

Bylaws and Operating Procedures for the USDA Advisory Council on Native American Farming and Ranching (CNAFR)

Section I: Purpose and Structure

- A. The U.S. Department of Agriculture (USDA) Council for Native American Farming and Ranching was created to advise the Secretary on ways to eliminate barriers to participation for Native American farmers and Ranchers in USDA loan and grant programs.
- B. The Council shall consist of 15 members appointed by the Secretary of Agriculture. These individuals have demonstrated ability to represent minorities, women, and persons with disabilities as well as persons who represent a diverse range of experience in different types of production agriculture.
- C. In addition to the Native American farmers and ranchers and persons who represent the interest of Native American farmers or ranchers, members shall also include representatives from the following groups: The Farm Service Agency Administrator or his or her delegate; the Senior Advisor to the Secretary, Tribal relations, or his or her delegate; the Assistant Secretary for Civil rights or his or her delegate; the Chief of the Natural Resources Conservation Service or his or her delegate.

Section II: Authority

- A. The Secretary establishes the Council pursuant to the Federal Advisory Council Act (FACA), as amended, 5 U.S.C. App. 2.
- B. No person other than an officer or employee of the Department of Agriculture may serve for more than six consecutive years on an advisory Council, unless authorized by the Secretary.
- C. The Council for Native American Farming and Ranching will be conducted under the the oversight of USDA's Office of Tribal Relations (OTR).

Section III: Role of Council

The role of the CNAFR is to:

- advise the Secretary of Agriculture on issues related to the participation of Native American farmers and ranchers in USDA programs ;
- transmit recommendations concerning any changes to USDA regulations or internal guidance or other measures that would eliminate barriers to program participation for Native American farmers and ranchers;
- examine methods of maximizing the number of new farming and ranching opportunities created through USDA programs through enhanced extension and financial literacy services;
- examine methods of encouraging intergovernmental cooperation to mitigate the effects of land tenure and probate issues on the delivery of USDA programs;
- evaluate other methods of creating new farming or ranching opportunities for Native American producers; and
- address other related issues as deemed appropriate.

Section IV: Decision Making

A. Consensus

The Council will seek to operate via consensus in recommendations made to the Secretary of Agriculture. The DFO will provide deadlines for work on designated issues and submittal of Council recommendations.

- On occasion, the Chair may request a motion for a vote. Any member, including the Chair, may make a motion for a vote.
- Recommendations or other documents can be considered to have achieved consensus if there is no dissent by any member of the Council.
- Furthermore, the USDA believes there is value in the Council articulating the range of disparate views of its members even if consensus is not reached.
 - Therefore, if consensus on specific substantive proposals is not possible, the Council will make every effort in any recommendations or findings provided to the Secretary to articulate both the areas of agreement and disagreement, and the reasons why differences continue to exist. In striving to achieve consensus, Council members should consider all relevant public and private sector perspectives and the interests and concerns of all Council members.
- If it is required that the Council report to the Secretary by a fixed date recommendations or findings on which it has not been possible to achieve full consensus, a report shall consist of those elements upon which there has been

consensus agreement plus an accurate description of non-consensus recommendations and the points of disagreement within those recommendations, developed jointly by the Council Chair and the DFO. Council members will be given the opportunity to confirm and/or improve the accuracy of the draft report.

- Council members shall be afforded the opportunity to provide to the Secretary, in parallel and in a timely manner, any comments on the accuracy of such a report. The Council will also strive to achieve consensus on significant procedural issues, such as whether to establish work groups.
- However, if the Council is unable to achieve consensus on significant procedural matters or on whether a particular procedural matter is significant, the Designated Federal Official (DFO) will make final decisions on how to proceed. For routine procedural matters, such as setting the date of meetings, the DFO will make every effort to find a solution that best meets the needs of Council members and USDA staff.
- Agreement and Product(s). Agreement of the Council on any written document or other product(s) of the Council intended for delivery to the Secretary will include appropriately authorized signatures from Council Members.
- Any and all materials prepared by the Council are subject to public inspection and copying. Therefore, pre-consensus draft materials will be available publicly.

B. Quorum

The Office of Tribal Relations requires that eight members, be present to constitute a quorum for the conduct of business. At least one of the eight members must be a Council member who represents the USDA.

Section V: Meeting Procedures

- The full Council will meet at least two times per year. These meetings will take place in the Washington, DC area. However, Council meetings may take place outside the DC area if the DFO finds there are compelling reasons to do so.
- Meetings will be open to the public except when a determination is made in writing by the Secretary of Agriculture or his designee that any or all portions of a meeting should be closed in accordance with 5 U.S.C. 552b (c).
- The Council for Native American Farming and Ranching will be conducted under the law and regulations of the Federal Advisory Committee Act (FACA).

A. Open Meetings:

- Unless otherwise determined in advance, all meetings of the Council will be open to the public. Once an open meeting has begun, it will not be closed for any reason. All materials brought before, or presented to, the Council during the conduct of an open meeting, including the minutes of the proceedings of an open meeting, will be available to the public for review or copying at the time of the scheduled meeting.
- Members of the public may attend any open meeting or portion of an open meeting and may at the determination of the DFO offer oral comment at such meeting.
- The DFO may decide in advance to exclude oral public comment during a meeting, in which case the meeting announcement published in the Federal Register will note that oral comment from the public is excluded and will invite written comments as an alternative. Members of the public may submit written statements as instructed in each meeting's Federal Register notice.
- If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the DFO will order such discussion to cease and will schedule it for closed session if it is determined that such a session is warranted.
- The DFO will close an open meeting if personal, sensitive, or otherwise confidential information is discussed.

B. Agendas:

- Meeting agendas will be drafted by the DFO in consultation with the Federal members of the Council. In developing approaches to address items on the agenda, the DFO will also brief the Chair and solicit his/her input.
- Items for the agenda may be provided by the Secretary of Agriculture, or by recommendation of USDA's Office of Tribal Relations and Farm Service Agency.
- The DFO will approve the agenda for all meetings. A draft agenda will be distributed to the members at least two weeks in advance of each meeting for their preparation.
- USDA will endeavor to distribute all documents to be considered at a Council meeting to Council members at least two weeks in advance of that meeting, recognizing that some time-sensitive documents may need updating at the time of the meeting.
- USDA will publish an outline of the tentative agenda with the notice of the meeting in the Federal Register. It will be reviewed at the beginning of each meeting and refined, if necessary, and approved by consensus. However, the Council may not

substantively change the agenda without approval of the DFO.

C. Pre-Work:

Where practical/applicable, the DFO will ensure that Council members receive agenda item(s) pre-work at least two weeks in advance of meetings to ensure members have the opportunity to prepare and/or consult with groups their represent.

D. Minutes and Records:

- The DFO will prepare minutes (i.e., a meeting summary) of each meeting and distribute copies to Council members for approval review approximately one month after the meeting. Council members present, at the meeting being summarized, will have two weeks to review the summary and make suggested changes. The DFO and Council Chair will attempt to address any comments received and will subsequently develop a final summary for public distribution.
- All documents, reports, or other materials prepared by, or for, the Council constitute official government records and must be maintained according to National Archives and Records Administration (NARA) General Records Schedule 26.
- Under FACA, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by the Council will be made contemporaneously available to the public.

E. Comments provided by the public at a meeting of the Council or a work group thereof, or submitted to USDA for consideration by the Council will be considered part of the official record. Official Council documents will be maintained in a designated location by the DFO in accordance with Federal record keeping requirements and will be made available for public viewing by appointment.

F. Subcommittees:

- The DFO as the authority to create subcommittees.
- Subcommittees must report back to the Council, and must not provide advice or work products directly to the Secretary.
- Subcommittees will represent a balanced range of viewpoints, and will consist of Council members plus other individuals that USDA may deem appropriate for such discussions. A balance plan will be filed to address how balance factors will be considered and met during the subcommittee selection process.

- Subcommittees meetings may take place via conference call or in person and again, while the default assumption is that these will take place in Washington, DC, other circumstances may dictate that they be held elsewhere in the United States.
- All Council Members will be notified of subcommittee meetings, including date and time of meetings and agenda items to be discussed.
- Summaries of subcommittee meetings also will be provided to Council members.

G. Electronic Communication:

- Electronic communication mechanisms will be utilized to the greatest extent possible for the sharing of information outside of Council meetings, including meeting agendas and summaries.
- For any Council member who is unable to participate in electronic communication, others available means of communication (e.g., fax and mail) will be utilized.
- All members, who have the technical capability, are requested to use electronic communication.
- The purpose of electronic communications is to reduce paperwork, delay and mailing expense.

H. Attendance at Meetings:

- The Chair and DFO will address Council members that have missed three or more meetings to determine if the Council member is willing and/or able to fulfill their duties as a member of the Council.
- If a Council member is unable to fulfill their duties then the Chair and DFO will follow USDA procedures for the nomination of a replacement member.
- The Council Member may be accompanied by such other individuals as the Council member believes are appropriate to assist him or her in representing his/her interest.
- Only Council members and USDA designees will be permitted to sit at the speakers' table and speak during the meetings, except during designated public comment periods when members of the public will have an opportunity to comment.

I. Meeting Location and Announcements:

The DFO will ensure the coordination of meeting locations and dates. The DFO will also ensure a notice of upcoming meetings is placed in the Federal Register at least 15 calendar days prior to the meeting data and notices are distributed through local media at least a week prior to the meeting.

J. Meeting Access:

- All meetings of the Council will be open to the public for the duration of the meeting.
- Each meeting will have a public comment period where members of the public may address the Council. The DFO may set a time limit to address the Council.
- These comments will be received by the Council and not be addressed unless the comments can be handled within the time limit.
- Written statements from the public may also be submitted to the Council through the DFO, at defined periods prior to each meeting. Each meeting's Federal Register Notice will give the public instructions for public comment.
- Time will be reserved on the agenda at each meeting for Council members to discuss comments received prior to that meeting from members of the public. If the individual submitting the comment is present at the meeting, the Council may ask questions for clarification while the comment is being reviewed.
- Speakers will be required to provide a written copy of any presentation and handouts they will use, to the DFO two weeks prior to the meeting date so copies can be sent to members for their review before the meeting.

Section VI: Role of Board Officials

A. Members:

Members represent the appropriate groups. They should:

- generate information necessary from interest groups;
- keep their constituency informed of progress;
- understand whether or not general public support exists for their recommendation(s); and
- they should also review USDA materials prior to meeting and come prepared to discuss issues and make recommendations.

B. Chairman or Chairwoman (referred to as the Chair):

- The Chair works with the DFO to identify issues which must be addressed, and serves as the focal point for the Council's membership.
- In addition, the Chair is responsible for certifying the accuracy of minutes developed by the DFO to document Council meetings.
- The Chair typically acts as the spokesperson for the Council. The Chair is the link between Council members and the DFO.

For example, Council members will notify the Chair before speaking to the public, media or special interest groups. The Chair will then notify the DFO who will clear the request through appropriate USDA channels.

- The Chair will prepare and include a Chair's letter with submittal of all recommendations to the Secretary via the DFO. The letter will include a statement of how decisions were made that lead to the recommendations.

C. Vice-Chair:

In the absence of the Chair the Vice-Chair will fulfill the duties of the Chair.

D. Designated Federal Official:

The DFO serves as the Government's agent for all matters related to the Council's activities. The DFO must:

- approve or call the meeting(s) of the Council; develop and approve agendas;
- attend all meetings;
- adjourn the meetings when such adjournment is in the public interest; and
- chair meetings of the Council, when so directed by the Secretary of Agriculture, or his designee; and
- receive and transmit the Council's recommendations and coordinate USDA's response to the recommendations back to the Council.

In addition, the DFO is responsible for providing adequate staff support to the Council, including the performance of the following functions:

- notifying members of the time and place for each meeting;

- maintaining records of all meetings, including subgroup or working group activities, as required by National Archives and Records Administration (NARA) Schedule 26;
- maintaining the roll;
- preparing the minutes of all meetings of the Council’s deliberations, including subgroup and working group activities;
- attending to official correspondence;
- maintaining official Council records and filing all papers and submissions prepared for or by the Council, including those items generated by subgroups and working groups;
- acting as the Council’s agent to collect, validate and pay all vouchers for pre-approved expenditures; and,
- preparing and handling all reports, including the annual report as required by FACA.

Section VII: Safeguards for Council Members

A. Good Faith.

All Council members agree to act in good faith in all aspects of the Council deliberations. In order to encourage consensus building as well as the free and open exchange of ideas, views and information prior to decision making.

B. Right to Withdraw.

Any member may withdraw from the Council at any time without prejudice. However, it is requested that the member wishing to withdraw communicate the reasons for withdrawal.

C. Others' Positions.

Members agree not to characterize the position of any other member in public statements outside of the Council meetings, or in discussions with the media. To the extent feasible, members will refer others to approved meeting summaries for information about the Council’s discussions.

D. All members agree to be open and forthcoming in the sharing of relevant, readily available information to aid in the Council’s deliberations. If a member believes it cannot or should not release relevant information important to the Council’s deliberations, because of the

confidential or proprietary nature of that information, the member will endeavor to provide the substance of the information in some form (such as by aggregating data, by deleting non-relevant confidential information, by providing summaries, or by furnishing it to a neutral consultant to use or abstract) or a general description of the information and the reason for not providing it directly.

Council members will make every effort to provide this information as much in advance of the meeting at which such information is to be used as is reasonably convenient.

- E. Information and data provided to the Council in writing is a matter of a public record and will be maintained according to Department of Agriculture policies and procedures.

- F. Any information that qualifies as Confidential Business Information under Exemption b(4) of the Freedom of Information Act may not be discussed by the Council without prior approval of its owner and may be discussed only in closed session of the Council. All Council members and USDA staff in attendance must agree in writing, prior to its distribution to Council members, to protect such information.

Section VIII: Expenses and Reimbursement.

- A. Expenses related to the operation of the Council will be borne by USDA under the direction of the Office of Tribal Relations.
 - Expenditures of any kind must be approved in advance by the DFO.
 - Federal Government employees serving on the Council are not eligible for any form of additional compensation.
 - The Government will pay travel and per diem for those non-government council members and workgroup members who require assistance in order to attend meetings at a rate equivalent to that allowable for Federal employees.

- B. Members shall serve without compensation, but may receive reimbursement for travel expenses and per diem in accordance with USDA travel regulations for attendance at Council functions. Council members who represent the interests of Native American farmers or ranchers will be paid an amount not less than \$100 per day for time spent away from their employment or farming or ranching operation, subject to the availability of funds.

If there is a shortfall of appropriated funds for the Council for the payment of travel expenses or honoraria, USDA will notify Council members as soon as reasonably practicable.