

*Implement* means the taking of action by an agency of the Department in order fully and promptly to effectuate a final determination of the Division.

*Participant* means any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of an agency to which the regulations in this part apply is affected by a decision of such agency. The term does not include persons whose claim(s) arise under:

(1) Programs subject to various proceedings provided for in 7 CFR part 1;

(2) Programs governed by Federal contracting laws and regulations (appealable under other rules and to other forums, including to the Department's Board of Contract Appeals under 7 CFR part 24);

(3) The Freedom of Information Act (appealable under 7 CFR part 1, subpart A);

(4) Suspension and debarment disputes, including, but not limited to, those falling within the scope of 7 CFR parts 1407 and 3017;

(5) Export programs administered by the Commodity Credit Corporation;

(6) Disputes between reinsured companies and the Federal Crop Insurance Corporation;

(7) Tenant grievances or appeals prosecutable under the provisions of 7 CFR part 1944, subpart L, under the multifamily housing program carried out by RHS;

(8) Personnel, equal employment opportunity, and other similar disputes with any agency or office of the Department which arise out of the employment relationship;

(9) The Federal Tort Claims Act, 28 U.S.C. 2671 *et seq.*, or the Military Personnel and Civilian Employees Claims Act of 1964, 31 U.S.C. 3721;

(10) Discrimination complaints prosecutable under the nondiscrimination regulations at 7 CFR parts 15, 15a, 15b, 15e, and 15f; or

(11) Section 361, *et seq.*, of the Agricultural Adjustment Act of 1938, as amended (7 U.S.C. 1361, *et seq.*) involving Tobacco Marketing Quota Review Committees.

*Record review* means an appeal considered by the Hearing Officer in which

the Hearing Officer's determination is based on the agency record and other information submitted by the appellant and the agency, including information submitted by affidavit or declaration.

*Secretary* means the Secretary of Agriculture.

#### § 11.2 General statement.

(a) This part sets forth procedures for proceedings before the National Appeals Division within the Department. The Division is an organization within the Department, subject to the general supervision of and policy direction by the Secretary, which is independent from all other agencies and offices of the Department, including Department officials at the state and local level. The Director of the Division reports directly to the Secretary of Agriculture. The authority of the Hearing Officers and the Director of the Division, and the administrative appeal procedures which must be followed by program participants who desire to appeal an adverse decision and by the agency which issued the adverse decision, are included in this part.

(b) Pursuant to section 212(e) of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, Pub. L. 103-354 (the Act), 7 U.S.C. 6912(e), program participants shall seek review of an adverse decision before a Hearing Officer of the Division, and may seek further review by the Director, under the provisions of this part prior to seeking judicial review.

#### § 11.3 Applicability.

(a) *Subject matter.* The regulations contained in this part are applicable to adverse decisions made by an agency, including, for example, those with respect to:

(1) Denial of participation in, or receipt of benefits under, any program of an agency;

(2) Compliance with program requirements;

(3) The making or amount of payments or other program benefits to a participant in any program of an agency; and