

and OMB's implementing regulations (e.g., a streamlined comment period for collections associated with proposed rules) when permissible and appropriate.

5. Agencies, as appropriate, should seek legal authority from Congress to take advantage of this recommendation.

### Administrative Conference Recommendation 2017–7

#### Regulatory Waivers and Exemptions

*Adopted December 15, 2017*

Individuals and entities regulated by federal agencies must adhere to program-specific requirements prescribed by statute or regulation. Sometimes, however, agencies prospectively excuse individuals or entities from statutory or regulatory requirements through waivers or exemptions.<sup>1</sup> The authority to waive or exempt regulated parties from specific legal requirements affords agencies much-needed flexibility to respond to situations in which generally applicable laws are a poor fit for a given situation.<sup>2</sup> Emergencies or other unforeseen circumstances may also render compliance with statutory or regulatory requirements impossible or impracticable.<sup>3</sup> In such instances, requiring strict adherence to legal requirements may not be desirable.<sup>4</sup> This is particularly true when the recipient of a waiver or exemption demonstrates that it intends to engage in

<sup>1</sup> Agencies may also *retrospectively* decline to bring an enforcement action once a legal violation has already occurred. This recommendation, however, is confined to the agency practice of prospectively waiving or exempting regulated parties from legal requirements.

<sup>2</sup> The terms "waiver" and "exemption" carry various meanings in agency practice. For the purposes of this recommendation, when Congress has expressly authorized an agency to excuse a regulated party from a legal requirement, the term "waiver" is used. If an agency is implicitly authorized by Congress to excuse a regulated party from a legal requirement, "exemption" is used. These definitions stem from the report underlying this recommendation. See Aaron L. Nielson, *Waivers, Exemptions, and Prosecutorial Discretion: An Examination of Agency Nonenforcement Practices* (Nov. 1, 2017) (report to the Admin. Conf. of the U.S.), <https://acus.gov/report/regulatory-waivers-and-exemptions-final-report>. Some agencies may also derive authority to grant waivers or exemptions from presidential delegations under Article II of the Constitution. That category of waivers and exemptions is outside the scope of this recommendation.

<sup>3</sup> See, for example, the Stafford Act, 42 U.S.C. 5141, authorizing any federal agency charged with the administration of a federal assistance program in a presidentially declared major disaster to modify or waive administrative conditions for assistance if requested to do so by state or local authorities.

<sup>4</sup> Of course, agencies cannot issue waivers or exemptions unless authorized by law, and even when authorized by law, agencies must not issue them in an arbitrary fashion.

conduct that will otherwise further the agency's legitimate goals.

Yet, waiving or exempting a regulated party from a statutory or regulatory requirement also raises important questions about predictability, fairness, and protection of the public. For instance, when an agency decides to waive legal requirements for some but not all regulated parties, the decision to grant a waiver or exemption may create the appearance—or perhaps even reality—of irregularity, bias, or unfairness. Waiving or exempting a regulated party from a legal requirement, therefore, demands that agencies simultaneously consider regulatory flexibility, on the one hand, and consistent, non-arbitrary administration of the law, on the other.

Agencies' authority to waive or exempt regulated parties from legal requirements may also intersect with other principles of administrative law. When agencies frequently issue waivers or exemptions because a regulation is outdated or ineffective, for example, amending or rescinding the regulation may be more appropriate in some circumstances, despite the necessary resource costs.<sup>5</sup> Such revisions can enhance efficiency and transparency. The requisite notice-and-comment procedures can also foster public participation and informed decisionmaking.

The following recommendations offer best practices and factors for agencies to consider regarding their waiver and exemption practices and procedures. They are not intended to disturb or otherwise limit agencies' broad discretion to elect how to best use their limited resources.

### Recommendation

#### Scope of Waiver and Exemption Authority

1. When permitted by law, agencies should consider creating mechanisms that would allow regulated parties to apply for waivers or exemptions by demonstrating conduct that will achieve the same purpose as full compliance with the relevant statutory or regulatory requirement.

2. When consistent with the statutory scheme, agencies should endeavor to draft regulations so that waivers and exemptions will not be routinely necessary. When an agency has approved a large number of similar

<sup>5</sup> See Admin. Conf. of the U.S., Recommendation 2014–5, *Retrospective Review of Agency Rules*, ¶ 5, 79 FR 75,114, 75,116 (Dec. 17, 2014) (identifying petitions from stakeholder groups and members of the public and poor compliance rates as factors to consider in identifying regulations that may benefit from amendment or rescission).

waivers or exemptions, the agency should consider revising the regulation accordingly. If eliminating the need for waivers or exemptions requires statutory reform, Congress should consider appropriate legislation.

#### Exercising Waiver or Exemption Authority

3. Agencies should endeavor, to the extent practicable, to establish standards and procedures for seeking and approving waivers and exemptions.

4. Agencies should apply the same treatment to similarly situated parties when approving waivers and exemptions, absent extenuating circumstances.

5. Agencies should clearly announce the duration, even if indefinite, over which a waiver or exemption extends.

#### Transparency and Public Input in Seeking and Approving Waivers and Exemptions

6. Agencies should consider soliciting public comments before establishing standards and procedures for seeking and approving waivers and exemptions.

7. Agencies should endeavor, to the extent practicable, to make standards and procedures for seeking and approving waivers and exemptions available to the public.

8. Agencies should consider soliciting public comments before approving waivers or exemptions.

9. Agencies should provide written explanations for individual waiver or exemption decisions and make them publicly available to the extent practicable and consistent with legal or policy concerns, such as privacy. Further, agencies should consider providing written explanations of representative instances to help illustrate the types of activities likely to qualify for a waiver or exemption.

[FR Doc. 2017–28124 Filed 12–28–17; 8:45 am]

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### AGENCY FOR INTERNATIONAL DEVELOPMENT

#### Notice of January 18, 2018 Advisory Committee on Voluntary Foreign Aid Meeting

**AGENCY:** United States Agency for International Development.

**ACTION:** Notice of meeting.

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

*Date:* Thursday, January 18, 2018.

*Time:* 2:00–4:00 p.m.

*Location:* Horizon Ballroom, The Ronald Reagan Building, 1300 Pennsylvania Ave. NW, Washington DC 20004.

#### Purpose

The Advisory Committee on Voluntary Foreign Aid (ACVFA) brings together USAID and private voluntary organization officials, representatives from universities, international nongovernment organizations, U.S. businesses, and government, multilateral, and private organizations to foster understanding, communication, and cooperation in the area of foreign aid.

#### Agenda

USAID leadership will make opening remarks, followed by a presentation and discussion on the principles, benchmarks, and programs that the Agency is considering to support countries along their development journey to self-reliance and long-term prosperity. The full meeting agenda will be forthcoming on the ACVFA website at <http://www.usaid.gov/who-we-are/organization/advisory-committee>.

#### Stakeholders

The meeting is free and open to the public. Persons wishing to attend should register online at <http://www.usaid.gov/who-we-are/organization/advisory-committee>.

**FOR FURTHER INFORMATION CONTACT:** Jessica Klein, [acvfa@usaid.gov](mailto:acvfa@usaid.gov) or 202-712-5856.

Dated: December 18, 2017.

**Jessica Klein,**

*Acting Executive Director, U.S. Agency for International Development.*

[FR Doc. 2017-28152 Filed 12-28-17; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Notice of Request for Extension or Renewal of a Currently Approved Information Collection

**AGENCY:** Office of the Assistant Secretary for Civil Rights, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Office of the Assistant Secretary for Civil Rights (OASCR) to request a renewal of a currently approved information collection. OASCR will use the information collected to collect the race, ethnicity, and gender (REG) of all

program applicants and participants by county and State.

**DATES:** Comments on this notice must be received by February 27, 2018 to be assured of consideration.

**ADDRESSES:** Office of the Assistant Secretary for Civil Rights/Office of Compliance, Policy, and Training invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

*Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

*Mail, including CD-ROMs, etc.:* Send to Docket Clerk, 1400 Independence Avenue SW, Washington, DC 20250-3700, Mailstop 9401.

*Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Washington, DC 20250-3700, Mailstop 9401.

*Instructions:* All items submitted by mail or electronic mail must include the Office of the Assistant Secretary for Civil Rights/Office of Compliance, Policy, and Training, Docket No. 0503-0022. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

*Docket:* For access to background documents or comments received, go to the Office of the Assistant Secretary for Civil Rights/Office of Compliance, Policy, and Training, Docket Room at 1400 Independence Avenue SW, Washington, DC 20250-3700, Mailstop 9401, between 8:00 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:**

Contact Anna G. Stroman, Deputy Director, Office of Compliance, Policy, and Training, Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, (202) 205-5953 or [Anna.Stroman@ascr.usda.gov](mailto:Anna.Stroman@ascr.usda.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR part 15 subpart D—Data Collection Requirement.

*OMB Number:* OMB No. 0503-0022.

*Expiration Date of Approval:* January 31, 2018.

*Type of Request:* Extension or renewal of the USDA 7 CFR part 15 subpart D—Data Collection Requirement Form.

*Abstract:* Currently, Section 14006 of the 2008 Farm Bill requires the

Secretary of Agriculture to annually compile for each county and State in the United States program application and participation rate data regarding socially disadvantaged farmers or ranchers for each program of USDA that serves agricultural producers or landowners. This requirement only applies to FSA, NRCS, RD, and RMA. These four agencies use the voluntary data collection form approved by OMB that is attached as a cover page to the application forms for programs that provide services to agriculture producers, farmers and ranchers. In addition, all remaining USDA agencies with conducted programs (Animal and Plant Health Inspection Service, and Foreign Agricultural Service) were required to develop a strategy for collecting voluntary REG data from individuals for their respective federally conducted programs by utilizing the same OMB approved form. Applicants and program participants of these programs and activities provide this data on a voluntary basis. These strategies will be reviewed and approved by OASCR, who will also provide oversight and monitoring of the collection of this data through its compliance activities.

If the REG data is not collected on applicants and participants in USDA federally conducted programs, USDA will not be able to collect and report demographic data on its applicants and program participants. In addition, USDA would not be able to determine if programs and services are reaching and meeting the needs of the public, beneficiaries, partners, and other stakeholders based on demographic data.

Failure to collect this information will also have a negative impact on USDA's outreach and compliance activities. This could result in an inability to equitably deliver programs and services to applicants and producers, and ultimately an inability to hold the agencies accountable.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average one hour per response.

*Respondents:* Producers, applicants, and USDA customers.

*Estimated Number of Respondents:* 1,190.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 68 hours.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have