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MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Appeals Arbitration

AGENCY: Merit Systems Protection Board.

ACTION: Interim rules; request for comments.

SUMMARY: The Merit Systems Protection Board is adopting a new appeals arbitration procedure for resolving matters subject to the appellate jurisdiction of the Board. It is being conducted on a pilot basis in four regional offices (San Francisco, Chicago, Seattle and Denver) and will be carefully evaluated in approximately one year to determine if it should be extended. The functions of the new rules are to provide an alternative procedure that will offer employees and agencies a faster, less costly means of resolving routine actions while also affording an impartial forum. The appellant may request that his or her petition be processed under appeals arbitration. The agency will be given the opportunity to concur in or decline the use of appeals arbitration. However, the Regional Director or designee retains final authority to grant or deny the request to use appeals arbitration. If granted, the regional director will appoint an arbitrator on a rotating basis from a panel of presiding officials who are designated for the new procedures; these officials will receive special training. The procedure will be informal with no discovery and will not be precedential. Settlement will be explored by the arbitrator with the parties. A decision will be issued within 30 days from the due date or receipt of the parties' joint arbitration record, whichever is earlier. The arbitrator's award will include a summary of the issues presented, findings of fact and conclusions of law, and decision on the merits. The award is final except a limited right is provided to petition the Board for review for demonstrated harmful procedural irregularity in the proceeding or a clear error of law. The board will issue a final decision within 15 days after the close of the published briefing schedule.

EFFECTIVE DATE: March 18, 1983.

ADDRESS: Comments should be submitted on or before July 1, 1983 to: Paul E. Trayers, Labor Counsel, Office of the General Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Paul E. Trayers, Labor Counsel, (202) 653-7171.

SUPPLEMENTARY INFORMATION:

Background

The Civil Service Reform Act of 1978 authorized the Board to establish regulations for the purpose of adjudicating employee appeals. The legislative history of the Act discloses Congress' major interest in expediting the resolution of personnel actions subject to the Board's appellate jurisdiction. Illustrative of this is commentary which urges the Board to develop efficient and effective alternative methods for resolving appealable matters by adoption of "suitable forms of conciliation, mediation, arbitration, and other methods mutually agreeable to the parties." (S. Rep. No. 969, 95th Cong. 2d Sess., 61 (1978)).

In accordance with 5 U.S.C. 7701(j), the Merit Systems Protection Board is establishing an appeals arbitration procedure as an alternative to the more formalized procedure now governing appeals before the Board. The Board's basic objectives are to establish a simplified system which will provide the parties with a faster, less costly process to resolve routine, non-precedential actions, and to preserve an impartial forum with full concern for fairness to the parties and the public.

In formulating the appeals arbitration procedure, the Board sought a system which will achieve the following goals:

—It will encourage the informal resolution of disputes in the proceeding, including settlement by agreement between the parties.

—It will cover as many kinds of appealable matters as are feasible for resolution through the more informal process.

—It will improve the timeliness and cost-effectiveness of the process leading to the resolution of disputed personnel actions.

—It will exclude sensitive cases requiring more intense adjudicative proceedings, based on the nature, gravity and complexity of the issues involved.

—It will preserve the parties' rights to limited Board review of major procedural and legal errors in the arbitration award.

After broad consultation and advice, the Board designed the procedures described below and detailed in the accompanying regulations to achieve these goals. The procedures are based on the arbitration process that is used in the private sector and increasingly in the public sector to resolve disputes. While the procedures are not exactly the same as other forms of arbitration, the essential elements are adapted for the administrative setting in which they will operate. Thus, the procedures draw from several aspects of administrative practice as well as traditional arbitration concepts to provide a practical alternative in the resolution of routine appeals.

Appeals Arbitration Procedure

By offering the benefits of reduced costs and an expedited time for the resolution of an appeal, the appeals arbitration procedure should present an attractive alternative to both appellants and agency management. As a primary characteristic, its goal will be the issuance of an arbitration award within 60 days from the appellant's election of appeals arbitration. The program is being conducted on a pilot basis in the San Francisco, Chicago, Denver and Seattle regional offices. The experience under the new procedure will be carefully evaluated during the year to determine whether it should be modified, terminated, or extended to other regions.

Filing requirements with respect to timeliness and content of the appeal are

the same as those provided by § 1201.22(b) of the Board's appellate regulations. In addition, the filing will include a statement by the appellant or representative specifically requesting that the matter be processed under appeals arbitration. The appeal and election will be filed with the appropriate regional office of the Merit Systems Protection Board. The appellant may, however, elect to use the appeals arbitration procedure anytime within 10 days of the date of the Board's order of acknowledgement.

The agency will have 15 days from the date of Board's order of acknowledgement to file its designation of representative and consent form or decline to utilize the appeals arbitration procedures. Included in the consent form will be a summary of the facts and legal issues. Following receipt of the designation of representative form, the regional director will then decide whether to accede to the request to use the appeals arbitration procedure. While the parties' request will be given great weight, factors influencing the decision are whether it appears likely that discovery will be needed for a fair resolution of the appeal, whether the petition presents novel questions of law, whether the issues are overly complex or whether the region's caseload and staffing prohibit further processing of cases under the expedited arbitration system. The regional director or his designee may at any time prior to the issuance of the arbitration award convert the appeal to the formal MSPB appeal process.

If the agency consents to use appeals arbitration, the parties will jointly prepare the arbitration record including, but not limited to, statements of issues, statements of positions with respect to those issues limited to three pages, requests for hearing, witness lists, the agency file required by § 1201.25 and two dates mutually agreed upon for the hearing. This record will be filed with the regional office within 30 days from the date of the Board's order of acknowledgement.

If the case is accepted for the appeals arbitration procedure, specially trained presiding officials from the Regional Office will be selected on a rotating basis. The hearing, if requested by the appellant, will be held at the employment site and be scheduled within a 15-day period following expiration of the time limit for the filing of the joint arbitration record; otherwise the record will close on a date specified by the arbitrator. In any event, the record will close within 15 days from expiration of the time limit for the filing of the Joint Arbitration Record.

The Director of the Office of Personnel Management and the Special Counsel may intervene as a matter of right in those appeals that meet the criteria of 5 U.S.C. 7701(d) and 1206(i), respectively.

Although formal rules of procedure may be used as a guide, formal rules as to admissibility of evidence, motions, filings of briefs, etc., will not apply to appeals arbitration. Rules of procedure are to be liberally construed to promote the ultimate goal of an expedited final resolution of the appeal with full disclosure of pertinent information by both parties in the presentation of their respective sides of the appealed action. While the burden of proof will remain with the agency, determinations as to relevance, reliability, and fairness shall be the primary consideration for admission of evidence. While discovery is not available under this procedure, the parties have the duty to include all known relevant materials with their submissions. Every Federal agency is obligated to make its employees available on official duty status to furnish sworn statements or to appear as witnesses when requested to do so. The arbitrator may request the production of additional information or witnesses if he or she has a reasonable basis to believe it will aid in the resolution of the matter. In the event a party fails to cooperate, the arbitrator may impose appropriate sanctions.

Appeals arbitration is intended to foster an environment conducive to the informal settlement of disputes prior to the issuance of an arbitrator's award. The arbitrator is authorized and expected to explore the possibility of a settlement agreement at any time up to the actual hearing. If a hearing is conducted, it will be informal in nature.

If a settlement agreement has been achieved, the parties may enter such agreement into the arbitration record, which will stand as the authoritative and binding resolution of the appeal. The Board will retain jurisdiction to ensure compliance. If the parties choose not to enter the settlement into the record, the Board does not have jurisdiction to enforce the settlement. The arbitrator will issue an order dismissing the appeal with prejudice when settlement occurs. If settlement is not achieved, the arbitrator will adjudicate the appeal and issue a final decision that summarizes the basic issues, findings of fact and conclusions of law, and upholds, sets aside, or modifies the appealed action. These decisions will be based on authoritative legal precedents, including Board decisions, but will not be precedential in and of themselves and, therefore, may not be cited as authority in subsequent cases.

The decision of the arbitrator is subject to limited review by the Board. The standards of review are demonstrated harmful procedural irregularity in the proceedings before the arbitrator or a clear error of law. Any party to the proceeding may file a petition for review under these standards. The petition for review must be filed and received by the Board within 35 days of the arbitrator's award and a supporting brief limited to no more than 15 pages must accompany the petition. Opposition briefs of no more than 10 pages may be filed within 15 days of the Board's forwarding of the petition for review. The Board will issue a final decision 15 days from the close of the briefing schedule.

The appellant retains the right of filing an appeal from the Board's decision in the Court of Appeals for the Federal Circuit.

The Board has found that good cause exists for publication of these regulations for interim effect in view of the public interest served by the immediate availability of an alternative appeals arbitration procedure. The Board invites public comments on these regulations through July 1, 1983.

Regulatory Flexibility Act

The Chairman, Merit Systems Protection Board, certifies that the Board is not required to prepare initial or final regulatory analysis of this proposed rule, pursuant to section 603 or 604 of the Regulatory Flexibility Act, because of his determination that this rule would not have a significant economic impact on a substantial number of small entities, including small business, small organizational units and small governmental jurisdictions.

List of Subjects in 5 CFR Part 1201

Government employees.

Accordingly, the Merit Systems Protection Board proposes to amend 5 CFR Part 1201 as follows:

Subpart B—[Amended]

Petitions for Review of Agency Action. Pleadings

1. Section 1201.21 is amended by adding paragraph (e) to read as follows:

§ 1201.21 Notice of Appeal rights.

* * * * *

(e) In regions offering the use of appeals arbitration, notice of the

opportunity to request such procedure set forth at § 1201.200 *et seq.*, including a description of the procedure.

2. Section 1201.24 is amended by adding paragraph (a)(10), and revising (b) and (c) to read as follows:

§ 1201.24 Content of petition for appeal, right to hearing.

(a) * * *

* * * * *

(10) A request that the matter be processed under the appeals arbitration procedure set forth at § 1201.200 *et seq.*, if such procedure is available.

(b) *Use of the form.* Completion of the form in Appendix I shall constitute compliance with paragraph (a) of this section and § 1201.31 if a representative is designated in the form. In regions allowing the use of appeals arbitration, the amended form in Appendix I–A containing an entry for the election of voluntary arbitration and an explanation thereof will be used.

(c) *Right to hearing.* Under 5 U.S.C. 7701, an appellant has a right to a hearing. Alternatively, the appellant may choose to have the determination based on the record. If the parties choose to utilize appeals arbitration, the procedures for a hearing shall be in accordance with § 1201.205.

3. In § 1201.25, paragraphs (a)(6) and (7) are revised to read as follows:

§ 1201.25 Content of agency response, request for hearing.

(a) * * *

* * * * *

(6) A declination by the agency, if appeals arbitration has been requested by the appellant and the agency declines to use the process;

(7) Designation of and signature by the authorized agency representative.

* * * * *

4. 5 CFR Part 1201 is amended by adding Subpart G, to read as follows:

Subpart G—Appeals Arbitration

General

Sec.
1201.200 Scope and policy.

Election of and Filing for Appeals Arbitration

1201.201 Election of appeals arbitration.
1201.202 Filing of request for appeals arbitration; contents; time limits.
1201.203 Procedures for cases involving allegations of discrimination.

Arbitrator and Hearing

1201.204 Selection and authority of arbitrator.
1201.205 Hearing.

Parties and Witnesses

1201.206 Witnesses.
1201.207 Intervenors.

Evidence

Sec.
1201.208 Service of documents.
1201.209 Admissibility.
1201.210 Production of evidence or witnesses by request of arbitrator.
1201.211 Stipulations.
1201.212 Official notice.

Sanctions

1201.213 Sanctions.

Hearing Procedure; Settlement; Arbitration Award

1201.214 Burden of proof.
1201.215 Closing the record.
1201.216 Settlement.
1201.217 Arbitration award.

Petitions for Review

1201.218 Petitions for review.
1201.219 Standard of review.
1201.220 Final decision.
1201.221 Judicial review.

Authority: 5 U.S.C. 7701(j).

Subpart G—Appeals Arbitration

§ 1201.200 Scope and policy.

(a) The rules in this subpart apply to appeals arbitration procedures of the Board. It is the objective of the Board to establish a simplified alternative dispute resolution procedure which will provide employees and agencies with a faster, less costly process than Subpart B procedures to resolve appealed actions, while also assuring an impartial third-party forum with full concern for fairness and the rights of all parties.

(b) This pilot program will be conducted for one year and be available in four regional offices—San Francisco, Chicago, Denver and Seattle.

Election of and Filing for Appeals Arbitration

§ 1201.201 Election of appeals arbitration.

(a) The appellant may request appeals arbitration at the time of filing a petition for appeal. In the event the appellant has not elected appeals arbitration at the time of filing, appellant will be allowed 10 days from the date of the Board's order of acknowledgement to elect appeals arbitration. Such election must be in writing. The date of filing shall be determined by the date of mailing indicated by the postmark date.

(b) Notice of election of appeals arbitration will be served on the agency in the Board's order of acknowledgement. Within 15 days from the date of the Board's order, the agency will file either a consent to use the appeals arbitration process and a designation of representative form or a declination to use appeals arbitration. Included in the consent will be a summary of facts and legal issues raised in the appeal. In the event the agency declines to use appeals arbitration, it must timely file its response to the petition for appeal in accordance with § 1201.25 and note its declination of the process.

(c) The regional director or designee of the MSPB office having jurisdiction over the appeal retains final discretion to process the case under appeals arbitration or the formal MSPB procedure. Such decision will be made after receipt of the agency's consent and summary of the case. The regional director or designee also retains the right to convert the case to adjudication under Subpart B procedures in the event circumstances warrant, such as whenever it appears that discovery is required, novel questions of law are raised at the hearing or in briefs, or issues arise that do not lend themselves to resolution in appeals arbitration.

§ 1201.202 Filing of request for appeals arbitration; contents; time limits.

(a) The filing, time limits and content requirements of the petition for appeal processed under this subpart shall comply with the provisions of §§ 1201.22–1201.26 of Subpart B, unless these regulations expressly provide otherwise.

(b) Within 15 days from the date of the Board's order of acknowledgement, the agency will file a designation of representative and consent form, including a summary of facts and legal issues raised in the case or decline to use the process.

(c) Within 30 days from the date of the Board's order of acknowledgement, the parties will file a Joint Arbitration Record including, but not limited to:

(1) Statements of issues;

(2) Statements of position with respect to those issues limited to three pages;

(3) Request for hearing;

(4) Witness lists;

(5) The agency file required by § 1201.25; and

(6) Two dates, mutually agreed upon by the parties for the hearing, no later than 15 days beyond the day the Joint Arbitration Record is to be received by the Regional Office.

§ 1201.203 Procedures for cases involving allegations of discrimination.

The provisions for the processing of cases involving discrimination are not abridged by the use of the appeals arbitration procedure. Section 1201.152, however, does not apply to the adjudication of cases involving allegations of discrimination if they are processed under appeals arbitration.

Arbitrator and Hearing

§ 1201.204 Selection and authority of arbitrator.

(a) The regional director will appoint the arbitrator on a rotating basis, taking due account of scheduling difficulties, workload requirements or conflicts of interest.

(b) The arbitrator shall have the authority to rule on parties' procedural requests. However, the arbitrator shall issue the award no later than 30 days from the date the Joint Arbitration Record is received by the Board.

(c) The arbitrator shall have the authority to take all necessary action to avoid delay in the disposition of the proceeding and to conduct a fair and impartial hearing including the authority to regulate the hearing, maintain decorum and exclude from the hearing any disruptive person.

(d) Unless these regulations expressly provide otherwise, the arbitrator will follow the regulations under 5 CFR Part 1201, Subpart B.

§ 1201.205 Hearing.

(a) Either party may request a hearing. The arbitrator will determine in accordance with § 1201.24(c) and § 1201.25(b) whether a hearing is appropriate. The hearing will be scheduled within 15 days following the due date or receipt of the Joint Arbitration Record, whichever is earlier.

(b) The hearing will be informal. Election of appeals arbitration constitutes a waiver by the parties of a verbatim record.

(c) The hearing will be held at the employment site.

Parties and Witnesses

§ 1201.206 Witnesses.

(a) Every Federal agency will make its employees available to furnish sworn statements or to appear as witnesses at the hearing when requested by the arbitrator. Witnesses are on official duty status when providing such statements or testimony.

(b) The parties will exchange witness lists within the 30 day time limit for preparation of the Joint Arbitration Record. The parties will accompany each request with a statement of the anticipated testimony of the witness.

(c) Parties may object by oral motion at the hearing regarding the relevancy or availability of witnesses. However, the parties are requested to make every reasonable effort to make witnesses available. The arbitrator will rule on the objections at the hearing.

§ 1201.207 Intervenors.

(a) The Director of the Office of Personnel Management may intervene as a matter of right pursuant to 5 U.S.C. 7701(d)(1). Such intervention shall be made at the earliest practicable time.

(b) The Special Counsel may intervene as a matter of right pursuant to 5 U.S.C. 1206(i). Such intervention shall be made at the earliest practicable time.

Evidence

§ 1201.208 Service of documents.

Any documents submitted to the arbitrator shall be served upon all parties to the proceeding.

§ 1201.209 Admissibility.

Formal rules as to admissibility of evidence will not be applied although they will be used as guidance for the conduct of the proceeding. Rules of procedure shall be liberally construed to facilitate full and frank disclosure by both parties. Parties have the duty of including all known relevant materials in their submissions.

§ 1201.210 Production of evidence or witnesses by request of arbitrator.

The arbitrator may request the production of information or witnesses if he or she has a reasonable basis to believe that it will be germane to the case.

§ 1201.211 Stipulations.

The parties may stipulate to any matter of fact.

§ 1201.212 Official notice.

The arbitrator, on his or her own motion or on motion of a party, may take official notice of matters of common knowledge or matters that can be verified. Official notice taken of any fact satisfies a party's burden of proving the fact noticed.

Sanctions

§ 1201.213 Sanctions.

The arbitrator may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in paragraphs (a), (b), and (c) of this section.

(a) *Failure to comply with a request.* If a party fails to comply with an arbitrator's request for information or witnesses within the party's control which the arbitrator believes to be necessary to resolve the issues, or a party fails to cooperate or act in good faith, the arbitrator may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit the party failing to comply with such request from introducing evidence concerning or otherwise relying upon testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; or

(4) Strike any part of the submissions of the party failing to comply with such request dealing with the subject matter of the request.

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the arbitrator may dismiss the action with prejudice or rule for the appellant.

(c) *Failure to make timely filing.* The arbitrator may refuse to consider any information which is not filed in a timely fashion in compliance with this subpart or with the arbitrator's request.

Hearing Procedure; Settlement; Arbitration Award

§ 1201.214 Burden of Proof.

Section 1201.56 of Subpart B applies.

§ 1201.215 Closing the record.

(a) When a hearing is convened, the record will close at the conclusion of the hearing unless otherwise specified by the arbitrator.

(b) When a hearing is not convened, the record will close on the date set by the arbitrator as the final date for the receipt of submissions of the parties.

(c) In any event, the record will be closed no later than 15 days from the due date of the joint arbitration record.

(d) Once the record is closed, no additional evidence or argument will be accepted unless, in the arbitrator's discretion, he or she determines that the party seeking such admission has shown that new and material evidence has become available which was not readily available prior to the closing of the record.

§ 1201.216 Settlement.

(a) *Settlement discussion.* Informal settlement of the dispute will be explored by the arbitrator with the parties prior to the arbitration hearing or, if no hearing is requested, within 15 days after the filing of the Joint Arbitration Record. Prohibitions against ex parte communications during settlement discussions will be waived by the parties. If the matter cannot be settled informally the arbitrator will proceed with the hearing if one has been requested. At any time until the issuance of an arbitration award the parties may enter into a settlement agreement.

(b) *Agreement.* If the parties agree to resolve the dispute without an arbitration award, the settlement agreement will be the final and binding resolution of the appeal and the arbitrator will dismiss the appeal with prejudice.

(1) The terms of the settlement agreement may be recorded by the arbitrator, signed by both parties and made a part of the arbitration record, in which case the Board will retain jurisdiction to ensure compliance with the settlement agreement;

(2) If the agreement is not entered into the arbitration record, the Board will not retain jurisdiction to ensure compliance.

§ 1201.217 Arbitration award.

If settlement is not reached, the arbitrator will adjudicate the appeal and issue a written decision within 15 days after the record is closed. The award is binding on the parties. The decision will include a summary of the basic issues, findings of fact and conclusions of law, a holding affirming, reversing or modifying the appealed action and order appropriate relief.

Appeals arbitration decisions are not precedential.

The award will become final after 35 days if no petition for review is filed.

Petitions for review

§ 1201.218 Petitions for review.

(a) Any party may file a petition for review with the Board of the arbitrator's award.

(b) Petitions for review must be filed within 35 days from the date of the arbitration award. Supportive briefs must accompany the petitions for review and be limited to 15 pages. Opposition briefs must be received by the Board within 15 days from the date of the Board's forwarding of a copy of the petition for review to the opposing party and be limited to 10 pages.

§ 1201.219 Standard of review.

The Board will grant a petition for review which establishes:

(a) Demonstrated harmful procedural irregularity in the proceedings before the arbitrator, or

(b) Clear error of law.

§ 1201.220 Final Decision.

The Board will issue a final decision no later than 15 days from the close of the respondent's filing deadline.

§ 1201.221 Judicial review.

Any employee or applicant for employment adversely affected by a final order or decision of the Board may obtain judicial review under the provisions of 5 U.S.C. 7703.

Dated: March 10, 1983.

For the Board.

Herbert E. Ellingwood,

Chairman.

[FR Doc. 83-6973 Filed 3-17-83; 8:45 am]

BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Parts 1b and 1c

National Environmental Policy Act (NEPA) Policies and Procedures

AGENCY: Agriculture Department.

ACTION: Final rule.

SUMMARY: This rule prescribes the Department of Agriculture (USDA) policies and procedures for compliance with the National Environmental Policy Act (NEPA), as amended, and the Council on Environmental Quality (CEQ) implementing regulations (40 CFR Parts 1500–1508). It has been determined that effective NEPA implementation can best be achieved by reliance on individual USDA agency NEPA regulations for detailed implementation procedures. It has been further determined that a Departmental statement of policy regarding NEPA is an effective means of assisting agency implementation. This regulation sets forth this policy.

EFFECTIVE DATE: March 18, 1983.

FOR FURTHER INFORMATION CONTACT: Peter F. Smith, Executive Secretary of the Environmental Issues Working Group, Room 6154 South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447–5166.

SUPPLEMENTARY INFORMATION: On September 27, 1982, (47 FR 42364) the USDA proposed rules setting forth policies and procedures for compliance with NEPA and the CEQ implementing regulations (40 CFR Parts 1500–1508). This action constitutes final rulemaking stemming from that proposed rule. The final rule provides a USDA policy statement regarding NEPA and environmental matters, including responsibilities for environmental effects abroad; a list of USDA actions categorically excluded from the preparation of environmental assessments and environmental impact statements; and a list of USDA agencies which have been excluded from the requirements to prepare implementing procedures.

The final rule repeals and replaces the previous regulation, eliminating certain procedural requirements which were formerly performed by the Office of Environmental Quality.

This final rule has been reviewed under procedures established in Secretary's Memorandum 1512–1 and Executive Order 12291 and has been classified as nonmajor. The rule will not have—

(a) An annual effect on the economy of $100 million or more; or

(b) Any increased costs or prices to consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

(c) A significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will not have a significant economic impact on a substantial number of small entities because it imposes no direct or indirect costs on small entities, it requires no paperwork or recordkeeping, it does not affect the competitive position of small entities in relation to large entities, it does not affect the cash flow or liquidity of small entities, it does not affect the ability of a small entity to stay in the market, and it does not require that small entities obtain professional assistance to meet regulatory requirements.

During the 60-day comment period, one comment was received; and it was considered in developing the final rule. The principal point raised in the comment was the suggestion that a distinction be made between compliance policies for NEPA and Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions." This comment has been incorporated by establishing a new subsection to discuss separate policies for Executive Order 12114 compliance.

List of Subjects in 7 CFR Parts 1b and 1c

Environmental policy statements, Historic preservation, Foreign relations.

Accordingly, Title 7 of the Code of Federal Regulations, is amended as follows:

1. A new Part 1b, Subtitle A, is added to read as follows:

PART 1b—NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

1b.1 Purpose.
1b.2 Policy.
1b.3 Categorical exclusions.
1b.4 Exclusion of agencies.

Authority. National Environmental Policy Act (NEPA), as amended, 42 U.S.C. 4321 et seq.; E.O. 11514, 34 FR 4247, as amended by

E.O. 11991, 42 FR 26927; E.O. 12114, 44 FR 1957; 5 U.S.C. 301; 40 CFR 1507.3.

§ 1b.1 Purpose.

(a) This subpart supplements the regulations for implementation of the National Environmental Policy Act (NEPA), for which regulations were published by the Council of Environmental Quality (CEQ) in 40 CFR Parts 1500 through 1508. The subpart incorporates and adopts those regulations.

(b) This subpart sets forth Departmental policy concerning NEPA, establishes categorical exclusions of actions carried out by the Department and its agencies, and sets forth those USDA agencies which are excluded from the requirement to prepare procedures implementing NEPA.

§ 1b.2 Policy.

(a) USDA agencies carry out programs for the purpose of encouraging sufficient and efficient production of food, fiber, and forest products; proper management and conservation of the Nation's natural resources; and the protection of consumers through inspection services. Programs to meet this mission are carried out through research; education; technical and financial assistance to landowners and operators, producers, and consumers; and management of the National Forest System.

(b) All policies and programs of the various USDA agencies shall be planned, developed, and implemented so as to achieve the goals and to follow the procedures declared by NEPA in order to assure responsible stewardship of the environment for present and future generations.

(c) Each USDA agency is responsible for compliance with the provisions of this subpart, the regulations of CEQ, and the provisions of NEPA. Compliance will include the preparation and implementation of specific procedures and processes relating to the programs and activities of the individual agency, as necessary.

(d) The Assistant Secretary, Natural Resources and Environment (NR&E), is responsible for ensuring that agency implementing procedures are consistent with CEQ's NEPA regulations and for coordinating NEPA compliance for the Department (7 CFR 2.19(b)). The Assistant Secretary, through the USDA Natural Resources and Environment Committee, will develop the necessary processes to be used by the Office of the Secretary in reviewing, implementing, and planning its NEPA activities, determinations, and policies.

(e) In connection with the policies and requirements set forth in this subpart, all USDA agencies are responsible for compliance with Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions." Compliance will include the preparation and implementation of specific procedures and processes relative to the programs and activities of the individual agencies, as necessary. Agencies shall consult with the Department of State; the Council on Environmental Quality; and the Assistant Secretary, NR&E, prior to placing procedures and processes in effect.

§ 1b.3 Categorical exclusions.

(a) The following are categories of activities which have been determined not to have a significant individual or cumulative effect on the human environment and are excluded from the preparation of environmental assessment (EA's) or environmental impact statement (EIS's), unless individual agency procedures prescribed otherwise.

(1) Policy development, planning and implementation which relate to routine activities, such as personnel, organizational changes, or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursements, and transfer or reprogramming of funds;

(3) Inventories, research activities, and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement and investigative activities;

(6) Activities which are advisory and consultative to other agencies and public and private entities, such as legal counselling and representation;

(7) Activities related to trade representation and market development activities abroad.

(b) Agencies will identify in their own procedures the activities which normally would not require an environmental assessment or environmental impact statement.

(c) Notwithstanding the exclusions listed above and in 1b.4, or identified in agency procedures, agency heads may determine that circumstances dictate the need for preparation of an EA or EIS for a particular action. Agencies shall continue to scrutinize their activities to determine continued eligibility for categorical exclusion.

§ 1b.4 Exclusions of agencies.

(a) The USDA agencies listed below carry out programs and activities which have been found to have no individual or cumulative effect on the human environment. These agencies are excluded from the requirements to prepare implementing procedures. Actions of these agencies are categorically excluded from the preparation of an EA or EIS unless the agency head determines that an action may have a significant environmental effect.

(1) Agricultural Cooperative Service,
(2) Agricultural Marketing Service,
(3) Extension Service,
(4) Economic Research Service,
(5) Federal Crop Insurance Corporation,
(6) Federal Grain Inspection Service,
(7) Food and Nutrition Service,
(8) Food Safety and Inspection Service,
(9) Foreign Agricultural Service,
(10) Office of Transportation,
(11) Packers and Stockyards Administration,
(12) Statistical Reporting Service,
(13) Office of General Counsel,
(14) Office of Inspector General,
(15) National Agricultural Library.

2. A new Part 1c, Subtitle A, is added and reserved to read as follows:

PART 1c—CULTURAL RESOURCES [RESERVED]

Subparts A and B—[Removed]

3. Subpart A—[Reserved] and Subpart B—National Environmental Policy Act of Part 3100, Subtitle B are revoked and removed.

John B. Crowel, Jr.,

Assistant Secretary, Natural Resources and Environment.

March 14, 1983.

[FR Doc. 83-7203 Filed 3-17-83; 8:45 am]

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7 CFR Part 10

Classification, Declassification, and Safeguarding of Classified Information

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: These regulations implement the provisions of Executive Order 12356 (April 6, 1982, 47 FR 14874) and the Information Security Oversight Office Directive (47 FR 27836, June 25, 1982) relating to national security information. The Executive Order prescribes a uniform information security system and establishes a monitoring system to