

These revisions provide a common language for trade and better reflect the current marketing of fruits and vegetables.

On June 17, 2016, AMS published a Proposed Notice in the **Federal Register** (81 FR 39596) soliciting comments on replacing the two-term grading system with a single term to describe each quality level for the grade standards identified in this document. Two comments were received by August 16, 2016, the closing date of the public comment period, from one private citizen and one individual associated with a tribal government agency.

The two comments supported the replacement of the two-term grading system with a single term as a positive step forward. USDA stands by its decision to replace the two-term grading system (dual nomenclature) with a single term.

Based on the information gathered, AMS is removing the two-term grading system (dual nomenclature) and making editorial changes to the aforementioned U.S. Standards for Grade. The revision brings these grade standards in line with other recently amended standards and current terminology, and updates the standards to more accurately represent today's marketing practices.

Authority: 7 U.S.C. 1621–1627.

Dated: December 15, 2016.

Elanor Starmer,
Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Office of Inspector General

7 CFR Part 2610

Organization, Functions, and Delegations of Authority

AGENCY: Office of Inspector General, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA), Office of Inspector General (OIG) amends its regulation relating to organization, functions, and delegations of authority. The amendments are necessary to reflect reorganizations within OIG.

DATES: Effective December 21, 2016.

FOR FURTHER INFORMATION CONTACT: Christy Slamowitz, Counsel to the Inspector General, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 441–E, Washington, DC

20250–2308, Telephone: (202) 720–9110.

SUPPLEMENTARY INFORMATION: The regulation on USDA–OIG's organization, functions, and delegations of authority was last published in 1995 (60 FR 52840). Since that time, OIG has had several internal reorganizations. In order to provide the public with current information regarding OIG's organization, functions, and delegations of authority, OIG is amending its regulations.

Administrative Procedure Act

This rule relates to agency organization and internal agency management. Pursuant to 5 U.S.C. 553(A), such rules are not subject to the requirement to provide public notice of proposed rulemaking and opportunity for public comment. Therefore, notice and comment before the effective date are being waived.

Executive Orders 12866 and 13563

OIG has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563. OIG has determined that this rule is non-significant within the meaning of Executive Order 12866. Therefore, this rule is not required to be and has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

These regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided by the Regulatory Flexibility Act, as amended, is not required.

Executive Order 12291

This rule relates to internal agency organization and management. Therefore, it is exempt from the provisions of Executive Order 12291.

Paperwork Reduction Act

These regulations impose no additional reporting and recordkeeping requirements. Therefore, clearance by OMB is not required.

Federalism (Executive Order 13132)

This rule does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Congressional Review Act

OIG has determined that this rule is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

List of Subjects in 7 CFR Part 2610

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ For the reasons set forth in the preamble, the Office of Inspector General revises 7 CFR part 2610 to read as follows:

PART 2610—ORGANIZATION, FUNCTIONS, AND DELEGATIONS OF AUTHORITY

Sec.

- 2610.1 General statement.
- 2610.2 Headquarters organization.
- 2610.3 Regional organization.
- 2610.4 Requests for service.
- 2610.5 Delegations of authority.

Authority: 5 U.S.C. 301, 552; Inspector General Act of 1978, as amended, 5 U.S.C. app.; 7 U.S.C. 2270.

§ 2610.1 General statement.

(a) The Inspector General Act of 1978, as amended, 5 U.S.C. app. (IG Act), established an Office of Inspector General (OIG) in the U.S. Department of Agriculture (USDA) and transferred to it the functions, powers, and duties of offices referred to in the Department as the “Office of Investigation” and the “Office of Audit,” previously assigned to the OIG created by the Secretary's Memoranda 1915 and 1727, dated March 23, 1977, and October 5, 1977, respectively. Under the IG Act, OIG was established as an independent and objective unit, headed by the Inspector General (IG), who is appointed by the President and reports to and is under the general supervision of the Secretary.

(b) OIG conducts and supervises audits and investigations relating to Department programs and operations; provides leadership and coordination and recommends policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect fraud and abuse in, such programs and operations; and provides a means for keeping the Secretary of Agriculture and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(c) The IG has specific duties, responsibilities, and authorities pursuant to the IG Act, including to:

(1) Provide policy direction for, and conduct, supervise, and coordinate

audits and investigations relating to USDA programs and operations.

(2) Review existing and proposed legislation and regulations related to USDA programs and operations and make recommendations to the Secretary and the Congress on the impact such laws or regulations will have on the economy and efficiency of program administration or in the prevention and detection of fraud and abuse in USDA programs and operations.

(3) Recommend policies for, and conduct, supervise, or coordinate other activities carried out or financed by USDA for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse, in USDA programs and operations.

(4) Recommend policies for, and conduct, supervise, or coordinate relationships between, USDA and other Federal, State, and local governmental agencies and nongovernmental entities regarding the promotion of economy and efficiency, prevention of fraud and abuse, or the identification and prosecution of participants in fraud and abuse.

(5) Keep the Secretary and the Congress fully and currently informed about problems, abuses, and deficiencies, and the necessity for and progress of corrective actions in the administration of USDA programs and operations.

(6) Report expeditiously to the Attorney General any matter where there are reasonable grounds to believe there has been a violation of Federal criminal law.

(7) Have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the Department which relate to programs and operations for which the IG has responsibility.

(8) Make such investigations and reports relating to the administration of USDA programs and operations as are, in the judgment of the IG, necessary or desirable.

(9) Request such information or assistance as may be necessary for carrying out the duties and responsibilities of the IG Act from any Federal, State, or local governmental agency or unit thereof.

(10) Issue subpoenas for the production of information, documents, reports, answers, records, accounts, papers, and other data in any medium (including electronically stored information, as well as any tangible thing) and documentary evidence necessary in the performance of functions assigned by the IG Act, except that procedures other than subpoenas

shall be used to obtain documents and information from Federal agencies.

(11) Whenever necessary in the performance of functions assigned by the IG Act, administer to or take from any person an oath, affirmation, or affidavit, which shall have the same force and effect as if administered or taken by or before an officer having a seal.

(12) Have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions and responsibilities under the IG Act.

(13) Select, appoint, and employ necessary officers and employees in OIG in accordance with laws and regulations governing the civil service, including an Assistant Inspector General for Audit (AIG/A) and an Assistant Inspector General for Investigations (AIG/I).

(14) Obtain services as authorized by 5 U.S.C. 3109.

(15) Enter into contracts and other arrangements for audits, inspections, studies, analyses, and other services with public agencies and private persons, and make such payments as may be necessary to carry out the provisions of the IG Act, to the extent and in such amounts as may be provided in advance by an appropriation act.

(16) Receive and investigate complaints or information from any Department employee concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety.

(17) Designate a Whistleblower Protection Ombudsman, who will educate Department employees about prohibitions on retaliation for protected disclosures; and who have made or are contemplating making a protected disclosure about the rights and remedies against retaliation for protected disclosures.

(d) Pursuant to § 2.33 of this title, the Secretary has made the following delegations of authority to the IG:

(1) Advise the Secretary and General officers in the planning, development, and execution of Department policies and programs.

(2) At the request of the Secretary's security office, determine the availability of OIG law enforcement personnel to assist the security office in providing for the personal security of the Secretary and Deputy Secretary.

(3) Serve as liaison official for the Department for all audits of USDA performed by the Government Accountability Office.

(e) The IG, under section 1337 of the Agriculture and Food Act of 1981, Public Law 97–98, 7 U.S.C. 2270, and pursuant to rules issued by the Secretary in part 1a of this title, has the authority to:

(1) Designate OIG employees who investigate alleged or suspected felony criminal violations of statutes administered by the Secretary of Agriculture or any agency of USDA, when engaged in the performance of official duties to:

(i) Make an arrest without a warrant for any such criminal felony violation if such violation is committed, or if the employee has probable cause to believe that such violation is being committed, in his/her presence;

(ii) Execute and serve a warrant for an arrest, for the search of premises, or the seizure of evidence when issued under authority of the United States upon probable cause to believe that such a violation has been committed; and

(iii) Carry a firearm.

(2) Issue directives and take the actions prescribed by the Secretary's rules.

§ 2610.2 Headquarters organization.

(a) OIG has a headquarters office in Washington, DC, and regional offices throughout the United States. The headquarters office consists of the immediate office of the IG, which includes three component offices, and four operational units.

(b) *Immediate Office Components.* (1) The Director of the Office of Compliance and Integrity (OCI) performs independent quality assurance and internal control reviews of OIG operations. OCI also investigates allegations of criminal and/or serious administrative misconduct by OIG employees.

(2) Section 3(g) of the IG Act mandates that each IG shall obtain legal advice from a counsel either reporting directly to the IG or to another IG. Within USDA–OIG, such legal advice is provided by the Counsel to the Inspector General. The Office of Counsel (OC) provides legal advice and representation on issues arising during the course of audit, investigative, and Office of Data Sciences (ODS) activities or on internal administrative and management issues. OC also manages OIG's congressional, media relations, ethics, Freedom of Information Act, and Privacy Act programs; and reviews proposed legislation, regulations, and procedures.

(3) The Director of the Office of Diversity and Conflict Resolution advises OIG leadership on applying the principles of civil rights, equal

employment opportunity, dispute resolution, diversity, and inclusion, on matters affecting the OIG workforce, program activities, and development of policy. This office also guides all OIG personnel through the use of the Federal sector employment discrimination complaints and dispute resolution processes, as needed.

(c) *Operational units.* (1) The AIG/A carries out the OIG's domestic and foreign audit operations through a headquarters office and three regional offices shown in § 2610.3(a). The staff provides for audit review of information technology (IT) security throughout USDA. Auditing officials conduct operational liaison on audit matters; schedule and conduct audits; release audit reports to management; monitor agency action to assure that audit reports have been properly acted upon through review of Department management follow up systems; monitor the quality of OIG audit reports; and coordinate activities with the AIG/I. The staff also provides an integrated approach to fraud prevention and detection and management improvement in USDA programs and operations; coordinates analyses and reports on vulnerability assessments; and recommends policies and provides technical assistance for audit operations. The Auditing headquarters office consists of the immediate office of the AIG/A and five staff divisions.

(2) The Assistant Inspector General for Data Sciences carries out OIG's data sciences operations through a headquarters office. OIG officials within ODS perform predictive data analysis, statistical sampling, modeling, computer matching, data mining, and data warehousing of USDA programs and operations in support of OIG audits, investigations, and other activities.

(3) The AIG/I carries out OIG's domestic and foreign investigative operations through a headquarters office and the five regional offices shown in § 2610.3(b). Investigations officials conduct operational and intelligence liaison on investigative matters with the Federal Bureau of Investigation, Secret Service, Internal Revenue Service, Interpol, and other Federal, State, and local law enforcement organizations; determine the need for investigative action; conduct investigations; prepare factual reports of investigative findings; refer reports for appropriate administrative or legal action; follow up on agency actions to assure that OIG investigative reports have been properly acted upon; monitor the quality of investigative reports; and coordinate activities with the AIG/A. The staff also conducts special investigations of major

programs, operations, and high level officials; can assist the Secretary's security office in providing for the protection of the Secretary and Deputy Secretary; and receives and processes employee complaints concerning possible violations of laws, rules, regulations or mismanagement. The OIG Whistleblower Protection Ombudsman described in § 2610.1(c)(17) is located within the Office of Investigations.

(4) The Assistant Inspector General for Management (AIG/M) manages formulation of OIG policies and procedures; develops, administers and directs comprehensive programs for the management, budget, financial, personnel, systems improvement, and information activities and operations of OIG; and is responsible for OIG IT and information management systems. The staff maintains OIG's directives system, and Departmental Regulations and **Federal Register** issuances. The immediate office of the AIG/M and four divisions carry out these functions.

§ 2610.3 Regional organization.

(a) Each regional Audit Director is responsible to the IG and to the AIG/A for supervising the performance of all OIG auditing activities relating to the Department's domestic and foreign programs and operations within an assigned geographic area. The addresses and telephone numbers of the three Audit regional offices and the territories served are as follows:

Audit Region, Address, Telephone Number, and Territory

Eastern Region, 5601 Sunnyside Avenue, Suite 2-2230 (Mail Stop 5300), Beltsville, Maryland 20705-5300, (301) 504-2100; Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virgin Islands, Virginia, West Virginia, and Wisconsin.

Midwestern Region, 8930 Ward Parkway, Suite 3016, Kansas City, Missouri 64114, (816) 926-7667; Colorado, Iowa, Kansas, Missouri, Montana, Minnesota, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.

Western Region, 1333 Broadway, Suite 400, Oakland, California 94612, (510) 208-6800; Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Territory of Guam, Trust Territories of the Pacific, and Washington.

(b) Each regional Special Agent-in-Charge (SAC) is responsible to the IG and to the AIG/I for supervising the performance of all OIG investigative activities relating to the Department's

domestic and foreign programs and operations within an assigned geographic area. The addresses and telephone numbers of the five Investigations regional offices and the territories served are as follows:

Investigations Region, Address, Telephone Number, and Territory

Midwest Region, 111 N. Canal Street, Suite 325, Chicago, Illinois 60606-7296, (312) 353-1358; Illinois, Indiana, Iowa, Michigan, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin.

Northeast Region, 26 Federal Plaza, Room 1409, New York, New York 10278-0004, (212) 264-8400; Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.

Southeast Region, 401 W. Peachtree Street NW., Room 2329, Atlanta, Georgia 30308, (404) 730-3274; Alabama, Florida, Georgia, Kentucky, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands.

Southwest Region, 101 South Main, Room 311, Temple, Texas 76501, (254) 743-6535; Arkansas, Kansas, Louisiana, Mississippi, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

Western Region, 1333 Broadway, Suite 400, Oakland, California 94612, (510) 208-6860; Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Territory of Guam, Trust Territories of the Pacific, Utah, Washington, and Wyoming.

§ 2610.4 Requests for service.

(a) Heads of USDA agencies will direct requests for audit or investigative service to the AIG/A, AIG/I, Audit Director, SAC, or to other OIG audit or investigation officials responsible for providing service of the type desired in the geographical area where service is desired.

(b) Agency officials or other employees may, at any time, direct to the personal attention of the IG any audit or investigation matter that warrants such attention.

(c) Other persons (*i.e.*, non-USDA personnel) may address their communications regarding audit or investigative matters to: The Inspector General, U.S. Department of Agriculture, USDA Stop 2301, Washington, DC 20250.

(d) OIG has established several channels for USDA employees and the general public to report fraud, waste, abuse, and mismanagement in USDA programs, or misconduct by a USDA employee. These include a general OIG Hotline, a Bribery/Assault Line, and (for USDA employees) a Whistleblower Ombudsman.

(1) General fraud, waste, and abuse hotline:

(i) File complaint online: <http://www.usda.gov/oig/hotline.htm> (click on "Submit a Complaint" button);

(ii) Telephone: (800) 424-9121, (202) 690-1622, or (202) 690-1202 (Telecommunication Device for the Deaf);

(iii) Facsimile: (202) 690-2474; or

(iv) Write a letter to United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026.

(2) Bribery/Assault Line: (202) 720-7257 (24 hours a day).

(3) Whistleblower Protection Ombudsman. USDA employees may contact the Ombudsman via email at: OIGombudsman@oig.usda.gov. Additional information about the Ombudsman is available online at <https://www.usda.gov/oig/ombudsman.htm>.

§ 2610.5 Delegations of authority.

(a) AIGs, Directors, and Counsel listed in § 2610.2, and Audit Directors and SACs listed in § 2610.3, are authorized to take whatever actions are necessary to carry out their assigned functions. This authority may be re-delegated.

(b) The IG reserves the right to establish audit and investigation policies, program, procedures, and standards; to allocate appropriated funds; to determine audit and investigative jurisdiction; and to exercise any of the powers or functions or perform any of the duties referenced in the above delegation.

Dated: December 8, 2016.

Phyllis K. Fong,
Inspector General.

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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 721

RIN 3133-AE54

Federal Credit Union Occupancy, Planning, and Disposal of Acquired and Abandoned Premises; Incidental Powers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: As part of NCUA's Regulatory Modernization Initiative, the NCUA Board (Board) is finalizing amendments to its regulation governing federal credit union (FCU) occupancy, planning, and disposal of acquired and abandoned premises, and its regulation regarding

incidental powers. To provide regulatory relief to FCUs, this final rule eliminates a requirement in the current occupancy rule (formerly known as the fixed assets rule) that an FCU must plan for, and eventually achieve, *full* occupancy of acquired premises.

The final rule generally retains the current regulatory timeframes for *partial* occupancy. However, it modifies the definition of "partially occupy" to mean occupation and use, on a full-time basis, of at least fifty percent of the premises by the FCU, or by a combination of the FCU and a credit union service organization (CUSO) in which the FCU has a controlling interest in accordance with Generally Accepted Accounting Principles (GAAP).

The final rule also amends the excess capacity provision in NCUA's incidental powers rule to clarify that an FCU may lease or sell excess capacity in its *facilities*, but it need not anticipate that such excess capacity will be fully occupied by the FCU in the future. However, the sale or lease of excess capacity in *equipment or services*, including employee-sharing and data processing for third parties, continues to be limited to circumstances where an FCU reasonably anticipates that such excess capacity will be taken up by the future expansion of services to members.

DATES: This rule is effective January 20, 2017.

FOR FURTHER INFORMATION CONTACT:

Justin M. Anderson, Senior Staff Attorney, Office of General Counsel, at (703) 518-6540, or Jacob McCall, Program Officer, Office of Examination and Insurance, at (703) 518-6360.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Summary of Comments
- III. Regulatory Procedures

I. Background

In April 2016, the Board issued a proposed rule¹ to amend its regulation governing FCU occupancy, planning, and disposal of acquired and abandoned premises, and its regulation regarding incidental powers. The regulatory changes in the 2016 proposed rule are identical to the regulatory changes adopted in this final rule as summarized above. The Board received 27 comment letters in response to the proposed rule. Twenty-six of the commenters generally supported the proposal and one commenter opposed the rule. Of the 26 supportive comments, approximately

half recommended additional changes or more regulatory relief.

II. Summary of Comments.

As noted above, one commenter opposed the proposed rule in its entirety. This commenter asserted that the proposed rule was a significant departure from the Board's previous interpretation of the Federal Credit Union Act (the Act) and could lead to FCUs exceeding their authority.

As stated in the proposed rule, the Board believes the language in Section 107(4) of the Act supports an interpretation that provides FCUs with more flexibility than permitted by the current rule to acquire and hold real property.² Accordingly, the Board has reconsidered its current approach of requiring FCUs to fully occupy premises. The Board notes that section 107(4) of the Act neither explicitly mentions nor requires full occupancy of FCU property.

While this final rule represents a departure from the Board's previous interpretation of section 107(4) of the Act, the Board believes the rule is both reasonable and consistent with the requirements of the Act and is within the Board's authority. The Board notes that the United States Supreme Court has emphasized that an "initial agency interpretation is not instantly carved in stone," and "to engage in informed rulemaking, [an agency] must consider varying interpretations and the wisdom of its policy on a continuing basis," indicating that an agency may change its interpretive position on the statutes it administers.³ The final rule is reasonable and eliminates the imposition of unnecessary hardship on FCUs whose growth potential and member service strategies may be hampered by the current rule.

The Board reiterates, however, its current view that there is no authority in the Act for an FCU to invest in real estate for speculative purposes or to otherwise engage in real estate activities that do not generally support its purpose of providing financial services to its members. The Act is clear that any property acquired or held by an FCU must be "necessary or incidental to its operations."⁴ NCUA has stated consistently that an FCU may only invest in property it intends to use to

² 12 U.S.C. 1757(4).

³ *Chevron v. Natural Res. Def. Council*, 467 U.S. 837, 863-864 (1984). The Supreme Court has also found that an agency is entitled to *Chevron* deference if it reverses an earlier interpretation. See, e.g., *Rust v. Sullivan*, 500 U.S. 173 (1991); *National Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005).

⁴ 12 U.S.C. 1757(4).

¹ 81 FR 24738 (Apr. 27, 2016).