

(6) Division

The term “Division” means the National Appeals Division established by this chapter.

(7) Hearing officer

The term “hearing officer” means an individual employed by the Division who hears and determines appeals of adverse decisions by any agency.

(8) Implement

The term “implement” refers to those actions necessary to effectuate fully and promptly a final determination of the Division not later than 30 calendar days after the effective date of the final determination.

(9) Participant

The term “participant” shall have the meaning given that term by the Secretary by regulation.

(Pub. L. 103-354, title II, §271, Oct. 13, 1994, 108 Stat. 3228; Pub. L. 115-334, title XII, §§12404(b)(2), 12410(c)(2)(B), Dec. 20, 2018, 132 Stat. 4975, 4978.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle H (§§271-283) of title II of Pub. L. 103-354, Oct. 13, 1994, 108 Stat. 3228, which enacted this subchapter, amended sections 2006 and 5101 to 5106 of this title and section 2202e of Title 12, Banks and Banking, and repealed sections 1433e and 1983b of this title.

This chapter, referred to in par. (6), was in the original “this title”, meaning title II of Pub. L. 103-354, Oct. 13, 1994, 108 Stat. 3209, known as the Department of Agriculture Reorganization Act of 1994. For complete classification of title II of the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

2018—Par. (2)(A). Pub. L. 115-334, §12404(b)(2), substituted “Farm” for “Consolidated Farm” in two places.

Par. (2)(F). Pub. L. 115-334, §12410(c)(2)(B), substituted “section 6936(b) of this title” for “section 6962(b) of this title”.

§ 6992. National Appeals Division and Director**(a) Establishment of Division**

The Secretary shall establish and maintain an independent National Appeals Division within the Department to carry out this subchapter.

(b) Director**(1) Appointment**

The Division shall be headed by a Director, appointed by the Secretary from among persons who have substantial experience in practicing administrative law. In considering applicants for the position of Director, the Secretary shall consider persons currently employed outside Government as well as Government employees.

(2) Term and removal

The Director shall serve for a 6-year term of office, and shall be eligible for reappointment. The Director shall not be subject to removal during the term of office, except for cause established in accordance with law.

(3) Position classification

The position of the Director may not be a position in the excepted service or filled by a noncareer appointee.

(c) Direction, control, and support**(1) Direction and control****(A) In general**

Except as provided in paragraph (2), the Director shall be free from the direction and control of any person other than the Secretary or the Deputy Secretary of Agriculture.

(B) Administrative support

The Division shall not receive administrative support (except on a reimbursable basis) from any agency other than the Office of the Secretary.

(C) Prohibition on delegation

The Secretary may not delegate to any other officer or employee of the Department, other than the Deputy Secretary of Agriculture or the Director, the authority of the Secretary with respect to the Division.

(2) Exception

The Assistant Secretary for Administration is authorized to investigate, enforce, and implement the provisions in law, Executive order, or regulations that relate in general to competitive and excepted service positions and employment within the Division, including the position of Director, and such authority may be further delegated to subordinate officials.

(d) Determination of appealability of agency decisions

If an officer, employee, or committee of an agency determines that a decision is not appealable and a participant appeals the decision to the Director, the Director shall determine whether the decision is adverse to the individual participant and thus appealable or is a matter of general applicability and thus not subject to appeal. The determination of the Director as to whether a decision is appealable shall be administratively final.

(e) Division personnel**(1) In general**

The Director shall recommend to the Secretary persons for appointment as hearing officers as are necessary for the conduct of hearings under section 6997 of this title. The Director shall appoint such other employees as are necessary for the administration of the Division. A hearing officer or other employee of the Division shall have no duties other than those that are necessary to carry out this subchapter. Each position of the Division shall be filled by an individual who is not a political appointee.

(2) Political appointee

In this subsection, the term “political appointee” means an individual occupying—

(A) a position described under sections 5312 through 5316 of title 5 (relating to the Executive Schedule);

(B) a noncareer position in the Senior Executive Service, as described under section 3132(a)(7) of that title;

(C) a position in the executive branch of the Government of a confidential or policy-determining character under schedule C of subpart C of part 213 of title 5, Code of Federal Regulations; or

(D) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character.

(Pub. L. 103-354, title II, §272, Oct. 13, 1994, 108 Stat. 3229; Pub. L. 113-79, title I, §1610(a), Feb. 7, 2014, 128 Stat. 709; Pub. L. 115-334, title XII, §12412, Dec. 20, 2018, 132 Stat. 4980.)

Editorial Notes

REFERENCES IN TEXT

This subchapter, referred to in subsec. (e), was in the original “this subtitle”, meaning subtitle H (§§271-283) of title II of Pub. L. 103-354, Oct. 13, 1994, 108 Stat. 3228, which enacted this subchapter, amended sections 2006 and 5101 to 5106 of this title and section 2202e of Title 12, Banks and Banking, and repealed sections 1433e and 1983b of this title.

AMENDMENTS

2018—Subsec. (e). Pub. L. 115-334 amended subsec. (e) generally. Prior to amendment, text read as follows: “The Director shall appoint such hearing officers and other employees as are necessary for the administration of the Division. A hearing officer or other employee of the Division shall have no duties other than those that are necessary to carry out this subchapter.”

2014—Subsec. (c). Pub. L. 113-79 added subsec. (c) and struck out former subsec. (c). Prior to amendment, text read as follows: “The Director shall be free from the direction and control of any person other than the Secretary. The Division shall not receive administrative support (except on a reimbursable basis) from any agency other than the Office of the Secretary. The Secretary may not delegate to any other officer or employee of the Department, other than the Director, the authority of the Secretary with respect to the Division.”

§ 6993. Transfer of functions

There are transferred to the Division all functions exercised and all administrative appeals pending before the effective date of this subchapter (including all related functions of any officer or employee) of or relating to—

(1) the National Appeals Division established by section 1433e(c)¹ of this title (as in effect on the day before October 13, 1994);

(2) the National Appeals Division established by subsections (d) through (g) of section 1983b¹ of this title (as in effect on the day before October 13, 1994);

(3) appeals of decisions made by the Federal Crop Insurance Corporation; and

(4) appeals of decisions made by the Soil Conservation Service (as in effect on the day before October 13, 1994).

(Pub. L. 103-354, title II, §273, Oct. 13, 1994, 108 Stat. 3230.)

¹ See References in Text note below.

Editorial Notes

REFERENCES IN TEXT

The effective date of this subchapter, referred to in text, probably means the date of enactment of Pub. L. 103-354, which was approved Oct. 13, 1994.

Section 1433e of this title, referred to in par. (1), was repealed by Pub. L. 103-354, title II, §281(b), Oct. 13, 1994, 108 Stat. 3233.

Section 1983b of this title, referred to in par. (2), was repealed by Pub. L. 103-354, title II, §281(c), Oct. 13, 1994, 108 Stat. 3233.

§ 6994. Notice and opportunity for hearing

Not later than 10 working days after an adverse decision is made that affects the participant, the Secretary shall provide the participant with written notice of such adverse decision and the rights available to the participant under this subchapter or other law for the review of such adverse decision.

(Pub. L. 103-354, title II, §274, Oct. 13, 1994, 108 Stat. 3230.)

§ 6995. Informal hearings

(a) In general

If an officer, employee, or committee of an agency makes an adverse decision, the agency shall hold, at the request of the participant, an informal hearing on the decision.

(b) Farm Service Agency

With respect to programs carried out through the Farm Service Agency (or other office, agency, or administrative unit of the Department assigned to carry out the programs authorized for the Farm Service Agency under section 6932 of this title), the Secretary shall maintain the informal appeals process applicable to such programs, as in effect on October 13, 1994.

(c) Mediation

If a mediation program is available under title V of the Agricultural Credit Act of 1987 (7 U.S.C. 5101 et seq.) as a part of the informal hearing process, the participant shall—

(1) be offered the right to choose such mediation; and

(2) to the maximum extent practicable, be allowed to use both informal agency review and mediation to resolve disputes under that title.

(Pub. L. 103-354, title II, §275, Oct. 13, 1994, 108 Stat. 3230; Pub. L. 110-234, title XII, §12032, May 22, 2008, 122 Stat. 1391; Pub. L. 110-246, §4(a), title XII, §12032, June 18, 2008, 122 Stat. 1664, 2153; Pub. L. 115-334, title XII, §12404(b)(3), Dec. 20, 2018, 132 Stat. 4975.)

Editorial Notes

REFERENCES IN TEXT

The Agricultural Credit Act of 1987, referred to in subsec. (c), is Pub. L. 100-233, Jan. 6, 1988, 101 Stat. 1568. Title V of the Act is classified principally to chapter 82 (§5101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 2001 of Title 12, Banks and Banking, and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub.