

## Office of the Secretary, USDA

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### **Subpart N—Policy With Regard to Indemnification of Department of Agriculture Employees**

- 1.501 Policy on employee indemnification.

AUTHORITY: 5 U.S.C. 301, unless otherwise noted.

### **Subpart A—Official Records**

AUTHORITY: 5 U.S.C. 301, 552; 7 U.S.C. 3125a; 31 U.S.C. 9701; and 7 CFR 2.28(b)(7)(viii).

### **§ 1.1 Purpose and scope.**

This subpart establishes policy, procedures, requirements, and responsibilities for administration and coordination of the Freedom of Information Act (“FOIA”), 5 U.S.C. 552, pursuant to which any person may obtain official records. It also provides rules pertaining to the disclosure of records pursuant to compulsory process. This subpart also serves as the implementing regulations (referred to in § 1.3, “Agency implementing regulations”) for the Office of the Secretary (the immediate offices of the Secretary, Deputy Secretary, Under Secretaries and Assistant Secretaries) and for the Office of Communications. The Office of Communications has the primary responsibility for implementation of the FOIA in the Department of Agriculture (“USDA” or “Department”). The term “agency” or “agencies” is used throughout this subpart to include both USDA program agencies and staff offices.

[65 FR 46336, July 28, 2000]

### **§ 1.2 Policy.**

(a) Agencies of USDA shall comply with the time limits set forth in the FOIA and in this subpart for responding to and processing requests and appeals for agency records, unless there are unusual circumstances within the meaning of 5 U.S.C. 552(a)(6)(B) and § 1.16(b). An agency shall notify a requester in writing whenever it is unable to respond to or process a request or appeal within the time limits established by the FOIA.

(b) All agencies of the Department shall comply with the fee schedule provided as appendix A to this subpart, with regard to the charging of fees for providing copies of records and related services to requesters.

[65 FR 46337, July 28, 2000]

### **§ 1.3 Agency implementing regulations.**

Each agency of the Department shall promulgate regulations setting forth the following:

(a) The location and hours of operation of the agency office or offices where members of the public may gain access to those materials required by 5

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U.S.C. 552(a)(2) and §1.4 to be made available for public inspection and copying.

(b) Information regarding the publication and distribution (by sale or otherwise) of indexes and supplements to indexes that are maintained in accordance with the requirements of 5 U.S.C. 552(a)(2) and §1.4(c);

(c) The title and mailing address of the official or officials of the agency authorized to receive requests for records submitted in accordance with §1.5(a), and to make determinations regarding whether to grant or deny such requests. Authority to make such determinations includes authority to:

(1) Extend the 20 working day administrative deadline for reply pursuant to §1.16;

(2) Make discretionary releases pursuant to §1.19(b);

(3) Make determinations regarding the charging of fees pursuant to appendix A to this subpart;

(d) The title and mailing address of the agency official who is authorized to receive appeals submitted in accordance with §1.14 and to make determinations regarding whether to grant or deny such appeals. Authority to determine appeals includes authority to:

(1) Extend the 20 working day administrative deadline for reply pursuant to §1.16 (to the extent the maximum extension authorized by §1.16(c) was not used with regard to the initial request;

(2) Make discretionary releases pursuant to §1.19(b);

(3) Make determinations regarding the charging of fees pursuant to appendix A to this subpart; and

(e) Other information which would be of concern to a person wishing to request records from that agency in accordance with this subpart.

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### § 1.4 Public access to certain materials.

(a) In accordance with 5 U.S.C. 552(a)(2), each agency within the Department shall make the following materials available for public inspection and copying (unless they are promptly published and copies offered for sale):

(1) Final opinions, including concurring and dissenting opinions, as well as

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orders, made in the adjudication of cases;

(2) Those statements of policy and interpretation which have been adopted by the agency and are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released pursuant to a FOIA request under 5 U.S.C. 552(a)(3), and which because of the nature of their subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. Agencies shall decide on a case by case basis whether records fall into this category, based on the following factors:

(i) Previous experience with similar records;

(ii) The particular characteristics of the records involved, including their nature and the type of information contained in them; and

(iii) The identity and number of requesters and whether there is widespread media, historical, academic, or commercial interest in the records.

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) Records encompassed within paragraphs (a)(1) through (a)(5) of this section created on or after November 1, 1996, shall be made available to the public by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means.

(c) Each agency of the Department shall maintain and make available for public inspection and copying current indexes providing identifying information regarding any matter issued, adopted or promulgated after July 4, 1967, and required by paragraph (a) of this section to be made available or published. Each agency shall publish and make available for distribution copies of such indexes and supplements to such indexes at least quarterly, unless it determines by notice published in the FEDERAL REGISTER that publication would be unnecessary and impracticable. After issuance of such notice,