Cooperative Service (RBS), and Rural Utilities Service (RUS) Appeal Rules

7 CFR part 1900, subpart B currently contains rules for appeals of decisions of the former Farmers Home Administration (FmHA). Either by the Act or by delegation of the Secretary, the FmHA programs covered by part 1900, subpart B were divided among RHS, RBS, and RUS. This rule amends part 1900, subpart B to set forth rules for requesting informal appeals or mediation of adverse decisions concerning direct loans, loan guarantees, and grants under the following programs: RUS Water and Waste Disposal Facility Loans and Grants Program, RHS Housing and Community Facilities Loan Programs, and RBS Loan, Grant, and Guarantee Programs and the Intermediary Relending Program.

List of Subjects

7 CFR Part 1

Administrative practice and procedure, Agriculture, Reporting and recordkeeping requirements.

7 CFR Part 11

Administrative practice and procedure, Agriculture, Agricultural commodities, Crop insurance, Ex parte communications, Farmers, Federal aid programs, Guaranteed loans, Insured loans, Loan programs, Price support programs, Soil conservation.

7 CFR Part 12

Administrative practice and procedure, Agriculture, Soil conservation, Wetlands.

7 CFR Part 400

Administrative practice and procedure, Agriculture, Agricultural commodities, Crop insurance.

7 CFR Part 614

Administrative practice and procedure, Agriculture, Soil conservation, Wetlands.

7 CFR Part 620

Administrative practice and procedure, Agriculture, Soil conservation, Wetlands.

7 CFR Part 623

Administrative practice and procedure, Agriculture, Soil conservation, Wetlands.

7 CFR Part 631

Administrative practice and procedure, Agriculture, Soil conservation.

7 CFR Part 632

Administrative practice and procedure, Mines, Rural areas, Soil conservation.

7 CFR Part 634

Administrative practice and procedure, Agriculture, Soil conservation, Water resources, Water pollution control.

7 CFR Part 663

Administrative practice and procedure, Irrigation, Soil conservation, Water resources.

7 CFR Part 701

Administrative practice and procedure, Agriculture, Environmental protection, Forests and forest products, Soil conservation, Wetlands.

***67308 7 CFR Part 702**

Administrative practice and procedure, Agriculture, Soil conservation, Water resources.

7 CFR Part 752

Administrative practice and procedure, Agriculture, Soil Conservation, Water bank program, Water resources.

7 CFR Part 780

Administrative practice and procedure, Agriculture, Agricultural commodities, Crop insurance, Ex parte communications, Farmers, Federal aid programs, Loan programs, Price support programs, Soil conservation, Wetlands.

7 CFR Part 781

Administrative practice and procedure, Agriculture, Farmers.

7 CFR Part 1900

Administrative practice and procedure, Agriculture, Business, Community development, Farmers, Federal aid programs, Guaranteed loans, Housing, Insured loans, Loan programs, Rural areas, Utilities.

For the reasons set out in the preamble, Title 7 of the Code of Federal Regulations is amended as set forth below: