

**UNITED STATES DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250**

**SECRETARY'S MEMORANDUM 1076-020
January 4, 2018**

Delegations of Authority to the General Counsel

1. PURPOSE

This Secretary's Memorandum (SM) requires that certain additional delegations of authorities be provided to the General Counsel and some existing delegations be revised.

One of USDA's seven strategic goals is to ensure that USDA programs are delivered efficiently, effectively and with integrity. Revising the delegations of authority to the General Counsel provides necessary legal support to help effectuate this goal.

2. ACTIONS ORDERED

- a. Personnel Settlement Agreements: 7 C.F.R. § 2.31(a)(18) shall be revised to read:

“(18) Conduct legal sufficiency reviews and concur before an offer is made to an opposing party for all informal and formal Equal Employment Opportunity (EEO), Office of Special Counsel (OSC), or Merit Systems Protection Board (MSPB) complaints that are: 1) brought by, or allege discriminatory conduct by, any political appointee; or 2) for proposed settlement offers and draft settlement agreements that:

(i) Require a payment of compensatory damages or attorney's fees resulting in costs to the Department totaling \$50,000 or more; or

(ii) Place any political appointee on a detail outside the Department or on an Intergovernmental Personnel Act (IPA) agreement for one year or more if the Department retains the obligation to pay the employee's salary and benefits during the duration of the detail or IPA agreement.”

- b. Non-Personnel Settlement Agreements: 7 C.F.R. § 2.31(a) shall be revised to include a new paragraph (19) that reads:

“(19) Review monetary settlement agreements of any dollar amount negotiated by USDA offices or agencies upon request except that legal sufficiency review conducted by and concurrence from the Office of the General Counsel is required prior to execution for all proposed settlement agreements negotiated by USDA offices or agencies totaling \$500,000 or more, including attorney's fees. This required review is in addition to existing delegations of authority and processes for

USDA offices' or agencies' processing of settlement agreements. This required review does not apply to:

- i. Settlements pursuant to the Federal Tort Claims Act, which the Office of the General Counsel handles pursuant to § 2.31(a)(1); or
- ii. Settlements for personnel matters, which the Office of the General Counsel handles pursuant to § 2.31(a)(18); or
- iii. Settlement of contract claims, which contracting officers handle pursuant to the Contract Disputes Act (41 U.S.C. 601 et seq.) and Federal Acquisition Regulation (48 C.F.R. Parts 1-99); or
- iv. Settlement of USDA offices' or agencies' debt collection actions.”

c. To effectuate the above delegation changes in Sections 2a and 2b as a USDA policy, I am issuing the attached Departmental Regulation (DR) 1521-001, *Legal Review and Execution of Settlement Agreements*, directing all USDA agencies and staff offices:

- (1) To submit to the Office of the General Counsel (OGC) for legal sufficiency review and concurrence non-personnel monetary settlement agreements of \$500,000 or more prior to execution.
- (2) To submit to OGC for legal sufficiency review and concurrence personnel monetary settlement agreements of \$50,000 or more prior to execution.
- (3) To have both non-personnel and personnel monetary settlement agreements executed by agency and staff office officials at appropriate levels.

d. Equal Employment Opportunity and Employee Relations: 7 C.F.R. § 2.31(a)(8) shall be revised to read:

“(8) Provide legal advice and support in the field of civilian personnel law, including, but not limited to, matters before the Equal Employment Opportunity Commission and Merit Systems Protection Board.”

e. Contract Counsel: 7 C.F.R. § 2.31(a) shall be revised to include a new paragraph (20) that reads:

“(20) Conduct legal sufficiency reviews and concur with all proposed agency contracts or other transactions to retain outside counsel or for the provision of legal services regardless of whether an agency has specific statutory authority to retain outside counsel or legal services. The following services do not require legal sufficiency review and concurrence from the Office of the General Counsel: contracts for the provision of services in relation to USDA office's and agencies' Freedom of Information Act activities; contracts for the performance of trademark searches or other trademark or copyright related services; or contracts for the performance of patent prosecution or other related patent services.”

- f. Cross-reference amendment: 7 C.F.R. § 2.7 shall be revised in the first sentence to include the phrase “(including delegations of legal functions to the General Counsel at § 2.31)” after “otherwise delegated.”

3. EXISTING DELEGATIONS

Prior delegations of authority, administrative regulations, and other directives not inconsistent with the provisions of this SM shall remain in full force and effect.

4. EFFECTIVE DATE AND TERMINATION

This SM is effective immediately, and shall remain in effect for one year from the effective date or until such earlier time as the Department’s published delegations have been revised to incorporate the provisions of this SM.

/s/ SONNY PERDUE
SECRETARY OF AGRICULTURE