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criteria, factors such as whether the applicant has been subject to a termination or suspension under paragraph (a) of this section and whether the applicant or the person or persons who would direct or has have directed the scientific and technical aspects of an activity has have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

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With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

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AUTHORITY: 7 U.S.C. 6912(a)(1); 5 U.S.C. 301; Reorganization Plan No. 2 of 1953, 3 CFR 1949-1953 Comp., p. 1024.

SOURCE: 60 FR 56393, Nov. 8, 1995, unless otherwise noted.

Subpart A—General

§2.1 Establishment of the Department.

The Department of Agriculture was created by the Act of May 15, 1862, and by the Act of February 9, 1889, it was made an executive department in the Federal Government under the supervision and control of the Secretary of Agriculture (7 U.S.C. 2201, 2202, 2204).

§2.2 Authority of the Secretary to prescribe regulations.

The general authority of the Secretary to prescribe regulations governing the work of the Department is based on 5 U.S.C. 301 which provides that the head of an Executive department may prescribe regulations for the

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Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 4504(b)).

(iii) Appoint members of the National Processor Advertising and Promotion Board established by section 1999H(b)(4) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6407(b)).

(iv) Appoint members of the Cotton Board established by section 7(a) of the Cotton Research and Promotion Act, as amended (7 U.S.C. 2106(a));

(v) Appoint members of the Egg Board established by section 8(a) of the Egg Research and Consumer Information Act (7 U.S.C. 2707(a));

(vi) Appoint members of the Floraboard established by section 1707(l) of the Floral Research and Consumer Information Act (7 U.S.C. 4306(l));

(vii) Appoint members of the Honey Board established by section 7(c)(1) of the Honey Research, Promotion, and Consumer Information Act, as amended (7 U.S.C. 4606(c));

(viii) Appoint members of the Lime Board established by section 1955(b)(2) of the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6204(b));

(ix) Appoint members of the Mushroom Council established by section 1925(b)(1)(B) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6104(b));

(x) Appoint members of the Pecan Marketing Board established by section 1910(b)(8)(E) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6005(b));

(xi) Appoint members of the National Potato Promotion Board established by section 308(a)(4) of the Potato Research and Promotion Act as amended (7 U.S.C. 2617(a));

(xii) Appoint members of the National Watermelon Promotion Board established by section 1647(c) of the Watermelon Research and Promotion Act (7 U.S.C. 4906(c));

(xiii) Appoint members of the PromoFlor Council established by section 5(b) of the Fresh Cut Flowers and Fresh Cut Greens Act of 1993 (7 U.S.C. 6804(b));

(xiv) Appoint members of the National Kiwifruit Board established by section 555(c)(1) of the National Kiwifruit Research, Promotion, and

Consumer Information Act (7 U.S.C. 7464(c));

(xv) Appoint members of Popcorn Board established by section 575(b)(1) of the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7484(b));

(xvi) Appoint members of the Wheat Industry Council established by section 1706(a) of the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3405(a));

(xvii) Appoint members of the Cattle-men's Beef Promotion and Research Board established by section 5(l) of the Beef Research and Information Act as amended (7 U.S.C. 2904(l));

(xviii) Appoint members of the National Pork Board established by section 1619(a)(1) of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4808(a));

(xix) Appoint members of the United Soybean Board established by section 1969(b)(1) of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6304(b));

(xx) Appoint members of the National Sheep Promotion, Research, and Information Board established by section 5(b) of the Sheep Promotion, Research, and Information Act (7 U.S.C. 7104(b)(1));

(xxi) Appoint members of the National Canola and Rapeseed Board established by section 535(b)(1) of the Canola and Rapeseed Research, Promotion, and Consumer Information Act (7 U.S.C. 7444(b));

(xxii) Appoint members of boards established by section 515(b)(2)(A) of the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7414(b)).

(2) *Related to animal and plant health inspection.* (i) Determination that an emergency or extraordinary emergency exists under the Animal Health Protection Act (7 U.S.C. 8306, 8316).

(ii) Determination that an emergency or extraordinary emergency exists under the Plant Protection Act (7 U.S.C. 7715, 7772).

(iii) Approval of requests for apportionment of reserves for the control of outbreaks of insects, plant diseases,

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and animal diseases to the extent necessary to meet emergency conditions (31 U.S.C. 1512).

[60 FR 56393, Nov. 8, 1995, as amended at 61 FR 25776, May 23, 1996; 61 FR 68541, Dec. 30, 1996; 62 FR 40254, July 28, 1997; 65 FR 12428, Mar. 9, 2000; 65 FR 49471, Aug. 14, 2000; 68 FR 27439, May 20, 2003; 70 FR 55706, Sept. 23, 2005]

EDITORIAL NOTE: At 70 FR 55706, Sept. 23, 2005, the Department of Agriculture published a document in the Federal Register, attempting to amend § 2.22, by revising paragraph (a)(2)(xxxii). However, because of inaccurate amendatory language, this amendment could not be incorporated. For the convenience of the user, the language at 70 FR 55706 is set forth as follows:

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- (a) * * *
- (2) * * *

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(xxxii) Plant Protection Act, as amended (7 U.S.C. 7701-7786).

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§ 2.23 Assistant Secretary for Congressional Relations.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Congressional Relations:

- (1) *Related to congressional affairs.* (i) Exercise responsibility for coordination of all congressional matters in the Department.
- (ii) Maintain liaison with the Congress and the White House on legislative Matters of concern to the Department.
- (2) *Related to intergovernmental affairs.* (i) Coordinate all programs involving intergovernmental affairs including State and local government relations and liaison with:
 - (A) National Association of State Departments of Agriculture;
 - (B) Office of Intergovernmental Relations (Office of Vice President);
 - (C) Advisory Commission on Intergovernmental Relations;
 - (D) Council of State Governments;
 - (E) National Governors Conference;
 - (F) National Association of Counties;
 - (G) National League of Cities;
 - (H) International City Managers Association;

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(I) U.S. Conference of Mayors; and

(J) Such other State and Federal agencies, departments and organizations as are necessary in carrying out the responsibilities of this office.

(ii) Maintain oversight of the activities of USDA representatives to the 10 Federal Regional councils.

(iii) Serve as the USDA contact with the Advisory Commission on Intergovernmental Relations for implementation of OMB Circular A-85 to provide advance notification to state and local governments of proposed changes in Department programs that affect such governments.

(iv) Act as the department representative for Federal executive board matters.

(v) Serve as the official with the principal responsibility for the implementation of Executive Order 13175, including consultation and collaboration with tribal officials, and coordinate the Department's programs involving assistance to American Indians and Alaska Natives.

(b) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 68 FR 27439, May 20, 2003; 69 FR 34252, June 21, 2004]

§ 2.24 Assistant Secretary for Administration.

(a) The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Administration:

- (1) *Related to administrative law judges.* (i) Assign, after appropriate consultation with other general officers, to the Office of Administrative Law Judges proceedings not subject to 5 U.S.C. 556 and 557, involving the holdings of hearings and performance of related duties pursuant to the applicable rules of practice, when the Assistant Secretary for Administration determines that because of the nature of the proceeding it would be desirable for the proceeding to be presided over by an Administrative Law Judge and that such duties and responsibilities would not be inconsistent with those of an Administrative Law Judge.
- (ii) Provide administrative supervision of the Office of Administrative Law Judges.

(iii) Maintain overall responsibility and control over the Hearing Clerk's activities which include the custody of and responsibility for the control, maintenance, and servicing of the original and permanent records of all USDA administrative proceedings conducted under the provisions of 5 U.S.C 556 and 557:

(A) Receiving, filing and acknowledging the receipt of complaints, petitions, answers, briefs, arguments, and all other documents that may be submitted to the Secretary or the Department of Agriculture in such proceedings;

(B) Receiving and filing complaints, notices of inquiry, orders to show cause, notices of hearing, designations of Administrative Law Judges or presiding officers, answers, briefs, arguments, orders, and all other documents that may be promulgated or issued by the Secretary or other duly authorized officials of the Department of Agriculture in such proceedings;

(C) Supervising the service upon the parties concerned of any documents that are required to be served, and where required, preserving proof of service;

(D) Keeping a docket record of all such documents and proceedings;

(E) Filing a stenographic record of each administrative hearing;

(F) Preparing for certification and certifying under the Secretary's facsimile signature, material on file in the Hearing Clerk's office;

(G) Performing any other clerical duties with respect to the documents relative to such proceedings as may be required to be performed;

(H) Cooperating with the Office of Operations in the letting of contracts for stenographic and reporting services; and forwarding vouchers to appropriate agencies for payment;

(I) Receiving and compiling data, views or comments filed in response to notices of proposed standards or rules or regulations; and

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

(1) Arranging for suitable hearing place; and

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

(2) *Related to small and disadvantaged business utilization.* (i) In compliance with Public Law 95-507, the Assistant Secretary for Administration is designated as the Department's Director for Small and Disadvantaged Business Utilization. The Director of Small and Disadvantaged Business Utilization has specific responsibilities under the Small Business Act, 15 U.S.C. 644(k). These duties include being responsible for the following:

(A) Administering the Department's small and disadvantaged business activities related to procurement contracts, minority bank deposits, and grants and loan activities affecting small and minority businesses including women-owned business, and the small business, small minority business and small women-owned business subcontracting programs;

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

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

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

(3) [Reserved]

(4) [Reserved]

(5) *Related to operations.* (i) Provide services for Department headquarters in the Washington, DC metropolitan area and at emergency relocation sites and certain critical facilities specified by the Assistant Secretary for Administration in the following areas:

(A) Acquiring, leasing, utilizing, constructing, maintaining, and disposing of real and personal property, including control of space assignments;

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

(C) Mail management and all related functions; and

(D) Occupational health services and related functions.

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

(iii) Providing property management, space management, messenger, and other related services with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

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

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

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

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

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

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

(6) *Related to human resources management.* (i) Formulate and issue Department policy, standards, rules, and regulations relating to human resources management.

(ii) Provide human resources management procedural guidance and operational instructions.

(iii) Set standards for human resources data systems.

(iv) Inspect and evaluate human resources management operations and issue instructions or take direct action to insure conformity with appropriate laws, Executive Orders, Office of Personnel Management rules and regula-

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tions, and other appropriate rules and regulations.

(v) Exercise final authority in all human resources matters, including individual cases, that involve the jurisdiction of more than one General Officer or agency head.

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

(vii) Authorize and make final decisions on adverse actions, except in those cases where the Assistant Secretary for Administration has participated.

(viii) Represent the Department in human resources matters in all contacts outside the Department.

(ix) Exercise specific authorities in the following operational matters:

(A) Waive repayment of training expenses where an employee fails to fulfill service agreement;

(B) Establish or change standards and plans for awards to private citizens; and

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

(1) Labor-Management Agreements; and

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

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

(E) Change a position (with no material change in duties) from one pay system to another;

(F) Grant restoration rights, and release employees with administrative reemployment rights;

(G) Authorize any mass dismissals of employees in the Washington, D.C., metropolitan area;

(H) Approve "normal line of promotion" cases in the excepted service where not in accordance with time-in-grade criteria;

(I) Make the final decision on all classification appeals filed with the Department of Agriculture;

(J) Authorize all employment actions (except nondisciplinary separations and LWOP) and classification actions

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for senior level and equivalent positions including Senior Executive Service positions and special authority professional and scientific positions responsible for carrying out research and development functions;

(K) Authorize all employment actions (except LWOP) for the following positions:

(1) Schedule C;
(2) Non-career Senior Executive Service or equivalent; and

(3) Administrative Law Judge.

(L) Authorize and make final decisions on adverse actions for positions in GS-1-15 or equivalent;

(M) Authorize and make final decisions on adverse actions for positions in the career Senior Executive Service or equivalent;

(N) Approve the details of Department employees to the White House;

(O) Authorize adverse actions based in whole or in part on an allegation of violation of 5 U.S.C. chapter 73, subchapter III, for employees in the excepted service;

(P) Authorize long-term training in programs which require Department-wide competition;

(Q) Initiate and take adverse action in cases involving a violation of the merit system.

(x) As used in this section, the term human resources includes:

(A) Position management;
(B) Position classification;
(C) Employment;
(D) Pay administration;
(E) Automation of human resources data and systems;

(F) Hours of duty;
(G) Performance management;
(H) Promotions;
(I) Employee development;
(J) Incentive Programs;

(K) Leave;
(L) Retirement;
(M) Human resource program management evaluations;

(N) Social security;
(O) Life insurance;
(P) Health benefits;
(Q) Unemployment compensation;

(R) Labor management relations;
(S) Intramanagement consultation;

(T) [Reserved]
(U) Discipline; and
(V) Appeals.

(xi) Provide human resources services, as listed in paragraph (a)(6)(x) of this section, and organizational support services, with authority to take actions required by law or regulation to perform such services for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

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

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

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

(xiii) Authorize organizational changes which occur in:

(A) Departmental organizations:

(1) Agency or office;

(2) Division (or comparable component); and

(3) Branch (or comparable component in Departmental centers, only).

(B) Field organizations:

(1) First organizational level; and

(2) Next lower organizational level required only for those types of field installations where the establishment, change in location, or abolition of same, requires approval in accordance with Departmental internal direction.

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

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

(xvi) Establish Departmentwide safety and health policy and provide leadership in the development, coordination, and implementation of related standards, techniques, and procedures, and represent the Department in complying with laws, Executive Orders and other policy and procedural issuances related to occupational safety and health within the Department.

(xvii) Represent the Department in all rulemaking, advisory, or legislative capacities on any groups, committees, or Governmentwide activities that affect the Department's Occupational Safety and Health Management Program.

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

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

(xx) Administer the administrative appeals process related to the inclusion of positions in the Testing Designated Position listing in the Department's Drug-Free Workplace Program and designate the final appeal officer for that Program.

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

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

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

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

(xxv) Formulate and issue Department policy, standards, rules, and regulations relating to the Senior Scientific Research Service (7 U.S.C. 7657).

(xxvi) Redelegate, as appropriate, any authority delegated under paragraph (a)(6) to general officers of the Department and heads of Departmental agencies.

(7) *Related to procurement and property management.* (i) Promulgate policies, standards, techniques, and procedures, and represent the Department, in the following:

(A) Acquisition, including, but not limited to, the procurement of supplies, services, equipment, and construction;

(B) Socioeconomic programs relating to contracting;

(C) Selection, standardization, and simplification of program delivery processes utilizing contracts;

(D) Acquisition, leasing, utilization, value analysis, construction, maintenance, and disposition of real and per-

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sonal property, including control of space assignments;

(E) Motor vehicle and aircraft fleet and other vehicular transportation;

(F) Transportation of things (traffic management);

(G) Prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243);

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

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

(ii) Exercise the following special authorities:

(A) Designate the Departmental Debarring Officer to perform the functions of 48 CFR part 9, subpart 9.4 related to procurement activities, except for commodity acquisitions on behalf of the Commodity Credit Corporation (7 CFR part 1407); with authority to redelegate suspension and debarment authority for contracts awarded under the School Lunch and Surplus Removal Programs (42 U.S.C. 1755 and 7 U.S.C. 612c);

(B) Conduct liaison with the Office of Federal Register (1 CFR part 16) including the making of required certifications pursuant to 1 CFR part 18;

(C) Maintain custody and permit appropriate use of the official seal of the Department;

(D) Establish policy for the use of the official flags of the Secretary and the Department;

(E) Coordinate collection and disposition of personal property of historical significance;

(F) Make information returns to the Internal Revenue Service as prescribed by 26 U.S.C. 6050M and by 26 CFR 1.6050M-1 and such other Treasury regulations, guidelines or procedures as may be issued by the Internal Revenue Service in accordance with 26 U.S.C.

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6050M. This includes making such verifications or certifications as may be required by 26 CFR 1.6050M-1 and making the election allowed by 26 CFR 1.6050M-1(d)(5)(1);

(C) Promulgate regulations for the management of contracting and procurement for information technology and telecommunication equipment, software, services, maintenance and related supplies; and

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

(iii) Serve as the Acquisition Executive in the Department to integrate and unify the management process for the Department's major system acquisitions and to monitor implementation of the policies and practices set forth in Circular A-109, Major Systems Acquisitions, with the exception that major system acquisitions for information technology shall be under the cognizance of the Chief Information Officer. This includes the authority to:

(A) Insure that OMB Circular A-109 is effectively implemented in the Department and that the management objectives of the Circular are realized;

(B) Review the program management of each major system acquisition, excluding information technology;

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

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

(iv) Pursuant to Executive Order 12931, 3 CFR, 1994 Comp., p. 925, and sections 16, 22, and 37 of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. 414, 418(b), and 433, designate the Senior Procurement Executive for the Department and delegate responsibility for the following:

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

(B) Taking any necessary actions consistent with policies, regulations, and procedures with respect to pur-

chases, contracts, leases, and other transactions;

(C) Designating contracting officers;

(D) Establishing clear lines of contracting authority;

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

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

(G) Participating in the development of Governmentwide procurement policies, regulations, and standards, and determining specific areas where Governmentwide performance standards should be established and applied;

(H) Developing unique Departmental standards as required;

(I) Overseeing the development of procurement goals, guidelines, and innovation;

(J) Measuring and evaluating procurement office performance against stated goals;

(K) Advising the Secretary whether goals are being achieved;

(L) Prescribing standards for agency Procurement Executives and designating agency Procurement Executives when these standards not are met;

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

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

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

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

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

(viii) Serve as Departmental Remedy Coordination Official pursuant to 41

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U.S.C. 255 to determine whether payment to any contractor should be reduced or suspended based on substantial evidence that the request of the contractor for advance, partial, or progress payment is based on fraud.

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

(x) Review and approve exemptions for USDA contracts and subcontracts from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971-1975 Comp., p. 799, when he or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the Environmental Protection Agency (40 CFR 32.2155(b)).

(xi) Promulgate policy concerning excess Federal personal property in accordance with section 923 of Public Law 104-127, to support research, educational, technical and scientific activities or for related programs, to:

(A) Any 1994 Institutions (as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (Public Law 103-382; 7 U.S.C. 301 note));

(B) Any Institutions eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321, *et seq.*) including Tuskegee University; and

(C) Any Hispanic-serving Institutions (as defined in sections 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c (b)).

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

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

(xiv) Serve as a USDA Environmental Executive responsible for coordinating waste prevention, recycling, and the procurement, acquisition and use of recycled products and environmentally preferable products, including biobased products, and services pursuant to Executive Order 13101.

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(xv) [Reserved]

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

(xvii) Exercise full Departmentwide contracting and procurement authority.

(xviii) Conduct acquisitions with authority to take actions required by law or regulation to procure supplies, services, and equipment for:

(A) The Secretary of Agriculture;

(B) The general officers of the Department;

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

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

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

(8) *Related to competition advocacy.* (i) Pursuant to the Office of Federal Procurement Policy Act (Act), as amended (41 U.S.C. 401, *et seq.*), designate the Department's Advocate for Competition with the responsibility for section 20 of the Act (41 U.S.C. 418), including:

(A) Reviewing the procurement activities of the Department;

(B) Developing new initiatives to increase full and open competition;

(C) Developing goals and plans and recommending actions to increase competition;

(D) Challenging conditions unnecessarily restricting competition in the acquisition of supplies and services;

(E) Promoting the acquisition of commercial items; and

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

(9) *Related to emergency preparedness.* Provide guidance to the development and administration of the Department's Continuity of Operations Plan and to USDA participation in the Continuity of Government Plan. This includes:

(i) Managing the Department Emergency Operations Center and alternate facilities.

(ii) Providing guidance and direction regarding continuity of operations to

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Departmental staff offices, mission areas, and agencies.

(iii) Representing and acting as liaison for the Department in contacts with other Federal entities and organizations concerning matters of assigned responsibilities.

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

(10) *Related to compliance with environmental laws and environmental management systems.* (i) Take action pursuant to Executive Order 12088, 3 CFR, 1978 Comp., p. 243, to comply with environmental pollution control laws with respect to facilities and activities under his or her authority, including, but not limited to, entering into inter-agency agreements, administrative consent orders, consent judgments, or other agreements with the appropriate Federal, State, interstate, or local agencies to achieve and maintain compliance with applicable pollution control standards.

(ii) Provide program leadership and oversight for USDA compliance with applicable pollution control laws and executive orders, including Executive Order 13148, Greening of the Government Through Leadership in Environmental Management.

(iii) Provide program leadership and coordination for USDA's energy conservation and energy efficiency activities, and serve as USDA's principal Energy Conservation Officer, pursuant to Executive Order 13123, Greening of the Government Through Efficient Energy Management.

(iv) Promulgate policies, standards, techniques, and procedures, and represent the Department, in prevention, control, and abatement of pollution with respect to Federal facilities and activities under the control of the Department (Executive Order 12088, 3 CFR, 1978 Comp., p. 243).

(v) Review and approve exemptions for USDA contracts, subcontracts, grants, agreements, and loans from the requirements of the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*), and Executive Order 11738, 3 CFR, 1971-1975 Comp., p. 799, when he

or she determines that the paramount interest of the United States so requires as provided in these acts and Executive Order and the regulations of the Environmental Protection Agency (40 CFR 32.215(b)).

(vi) Coordinate USDA waste prevention, recycling, and procurement, acquisition and use of recycled products and environmentally preferable products, including biobased products, and services, and serve as a USDA Environmental Executive, pursuant to Executive Order 13101.

(vii) Serve on the USDA Hazardous Materials Policy Council.

(viii) Represent USDA in consulting or working with the Environmental Protection Agency (EPA), the Council on Environmental Quality, the Domestic Policy Council, and others to develop policies relating to hazardous materials management and Federal facilities compliance with applicable pollution control laws.

(ix) Monitor, review, evaluate, and oversee hazardous materials management program activities and compliance Department-wide.

(x) Monitor, review, evaluate, and oversee USDA agency expenditures for hazardous materials management program accomplishments.

(xi) Prepare for the USDA Hazardous Materials Policy Council the Hazardous Materials Management Program budget request to the Office of Management and Budget (OMB) and Congress, prepare accomplishment reports to Congress, OMB, and EPA, and take a lead role in the preparation of replies to Congressional inquiries.

(xii) Represent USDA on the National Response Team on hazardous spills and oil spills pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, *et seq.*); the Clean Water Act, as amended (33 U.S.C. 1251, *et seq.*); Oil Pollution Act, as amended (33 U.S.C. 2701, *et seq.*); Executive Order 12580, 3 CFR, 1987 Comp., p. 193; Executive Order 12777, 3 CFR, 1991 Comp., p. 351, and the National Oil and Hazardous Substances Contingency Plan, 40 CFR Part 300.

(xiii) Approve disbursements from the New World Mine Response and Restoration Account, approve the New

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World Mine Response and Restoration Plan, and make quarterly reports to Congress under Sections 502(d) and (f) of Title V of the Department of the Interior and Related Agencies Appropriations Act of 1998, Public Law 105-83.

(xiv) Ensure that the Hazardous Materials Management Program Department-wide is accomplished with regard to, and in compliance with, Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

(xv) Take such action as may be necessary, with the affected agency head and with the concurrence of the General Counsel, including issuance of administrative orders and agreements with any person to perform any response action under sections 106(a) and 122 (except subsection (b)(1)) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9606(a), 9622), pursuant to sections 4(c)(3) and 4(d)(3) of Executive Order 12580, as amended by Executive Order 13016.

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

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

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

(iv) Coordinate Departmental Administration strategic planning and budget

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coordination activities on behalf of the Assistant Secretary.

(12) [Reserved]

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

(14) [Reserved]

(15) *Related to defense.* Provide internal administrative management and support services for the defense program of the Department.

(16) *Related to the Board of Contract Appeals.* Provide administrative supervision of the Board of Contract Appeals. No review by the Assistant Secretary for Administration of the merits of appeals or of decisions of the Board is authorized and the Board shall be the representative of the Secretary in such matters.

(17) *Related to budget and finance.* Exercise general financial and budget authority over all organizations assigned to the Assistant Secretary for Administration.

(18) *Relating to personnel security and the safeguarding of national security information:*

(i) Direct and administer USDA's personnel security and public trust programs established pursuant to Executive Order 12968, Access to Classified Information (3 CFR 1995 Comp. pp 391-402) and 5 CFR 731.

(ii) Manage the personnel security functions of the Department including programs for eligibility access determinations, obtaining security clearances for USDA employees, denial or revocation of access to national security information, and developing and promulgating policies and training.

(iii) Direct and administer USDA's program under which information is safeguarded pursuant to Executive Order 12958, Classified National Security Information.

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(iv) Establish Information Security (INFOSEC) policies and procedures for classifying, declassifying, safeguarding, and disposing of classified national security information and materials.

(v) Establish procedures under which authorized holders of information may challenge the classification of information believed to be improperly classified or unclassified.

(vi) Take corrective action for violations or infractions under section 5.7, par. (b), of Executive Order 12958.

(vii) Develop and maintain a secure facility for the receipt and safeguarding of classified material.

(viii) Coordinate security activities with the Chief Information Officer who has primary responsibility for PDD 63, Critical Infrastructure Assurance.

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

(1) *Related to human resources management.* Make final determinations in the following areas:

(i) Separation of employees for security reasons;

(ii) Restoration to duty of employees following suspension from duty for security reasons;

(iii) Reinstatement or restoration to duty or the employment of any person separated for security reasons; and

(iv) Issuance of temporary certificates to occupy sensitive positions.

(2) [Reserved]

[60 FR 56393, Nov. 8, 1995, as amended at 65 FR 12428, Mar. 9, 2000; 65 FR 77756, Dec. 13, 2000; 67 FR 65689, Oct. 28, 2002; 68 FR 27439, May 20, 2003; 69 FR 34252, June 21, 2004]

§ 2.25 Assistant Secretary for Civil Rights.

(a) The following delegations of authority are made by the Secretary to the Assistant Secretary for Civil Rights:

(1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery, compliance, and equal employment opportunity, with emphasis on the following:

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

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

(iii) Actions to enforce Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, prohibiting discrimination on the basis of sex in USDA education programs and activities funded by the Department.

(iv) Actions to enforce the Age Discrimination Act of 1975, 42 U.S.C. 6102, prohibiting discrimination on the basis of age in USDA programs and activities funded by the Department.

(v) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA programs and activities funded by the Department.

(vi) Actions to enforce section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, prohibiting discrimination against individuals with disabilities in USDA conducted programs.

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

(viii) Actions to develop and implement the Department's Federal Women's Program.

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

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

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

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

(5) Coordinate with the Department of Justice on matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation,

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including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(6) Coordinate with the Department of Health and Human Services on matters relating to the Age Discrimination Act of 1975, 42 U.S.C. 6102, except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of the General Counsel.

(7) Order proceedings and hearings in the Department pursuant to §§ 15.9(e) and 15.86 of this title which concern consolidated or joint hearings within the Department or with other Federal departments and agencies.

(8) Order proceedings and hearings in the Department pursuant to § 15.8 of this title after the program agency has advised the applicant or recipient of his or her failure to comply and has determined that compliance cannot be secured by voluntary means.

(9) Issue orders to give a notice of hearing or the opportunity to request a hearing pursuant to part 15 of this title; arrange for the designation of an Administrative Law Judge to preside over any such hearing; and determine whether the Administrative Law Judge so designated will make an initial decision or certify the record to the Secretary of Agriculture with his or her recommended findings and proposed action.

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

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

(12) Make determinations that program complaint investigations performed under § 15.6 of this title establish a proper basis for findings of discrimination, and that actions taken to correct such findings are adequate.

(13) Investigate (or make determinations that program complaint investigations establish a proper basis for final determinations), make final determinations on both the merits and required corrective action, and, where applicable, make recommendations to the Secretary that relief be granted under 7 U.S.C. 6998(d) notwithstanding

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the finality of National Appeals Division decisions; as to complaints filed under parts 15a, 15b, and 15d of this title, except in those cases where the Assistant Secretary for Civil Rights has participated in the events that gave rise to the matter.

(14) Conduct civil rights investigations and compliance reviews Departmentwide.

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

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

(17) *Related to Equal Employment Opportunity (EEO)*. Is designated as the Department's Director of Equal Employment Opportunity with authority:

(i) To perform the functions and responsibilities of that position under 29 CFR part 1614, including the authority:

(A) To make changes in programs and procedures designed to eliminate discriminatory practices and improve the Department's EEO program.

(B) To provide EEO services for managers and employees.

(C) To make final agency decisions on EEO complaints by Department employees or applicants for employment and order such corrective measures in such complaints as may be considered necessary, including the recommendation for such disciplinary action as is warranted when an employee has been found to have engaged in a discriminatory practice.

(ii) Administer the Department's EEO program.

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

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

(v) Investigate Department EEO complaints and make final decisions on EEO complaints, except in those cases

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where the Assistant Secretary has participated in the events that gave rise to the matter.

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

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

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

(ix) Provide liaison on EEO programs and activities with the Equal Employment Opportunity Commission and the Office of Personnel Management.

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

(19) Administer the discrimination appeals and complaints program for the Department, including all formal individual or group appeals, where the system provides for an avenue of redress to the Department level, Equal Employment Opportunity Commission, or other outside authority.

(20) Make final determinations, or enter into settlement agreements, on discrimination complaints in federally conducted programs subject to the Equal Credit Opportunity Act. This delegation includes the authority to make compensatory damage awards whether pursuant to a final determination or in a settlement agreement under the authority of the Equal Credit Opportunity Act and the authority to obligate agency funds, including CCC

and FCIC funds to satisfy such an award.

(21) Make final determinations in proceedings under part 15f of this title where review of an administrative law judge decision is undertaken.

(22) Provide civil rights and equal employment opportunity support services, with authority to take actions required by law or regulation to perform such services for:

(i) The Secretary of Agriculture.

(ii) The general officers of the Department.

(iii) The offices and agencies reporting to the Assistant Secretary for Administration.

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

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

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

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

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

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

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

(vii) Establish requirements and procedures for reporting agency outreach status and accomplishments including Departmental reporting under the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program (7 U.S.C. 2279).

(24) *Related to conflict management.* (i) Designate the senior official to serve as the Department Dispute Resolution Specialist under the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571, *et seq.*, and provide leadership, direction and coordination for the Department's conflict prevention and resolution activities.