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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority within the Department of Agriculture (USDA) to reflect the delegation of authorities related to civil rights from the Secretary of Agriculture directly to the Assistant Secretary for Civil Rights (ASCR). Previously, these authorities were delegated to the Assistant Secretary for Administration and re-delegated to the ASCR.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: USDA's, Assistant General Counsel Civil Rights, Tami Trost at 202-690-3993 or email tami.trost@ogc.usda.gov.

SUPPLEMENTARY INFORMATION: Previously, USDA's Office of the Assistant Secretary for Civil Rights, overseen by the Assistant Secretary for Civil Rights (ASCR), was aligned within USDA's Departmental Management organization, overseen by the Assistant Secretary for Administration (ASA). To strengthen the visibility of USDA's Civil Rights program, this reporting structure was realigned so that the ASCR now reports directly to the Secretary of Agriculture (Secretary).

This rule amends the delegations of authority within USDA to reflect that realignment. The authorities of the Secretary related to civil rights that previously were delegated to the ASA and re-delegated to the ASCR are now delegated directly to the ASCR.

Specifically, this rule amends the delegations of authority from the Secretary to the ASA in 7 CFR 2.24 by removing the delegations related to civil rights. The rule also removes the re-delegation of those authorities from the ASA to the ASCR in 7 CFR 2.88. These authorities are now delegated from the Secretary directly to the ASCR, as reflected in a new 7 CFR 2.25. The rule also makes changes to the text of some of the delegations to clarify scope and adds a new delegation regarding establishment of an Alternative Dispute Resolution process for program complaints. Additionally, the delegation of authority in 7 CFR 2.300 from the ASCR to the Deputy ASCR is amended by making a technical change to correct the cross-reference. Finally, the delegations of authority in 7 CFR 2.24 (ASA), 2.89 (Chief Information Officer), 2.90 (Chief Financial Officer), 2.91 (Director, Office of Human Resources Management), and 2.98 (Director, Management Services) are revised to clarify that certain services performed by the Office of the Chief Information Officer, Office of the Chief Financial Officer, Office of Human Resources Management, and Management Services will continue to be performed by those entities for the Office of the Assistant Secretary for Civil Rights.

Classification

This rule relates to internal agency management. Accordingly, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not

required, and this rule may be made effective less than 30 days after publication in the Federal Register. This rule also is exempt from the provisions of Executive Order 12866. This action is not a rule as defined by the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 et seq., or the Congressional Review Act, 5 U.S.C. 801 et seq., and thus is exempt from the provisions of those Acts. This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies)

Accordingly, Title 7 of the Code of Federal Regulations is amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority for Part 2 continues to read as follows:

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.

Subpart C—Delegations of Authority to the Deputy Secretary, Under Secretaries, and Assistant Secretaries

2. The heading of subpart C is revised to read as set forth above.

3. Amend § 2.24 as follows:

a. Remove and reserve paragraph (a)(1);

b. Redesignate paragraph (a)(2)(xi)(C)(4) as paragraph (a)(2)(xi)(C)(5) and add a new paragraph (a)(2)(xi)(C)(4);

- c. Revise paragraph (a)(2)(xi)(D);
- d. Redesignate paragraph (a)(3)(xxv)(D) as paragraph (a)(3)(xxv)(E) and add a new paragraph (a)(3)(xxv)(D);
- e. Redesignate paragraph (a)(4)(xx)(C)(4) as paragraph (a)(4)(xx)(C)(5) and add a new paragraph (a)(4)(xx)(C)(4);
- f. Redesignate paragraph (a)(11)(i)(D) as paragraph (a)(11)(i)(E) and add a new paragraph (a)(11)(i)(D); and
- g. Redesignate paragraph (a)(11)(v)(D) as paragraph (a)(11)(v)(E) and add a new paragraph (a)(11)(v)(D).

The revisions and additions read as follows:

§ 2.24 Assistant Secretary for Administration.

(a) * * *

(2) * * *

(xi) * * *

(C) * * *

(4) The Office of the Assistant Secretary for Civil Rights.

(D) Manage a comprehensive set of end user office automation services, including setting rates to recover the cost of goods and services within approved policy and funding levels; and oversee the delivery of goods and services associated with end user office automation services, with authority to take actions required by law or regulation to perform such services for any offices or agencies of the Department as may be agreed (except for the Office of the Secretary, the general officers of the Department, the

agencies and offices reporting to the Assistant Secretary for Administration, and the Office of the Assistant Secretary for Civil Rights, as specified in § 2.24(a)(11)(i).

* * * * *

(3) * * *

(xxv) * * *

(D) The Office of the Assistant Secretary for Civil Rights.

* * * * *

(4) * * *

(xx) * * *

(C) * * *

(4) The Office of the Assistant Secretary for Civil Rights.

* * * * *

(11) * * *

(i) * * *

(D) The Office of the Assistant Secretary for Civil Rights.

* * * * *

(v) * * *

(D) The Office of the Assistant Secretary for Civil Rights.

* * * * *

4. Add § 2.25 to read as follows:

§ 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 or conducted by the Department.

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

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

(3) Analyze and evaluate program participation data and equal employment opportunity data, and make its analyses available to other appropriate Departmental entities, including the Office of Advocacy and Outreach and affected agencies and mission areas.

(4) Provide leadership and coordinate the Department-wide programs of public notification regarding the availability of USDA programs and employment opportunities on a nondiscriminatory basis.

(5) Coordinate with the Department of Justice on matters relating to title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), and section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), except those matters in litigation, including administrative enforcement actions, which shall be coordinated by the Office of 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 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 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 the finality of National Appeals Division decisions, as to complaints filed under parts 15a, 15b, and 15d of this title.

(14) Conduct civil rights investigations and compliance reviews Department-wide.

(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) 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 response to such complaints as may be considered necessary. Corrective measures may include recommending to the Office of Human Resources Management and the affected agency or office that appropriate disciplinary action be taken 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 where the Assistant Secretary for Civil Rights (or a

person directly supervised by the Assistant Secretary for Civil Rights) has participated in the events that gave rise to the matter.

(vi) Order such corrective measures in EEO complaints as may be considered necessary. Corrective measures may include recommending to the Office of Human Resources Management and the affected agency or office that appropriate disciplinary action be taken when an employee has been found to have engaged in a discriminatory practice.

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

(viii) Conduct EEO evaluations and develop policy regarding EEO programs.

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

(17) 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, and provide timely notice of such appeals to the Office of General Counsel and the Civil Rights Director of the affected agency.

(18) 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 Commodity Credit Corporation and Federal Crop Insurance Corporation funds to satisfy such an award.

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

(20) 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.

(21) Establish, within the Office of the Assistant Secretary for Civil Rights and in coordination with the Department's duly Designated Alternative Dispute Resolution (ADR) Official, an process for program complaints alleging civil rights violations.

(22) Redesignate, as appropriate, any authority delegated under this section to general officers of the Department and heads of Departmental agencies.

(b) [Reserved]

Subpart P—Delegations of Authority by the Assistant Secretary for Administration

§ 2.88 [Removed]

5. Remove § 2.88.

6. Amend § 2.89 as follows:

- a. Redesignate paragraph (a)(11)(iii)(D) as paragraph (a)(11)(iii)(E) and add a new paragraph (a)(11)(iii)(D); and
- b. Revise paragraph (a)(11)(iv).

The addition and revision read as follows:

§ 2.89 Chief Information Officer.

(a) * * *

(11) * * *

(iii) * * *

(D) The Office of the Assistant Secretary for Civil Rights.

(iv) Manage a comprehensive set of end user office automation services and oversee the delivery of goods and services associated with end user office automation services, with authority to take actions required by law or regulation to perform such services for any offices or agencies of the Department as may be agreed (except for the Office of the Secretary, the general officers of the Department, the agencies and offices reporting to the Assistant Secretary for Administration, and the Office of the Assistant Secretary for Civil Rights, as specified in § 2.98(a)(1)).

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- 6. Amend § 2.90 by redesignating paragraph (a)(25)(iv) as paragraph (a)(25)(v) and adding a new paragraph (a)(25)(iv), to read as follows:

§ 2.90 Chief Financial Officer.

(a) * * *

(25) * * *

(iv) The Office of the Assistant Secretary for Civil Rights.

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7. Amend § 2.91 by redesignating paragraph (a)(20)(iii)(D) as paragraph (a)(20)(iii)(E) and adding a new paragraph (a)(20)(iii)(D), to read as follows:

§ 2.91 Director, Office of Human Resources Management.

(a) * * *

(20) * * *

(iii) * * *

(D) The Office of the Assistant Secretary for Civil Rights.

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8. Amend § 2.98 as follows:

- a. In paragraph (a)(1) introductory text add the designation “(i)” after “including:” and before “Procurement”;
- b. Redesignate paragraph (a)(1)(i)(D) as paragraph (a)(1)(i)(E) and add a new paragraph (a)(1)(i)(D);
- c. Add reserved paragraph (a)(1)(ii); and
- d. Redesignate paragraph (a)(5)(iv) as paragraph (a)(5)(v) and add a new paragraph (a)(5)(iv).

The additions read as follows:

§ 2.98 Director, Management Services.

(a) * * *

(1) * * *

(i) * * *

(D) The Office of the Assistant Secretary for Civil Rights.

* * * * *

(ii) [Reserved].

* * * * *

(5) * * *

(iv) The Office of the Assistant Secretary for Civil Rights.

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Subpart R—Delegations of Authority by the Assistant Secretary for Civil Rights

9. Revise § 2.300 to read as follows:

§ 2.300 Deputy Assistant Secretary for Civil Rights.

Pursuant to § 2.25, the following delegation of authority is made by the Assistant Secretary for Civil Rights to the Deputy Assistant Secretary for Civil Rights, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all duties and exercise all powers, which are now or which may hereafter be delegated to the Assistant Secretary.

Signed in Washington, D.C. on __ March 6, 2012 _____

Thomas J. Vilsack,
Secretary of Agriculture

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