

**UNITED STATES DEPARTMENT OF AGRICULTURE**

Farm Service Agency  
Washington, DC 20250

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**Program Appeals, Mediation, and Litigation**  
**1-APP (Revision 2)**

**Amendment 2**

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**Approved by:** Administrator



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**Amendment Transmittal**

**A Reason for Amendment**

This amendment corrects typographical errors and clarifies mandatory language for appeals and mediation.

**B Major Changes**

Subparagraph 2 B has been amended to clarify when to use overnight mail delivery versus USPS delivery.

Subparagraph 4 has been amended to add additional monitoring and reporting requirements relative to final NAD determinations to SAC duties.

Paragraph 6 has been added to provide State Offices with instructions for submitting State Office supplements to ALS.

Paragraphs 28 and 29 have been added to provide information on what to do when offices receive notifications on suspensions, debarments, disqualifications, exclusions, and requests for payment under EAJA.

Paragraph 128 has been withdrawn because the information was incorporated into Part 6, Section 5.

Part 6, Section 5 has been added to address implementing final administrative decisions and new reporting requirements.

Part 8 has been added to provide:

- instructions relative to cases in litigation
- further guidance about employees being called as witnesses
- case settlement policy.

**Amendment Transmittal (Continued)**

**B Major Changes (Continued)**

Exhibit 2 has been amended to define additional terms.

Exhibit 61 has been added to provide an example letter for EFT's.

<b>Page Control Chart</b>		
<b>TC</b>	<b>Text</b>	<b>Exhibit</b>
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**Part 1 Basic Information****1 Overview****A Purpose**

This handbook provides:

- guidelines to FSA offices on matters about appeals and litigation, requests for documents, witnesses, etc.
- uniform procedure and policy about FSA's informal appeal process that includes:
  - ADR, also referred to as mediation
  - appealability reviews
  - appeals
  - reconsiderations.

**B Goal of Informal Appeals Process**

The goal of the informal appeals process is to maximize opportunity for resolution of factual disputes between participants and FSA at the lowest possible level within FSA.

The informal appeals process provides opportunity for review by persons or committees with detailed knowledge of FSA programs, knowledge of farming and ranching operations, and expertise in farm and ranch management. This is in contrast to appeals administered by NAD under rules at 7 CFR Part 11.

While participants may have the option to seek review at NAD, it is FSA's experience that, generally, only the most difficult unresolved disputes proceed to further appeals before NAD.

1 Overview (Continued)

C Sources of Authority

Sources of authority for this handbook include the following:

- 5 U.S.C. 574
- 7 U.S.C. 6995
- 15 U.S.C. 714b and 714c
- 16 U.S.C. 590h
- 7 CFR Part 1, Subpart K, Subpart G, Subpart A
- 7 CFR Part 11
- 7 CFR Part 780
- individual program regulations and internal operating guidelines.

This table provides steps to access CFR’s online.

Step	Action
1	Go to <a href="http://www.gpoaccess.gov/cfr/index.html">http://www.gpoaccess.gov/cfr/index.html</a> .
2	On Code of Federal Regulations (CFR) Main Page, under 1996 Through Current Year Based On CFR Update Schedule, CLICK “Browse and/or Search the CFR”.
3	On Available CFR Titles on GPO Access Page, scroll down to “7”, “Agriculture”, and CLICK “Jan. 1”.
4	On Code of Federal Regulations Home Page, scroll down and under “Browse Parts” column, click the range of parts for the part user wants to view.
5	On the page displayed, scroll down and click on the part user wants to view.
6	Click either the TXT or PDF icon to view the subparts.

**Example:** Starting with step 4, if user wants to view **7 CFR Part 780**, user would:

- scroll down and CLICK “700-799”, “Farm Service Agency”
- scroll down and CLICK “780”, “Appeal regulations”
- click either the TXT or PDF icon, depending on preference.

D Related Handbooks

Related handbooks include, but are **not** limited to the following:

- 9-AO for contact with OIG and using OIG documents to support an adverse decision
- 18-AO for Civil Rights compliance
- \*--1-AS for State supplements--\*
- 27-AS for mediation services contracting
- 61-FI for Prompt Payment Act
- 58-FI for establishing claims and making offsets
- 98-FI for mediation expense accounting codes
- 2-INFO and 3-INFO for FOIA and Privacy Act requests.

2 FSA, Office of the Administrator, OBPI, ALS Organization

A ALS Organizational Structure and Duties

ALS is part of the Office of the Administrator. ALS:

- monitors and coordinates administrative appeal activities
- develops administrative appeal policy
- prepares National directives
- assists OGC and the Department of Justice with administrative appeals and litigation involving FSA and CCC

**Note:** ALS is FSA's point of contact for obtaining concurrence on behalf of the Executive Vice President, CCC, or Administrator, on any compromise or offer of settlement stemming from or potentially about administrative appeal or litigation.

- conducts hearings, as necessary, about suspension and debarment appeals
- assembles and prepares for signature by the Administrator, requests for NAD Director review or reconsideration
- provides guidance to FSA offices and officials on mediation cases and on appeals and litigation matters
- reviews and processes FOIA and Privacy Act appeals
- reviews and processes AFIDA appeals.

2 FSA, Office of the Administrator, OBPI, ALS Organization (Continued)

**B ALS Addresses**

The addresses for ALS are as follows.

<b>For FedEx, UPS, or other Approved Overnight Mail Delivery</b>	<b>For USPS Delivery</b>
USDA, FSA, ALS SOUTH BUILDING ROOM 6722-S 1400 INDEPENDENCE AVE SW WASHINGTON DC 20250-6722  Telephone: 202-690-3297.	USDA, FSA, ALS STOP 0570 APPEALS AND LITIGATION STAFF 1400 INDEPENDENCE AVE SW WASHINGTON DC 20250-0570

**\*--Notes:** Use FedEx, UPS, or other approved overnight service when time is of the essence or when sending any electronic disks, photographs, or other sensitive or damageable material.

USPS regular or priority mail shall **not** be used for packages or when time is a factor. USPS regular mail should **only** be used for routine letter correspondence.--\*

**C ALS Contact Information**

ALS contacts are as follows.

<b>Appeals and Litigation Staff</b> Main Telephone Number: 202-690-3297 FAX Number: 202-690-3003.		
<b>Name</b>	<b>Title</b>	<b>Phone Number</b>
John W. Welch	Director	202-690-3297
Gwen Sellman	Staff Assistant	202-690-3297
Charles Berge	Management Analyst	202-720-7757
H. Tal Day	Management Analyst	202-720-0358
G. Sean O'Neill	Management Analyst	202-720-9003
Galen VanVleet	Management Analyst	202-690-8034
Carol Wagner	Management Analyst	202-720-4966
Robin Wieland	Paralegal Specialist	202-690-2814

### 3 Reserving Authority

#### A Regulation

**[7 CFR 780.3] (a) Representatives of FSA and CCC may correct all errors in data entered on program contracts, loan agreements, and other program documents and the results of the computations or calculations made pursuant to the contract or agreement. FSA and CCC will furnish appropriate notice of such corrections when corrections are deemed necessary.**

**(b) Nothing contained in this part shall preclude the Secretary, or the Administrator of FSA, Executive Vice President of CCC, the Chief of NRCS, if applicable, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any decision made by a subordinate employee of FSA or its county and State committees, or CCC.**

#### B Determinations Binding on FSA Reviewing Authorities

Except for special determinations reserved for the Secretary; Administrator, FSA; Executive Vice President, CCC; or designees thereof, the following determinations, including technical determinations, are binding on FSA reviewing authorities:

- any Federal agency, other than FSA and NRCS
- NRCS Title XII.

**Note:** Process appeals about NRCS Title XII determinations according to Part 4.

#### C Special Handling During Appeals

Although an FSA reviewing authority **must** accept written findings of fact and technical determinations as binding, the reviewing authority may, at its own option, request clarification from the determining official or agency.

Unusual situations or circumstances should be discussed with ALS as necessary.

## 4 Coordinating Appeals in State Offices

### A SAC Duties

Each State Office shall designate at least 1 employee as SAC who will be responsible for:

- ensuring that FSA's interests are properly and adequately represented
- protecting the integrity of FSA's programs in all administrative appeal and mediation proceedings
- assigning appeal cases to an FSA employee for handling
- appointing or designating an FSA employee as FSA representative for an appeal (subparagraph B)

**Note:** SED's have discretion to make each program specialist responsible for a particular program area responsible as a SAC. Regardless whether a State Office has 1 or more SAC's, each appeal case shall be assigned to a particular FSA employee for handling as the FSA's representative.

- assisting, to the extent necessary, the employee assigned the case in assembling and preparing the case file
- reviewing all NAD determinations where FSA error has been found \* \* \* and submit to ALS an analysis of NAD's determination and recommendation for the case to ALS according to paragraph 113
- ensuring that the employee assigned the responsibility for handling a case will be available and will attend scheduled NAD proceedings
- assuring that NAD determinations are properly and timely implemented

**Note:** When there are questions about proper implementation, contact ALS and/or the respective National Office program division responsible for the subject, as necessary.

- \*--monitoring receipt and implementation of final NAD determinations
- preparing report required in subparagraph 136 C.--\*
- reviewing and distributing, as appropriate, copies of the NAD appeal summary that is generated by ALS (paragraph 5 and 7 CFR Part 780 (see subparagraph 1 C)).

## 4 Coordinating Appeals in State Offices (Continued)

### B Appeal Representative Duties

Employees designated or appointed as FSA representative for an appeal are responsible for:

- ensuring that FSA's interests are properly represented and that the integrity of FSA's and CCC's programs are protected
- managing FSA's administrative record by making sure that all relevant and pertinent documents, program operating guidelines, and applicable regulations are included

**Note:** See paragraph 88 for instructions on records to be submitted to NAD.

- participating in the pre-hearing conference before a NAD appeal hearing
- submitting documents for inclusion in a NAD hearing record to NAD, appellant, and third parties
- preparing for the hearing
- appearing at the NAD hearing as FSA's authorized representative
- reviewing the NAD determinations according to paragraphs 111 through 114
- coordinating appeal activities with SAC
- working with SAC in consulting with the National Office on program issues relating to a specific case, including guidance on national policy and procedure, and, as appropriate, authority to resolve a case
- ensuring that NAD determinations are properly and promptly implemented within 30 calendar days of the effective date of the notice of the final NAD determination (paragraph 5).

## 5 NAD Case Activity Summary

### A ALS Generated Report

ALS generates a report for internal FSA use showing active NAD cases and the status as of the dates shown on the report. Generally, the report is issued to State Offices weekly. SAC's and other interested FSA offices and employees are expected to use the report that includes information about:

- the due date for the Administrator to request a NAD Director review
- outcome or action required in response to individual NAD hearing officer determinations received by FSA

## 5 NAD Case Activity Summary (Continued)

### A ALS Generated Report (Continued)

- active cases for which FSA has requested NAD Director review and comments about action that may be taken while FSA is waiting for the NAD determination
- active cases that were **not** submitted for NAD Director review and that may require additional FSA action and implementation
- active cases for which FSA or an appellant sought NAD Director reconsideration and outcome or action required
- a list of notices of appellant-filed requests for NAD Director review or reconsideration received by ALS and outcome or action required
- cases for which appealability determinations were made by NAD, received by ALS, and the outcome of the appealability determinations
- a list of Notices of Conclusion received by ALS
- remaining cases due by a certain date pending disposition at NAD.

**Notes:** The NAD Case Activity Summary may **not** contain complete information on all appellant-filed requests for NAD Director review or on NAD appealability determinations, because copies of those documents are **not** always sent to ALS. Additionally, NAD does **not** generally issue Notices of Conclusion on appeal cases.

See Exhibit 4 for an example of a NAD Case Activity Summary.

## \*--6 State Supplements

### A SED Responsibilities

SED's shall issue State supplements about appeals and litigation matters according to 1-AS, Part 8.

### B State Supplement Approval

Prior approval of all State supplements will be obtained from the Director, ALS, using the State Directives Management System outlined in 1-AS, Exhibit 8.--\*

## 7 (Reserved)



**14 Mandatory Language to Insert in Adverse Decision Letters (Continued)****C Reconsideration**

The following is the **mandatory** language to insert in adverse decision letters:

“You may request that the (*insert COC, FLO, FLM, SED, or STC, as applicable*) reconsider this determination by filing a written request no later than 30 calendar days after you receive this notice according to FSA’s appeal procedures found at 7 CFR Part 780. If you request reconsideration, you have the right to an informal hearing with (*insert COC, FLO, FLM, SED, or STC, as applicable*) that you or your representative may attend personally or by telephone. If you choose to seek reconsideration, you may later appeal the determination to (*insert STC or NAD, as applicable*). To request reconsideration, write to (*insert COC, FLO, FLM, SED, or STC, as applicable*) at the following address and explain why you believe this determination is erroneous. (*Insert applicable address.*)”

**D Appeal to STC**

The following is the **mandatory** language to insert in adverse decision letters:

“You may appeal the County Committee’s determination to the State Committee by filing a written request no later than 30 calendar days after you receive this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you appeal to the State Committee, you have the right to an informal hearing that you or your representative may attend either personally or by telephone. If you choose to appeal to the State Committee, you may later appeal the determination of the State Committee to the National Appeals Division. If you appeal an initial decision of a County Committee to the State Committee, you waive your right to reconsideration by the County Committee of that decision. To appeal, write to the State Committee at the following address and explain why you believe this determination is wrong. (*Insert STC address.*)”

14 **Mandatory Language to Insert in Adverse Decision Letters (Continued)****E ADR**

States **without** a USDA Certified State Mediation Program shall use the following:

“Mediation is available as part of FSA’s informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the timeframe in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the FSA State Executive Director at the following address. (*Insert SED address.*)

In the alternative, you may seek another form of ADR.”

States **with** a USDA Certified State Mediation Program shall use the following:

“Mediation is available as part of FSA’s informal appeal process. Mediation may enable us to narrow the issues and resolve the matter by mutual agreement. You may have to pay all or part of the cost of mediation. If you request mediation, the running of the timeframe in which you may file an appeal stops. When mediation closes, the clock restarts and you will have the balance of the days remaining in that period to file an appeal. To request mediation, you must submit your written request no later than 30 calendar days after you receive this notice. To request mediation, write to the (*insert State name*) State mediation program at the following address and provide a copy of your \*--request for mediation to FSA. (*Insert mediation program address or other address as agreed on by the State certified mediation program and FSA State Office.*)--\* ”

In the alternative, you may seek another form of ADR.”

26 **Employee Assistance to Program Participants**

**A Limitations on Employee and COC Assistance in Appeals**

Employees and COC members shall **not**:

- prepare appeal requests for participants
- furnish personal verbal or written statements without first obtaining written authorization from FSA
- advise participants on a proper course of action in an appeal
- function or act as appellant advocates in appeals to any FSA reviewing authority, NAD, or any other tribunal where their advocacy would be adverse to the Government.

**B Employee and COC Member Authority**

Employees and COC members shall always assume they do **not** have authorization to testify or issue statements in support of an appellant absent any written authorization to the contrary.

Follow paragraphs 78 and 98 about employees and COC members appearing as witnesses in appeal proceedings.

**C Subpoenas**

If an employee or committee member is served with a subpoena or subpoena duces tecum, contact ALS through the State Office **immediately**.

**27 Discrimination or Misconduct Allegations****A Discrimination Allegations**

If a participant or appellant alleges discrimination, the employee or FSA reviewing authority should explain that complaints of discrimination can be pursued through the USDA, Office of Adjudication and Compliance. Provide the participant or appellant with the following:

- web site (<http://www.ascr.usda.gov/>) with information on discrimination complaints
- address for filing complaints or allegations of discrimination:

U.S. DEPARTMENT OF AGRICULTURE  
DIRECTOR, OFFICE OF ADJUDICATION AND COMPLIANCE  
1400 INDEPENDENCE AVENUE SW  
WASHINGTON DC 20240-9410.

**Note:** Employees or reviewing authorities who receive written or verbal discrimination complaints shall advise the participant where to file discrimination complaints. Additionally, discrimination allegations shall **not** have **any** impact on the conduct or progress of the appeal.

**B Misconduct Allegations**

If a participant alleges misconduct, waste, fraud, or abuse, the employee or FSA reviewing authority should explain that complaints of misconduct, fraud, or abuse can be pursued separately by filing a complaint with the employee's supervisor, DAFO, or OIG.

**\*--28 Suspensions, Debarments, Disqualifications, and Exclusions****A FSA Policy About Receipt of Notices**

Employees and offices receiving any notification or communication of suspension, debarment, exclusion, or disqualification from anyone other than ALS shall **immediately** forward such notification or communication to ALS through the State Office.

**B ALS Communications**

ALS reviews **all** notices and communications mentioned in subparagraph A. Based on 7 CFR Part 3017, ALS issues notifications to DAFP and DAFLP about the specific implications of a suspension, debarment, exclusion, or disqualification notice. DAFP and DAFLP notify the appropriate State and County Offices accordingly.

**C Questions**

Refer any questions about an ALS notice about a suspension, debarment, or disqualification to ALS.

Send questions about whether an ALS notice impacts participation in benefits under a particular program through the State Office to the Regional Attorney, with copy to ALS.

**29 EAJA Applications, Notices, or Claims****A FSA Policy About Receiving Requests**

FSA employees and offices receiving any sort of document about claims, applications, petitions, or requests for reimbursement for attorneys fees incurred in either administrative appeal proceedings before NAD or litigation or both shall make **no comment** and shall **not** provide any sort of response. The employee or office shall **immediately** forward a legible copy of the documents to ALS and the Regional Attorney, through the State Office.

**B “No Comment”**

Employees and offices **must** refrain from commenting at **all** about the merits of any EAJA claim, application, petition, or request for reimbursement for attorney fees. If OGC contacts a State Office about the merits of an application or petition, the State Office **must** contact ALS **immediately** for advice on how to proceed.--\*

**30 (Reserved)**



## 73 NAD Jurisdiction and Hearing Guide (Continued)

## A Subject Matter Jurisdiction (Continued)

[7 CFR 11.1, Participant] *Participant* means any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of an agency to which the regulations in this part apply is affected by a decision of such agency.

The term “participant” does **not** include persons whose claims arise under any of the following:

- proceedings provided for under 7 CFR Part 11
- programs governed by Federal contracting laws and regulations
- FOIA
- suspension and debarment disputes
- export programs administered by CCC
- personnel, EEO, and other similar disputes
- discrimination complaints
- AFIDA appeals.

**Note:** AFIDA decisions are **not** appealable to NAD because they do **not** involve claims made by persons affected, but involve claims made by FSA against persons obligated to file under AFIDA. Final administrative determinations in AFIDA appeals are final USDA administrative decisions.

## 73 NAD Jurisdiction and Hearing Guide (Continued)

**B NAD Hearing Guide**

For informational purposes **only**, NAD's Hearing Guide is available at [http://www.nad.usda.gov/Forms/NAD%20Guide%20\(October%202007\).pdf](http://www.nad.usda.gov/Forms/NAD%20Guide%20(October%202007).pdf).

NAD's Hearing Guide for NAD hearing officers:

- outlines NAD's policies and procedures
- sets forth NAD's stated policy for NAD activities ranging from appealability reviews \*--through hearings and reconsiderations to EAJA reviews--\*
- outlines policies and procedures for NAD employee conduct, managing the hearing process, preparing determinations, and ensuring the quality and consistency of correspondence and determinations.

**Note:** The guidelines and instructions contained in NAD's Hearing Guide are **not** to be considered FSA's instructions. FSA employees and offices are required to adhere to FSA's instructions contained in appropriate FSA directives.



**97 Documentary Evidence for NAD Appeals (Continued)****C Exhibits**

In addition to FSA's record, FSA may want to submit exhibits with an appeal. Appellants and other parties may also want to submit exhibits. The hearing officer's pre-hearing conference report may instruct parties about exchanging exhibits before a hearing. However, there may still be instances when documentary evidence must be submitted at hearing that was not previously exchanged. When this occurs, the party receiving the newly offered exhibit may ask for time to review the documents. Depending on the nature of the document, the hearing officer may provide for review by calling a short recess, hold the record open for written comment on the newly submitted exhibit, continue, or postpone, in rare cases, the hearing to a later date. Although unusual, hearing officers have the authority to introduce documents into the record. If this happens, parties will generally have an opportunity to respond accordingly.

**D Formatting Documents Submitted**

In general, as is true for FSA's records, large documents such as maps, photographs, etc., should be reduced or mounted to fit an 8 1/2" X 11" page. All pages **must** be on 1-sided \*-paper (see paragraph 22).--\*

**E Authenticating Records and Other Documentary Evidence**

FSA's appeal representative shall ensure that evidence is presented to support that documents and copies of documents are in fact what they are represented to be. This is usually accomplished by asking pertinent questions. In appropriate cases, FSA's appeal representative should request time to obtain copies of originals from the file to confirm dates and other information if information on documents is illegible or unintelligible.

**97 Documentary Evidence for NAD Appeals (Continued)****F Physical Materials Submitted as Evidence**

For practical reasons, NAD does **not** accept evidence that is **not** susceptible to long term storage in NAD record-keeping systems. Instead of submitting physical materials as exhibits, FSA's representative should arrange for FSA physical evidence to be photographed, illustrated, or attested to by some available or appropriate means.

**G Illustrative Evidence**

FSA's appeal representative shall consider means to summarize FSA's record, position, exhibits, or other information to make the information easier to understand.

**Example:** In a joint appeal proceeding involving several LDP requests on different dates or multiple dates, summarizing the requests on a single exhibit may be an effective means of showing how all the requests were submitted beyond a deadline or after beneficial interest had been transferred. A graph or spreadsheet could be used for this purpose.

**H Post-Hearing Exhibits and Submissions**

Evidence that the hearing officer or party believes necessary to decide the appeal may not be available at the hearing, either through omission, delay beyond a party's control, or because of developments in the hearing. This evidence may be submitted by the parties as a post-hearing exhibit. When determined necessary, the hearing officer will leave the hearing record open for a defined period of time or number of days, to allow parties to submit information. The hearing officer will also, at the hearing officer's discretion in such cases, allow time for each party to respond to any submissions.

**119 Hearing Officer Determination Finalization**

**A Finality**

**[7 CFR 11.8(f)] If the [hearing officer's] determination is not appealed to the Director for review under 11.9, the notice provided by the hearing officer shall be considered to be a notice of final determination under this part.**

**B Final Determination and Final Administrative Decision**

**\*--If neither the appellant, any third party (but **not** interested party), or FSA submits a timely--\***  
request for NAD Director review, the hearing officer determination becomes the final  
determination of NAD and is the final administrative decision.

**\*--Note:** See paragraph 135 about implementing the final determination.--\*

**120-124 (Reserved)**



127 Formatting Director Review Requests and Distributing Determinations (Continued)

**C Receiving and Distributing NAD Director Review Determinations**

FSA’s official copies of NAD Director review determinations are received by ALS. Copies provided to or obtained by FSA officials from sources other than NAD are considered unofficial and shall **not** be used by FSA for any purpose.

The following table describes how a NAD Director determination is received by FSA and how FSA distributes that determination.

**Exception:** NAD appealability determinations are **not** considered appeal determinations. NAD distributes appealability determinations to FSA field offices and appellants (paragraph 74).

Step	Action
1	NAD Director review appeal determinations are received electronically by the National Office FSA, OBPI, ALS.
2	ALS opens the e-mail messages containing NAD Director appeal determinations and immediately document receiving the appeal determination.
3	ALS examines the NAD Director appeal determination and determines the State from which the appeal came based on a review of FSA records.  <b>Note:</b> FSA should have already identified the State from which the appeal arose when FSA received the NAD hearing officer determination (paragraph 112).
4	ALS FAXes a copy of the date-stamped NAD Director appeal determination to the State Office.  State Offices <b>promptly</b> provide copies of the appeal determination to other appropriate FSA offices and employees, and other agencies such as NRCS, that may be involved
5	ALS enters the determination in its database.
6	ALS makes an initial determination as to whether the NAD Director appeal determination finds error on the part of FSA, if equitable relief has been granted, and whether further action is required.

128 (Withdrawn--Amend. 2)



**129 Requests for Reconsideration of Director Review Determinations****A Justification for Seeking Reconsideration**

**[7 CFR 11.11] Reconsideration of a determination of the Director may be requested or the agency within 10 days of receipt of the determination. The Director will not consider any request for reconsideration that does not contain a detailed statement of material error of fact made in the determination, or a detailed explanation of how the determination is contrary statute or regulation, which would justify the reversal or modification of the determination.**

Requests for reconsideration by FSA **must** be signed by the Administrator. Upon receiving a request for reconsideration, the Director, NAD, shall issue a notice to all parties as to whether a request meets the standard mentioned above. If the Director rules that the request meets the standard for reconsideration requests, the nonrequesting parties will have 5 calendar days from receiving the Director's notice to file an appropriate response.

**Note:** Whenever the final date for any requirement or document falls on a Saturday, Sunday, Federal holiday, or other day on which NAD is **not** open for the transaction of business during normal working hours, the time for filing will be extended to COB on the next workday.

**B Timing of Reconsideration Determinations**

**[7 CFR 11.11(c)] The Director shall issue a decision on the request for reconsideration within 5 days of receipt of responses from the non-requesting parties. If the Director's decision upon reconsideration reverses or modifies the final determination of the Director rendered under 11.9(d), the Director's decision on reconsideration will become the final determination of the Director under 11.9(d) for the purposes of this part.**

**130-134 (Reserved)**





## \*--Section 5 Implementing Final Administrative Decisions

## 135 Implementing Final NAD Director Review Determinations

## A Overview

**[7 CFR 11.12(a)] On the return of a case to an agency pursuant to the final determination of the Division, the head of the agency shall implement the final determination not later than 30 days after the effective date of the notice of the final determination.**

Barring a pending request for reconsideration (paragraph 129), FSA **must** implement NAD Director review determinations within 30 calendar days of the effective date **of the notice** of the final determination.

## B When an Appeal Determination is Administratively Final

A hearing officer's appeal determination is administratively final unless an appellant, the agency, or a third party, but not an interested party, files a timely request for Director review, as follows:

- if a timely Director review is requested, the appeal determination is **not** final
- if no Director review is requested, the appeal determination becomes final 30 calendar days after it is received by the appellant from NAD; that is when the period for an appellant to request a Director review has passed.

**Note:** See paragraph 119.

A Director's review determination that:

- upholds, reverses, or modifies an appeal determination is final when issued, **except** when the agency, appellant, or third party requests reconsideration by the NAD Director
- remands a case to a hearing officer is **not** final, because subsequent action will occur in the matter.

A reconsideration determination that reverses or modifies a Director's review determination is final when issued.--\*

**\*--135 Implementing Final NAD Director Review Determinations (Continued)****C Appeal Determination Effective Date**

**[7 CFR 11.12(b)] A final determination will be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable under the applicable agency program statutes or regulations.**

The clarity and precision of the appealed adverse decision is critical both to justification of a decision on appeal and to correction of any error that NAD may determine. The limited grounds for requesting reconsideration of a review determination by the NAD Director that are set forth in the NAD Rules of Procedure, do **not** afford **any** means for an agency to request clarification of a final NAD determination. The adverse decision **must**; therefore, be clear and sufficient to guide agency action if an error is determined by NAD.--\*

## \*--135 Implementing Final NAD Director Review Determinations (Continued)

**D Final Determination Implementation**

**[7 CFR 11.1] *Implement* means the taking of action by an agency of the Department in order fully and promptly to effectuate a final determination of the Division.**

NAD determines agency error, but does **not** determine what must be done to implement an agency decision, except by implication. NAD has **no** role in enforcing its final determinations. Enforcement or reversal of appeal determinations is through the U.S. District Courts.

The requirement for full and prompt implementation of a final NAD determination is a matter for FSA to determine in the circumstances of particular programs and particular appeals, as follows:

- agencies, according to their regulations, may consider changes in the condition of the participant in implementing any NAD final determination
- the 30-calendar-day requirement for NAD decision implementation in 7 CFR 11.12(a) requires that an agency initiate the steps necessary to correct the error in agency consideration of a benefit or application identified by NAD.

**Example 1:** After a final NAD decision has determined agency error in a decision on farm loan repayment ability, FSA requests updated financial and production information to make a new determination on repayment ability. The request is proper because an appellant's circumstances may have changed during the pendency of the appeal.

**Example 2:** FSA determines that a new appraisal is necessary to determine the sum due under a Shared Appreciation Agreement. Procurement is initiated within 30 calendar days of the final NAD determination, but the new appraisal report is delivered more than 30 calendar days **after** the final NAD determination. The agency has taken action within 30 calendar days "in order fully and promptly to effectuate [the] final determination of the Division."

**Example 3:** After a final NAD decision has reversed an agency determination that a participant has received an overpayment of a farm program payment, FSA must reverse agency financial records to cancel the overpayment claim.

**Example 4:** After a final NAD decision has determined agency error in a denial of a disaster program payment, FSA **must** process payment of the denied benefit if the sum due is ascertainable, or take the next steps to determine what sum should be paid as a result of the determination of agency error.--\*

**\*--135 Implementing Final NAD Director Review Determinations (Continued)****E Implementation Resulting in New Appeal Rights**

If implementation of a NAD determination requires an agency to make a new determination of fact, then a participant **must** be given notice of appeal rights.

**Example:** The agency corrects flaws in an appraisal used to determine shared appreciation due under a Shared Appreciation Agreement, the corrected appraisal results in a different valuation of the security property and, as a result, a different determination of shared appreciation due. The participant **must** be given new rights of appeal.

**F Administrative Offset Appeals**

Once a participant's appeal from receipt of notice of intent to collect delinquent debt through administrative offsets has concluded in favor of the agency, the participant does **not** have rights to appeal the actual offsets to collect against the delinquency that was the subject of the appeal.

**Example 1: New Appeal Rights:** A participant's delinquency on loan installment payments is extinguished through administrative offsets, and the participant later becomes delinquent on the same loan. The new delinquency gives rise to new rights of appeal.

**Example 2: No New Appeal Rights:** The participant's delinquency is **not** cured by offsets during a crop year and later program payments to the participant become payable. The additional offsets against the delinquency do **not** give rise to new appeal rights because the participant has no new notice and all calculations of the remaining delinquency are purely mathematical.--\*

**\*--135 Implementing Final NAD Director Review Determinations (Continued)**

**G Prompt Payment Act**

When calculating program benefits because of an appeal decision, see 61-FI to determine whether interest is due the appellant under the Prompt Payment Act.

**H Questions**

Direct questions about properly implementing NAD determinations as follows.

<b>IF...</b>	<b>THEN contact...</b>
a County Office	State Office.
a State Office	National Office program division with responsibility for the matter appealed.
any other FSA office	ALS, with the NAD Case Number, at 202-690-3297.

--\*

**\*--136 Reporting Implementation Status****A Overview**

The 2008 Farm Bill (Pub. L. 110-246), Section 14009(b) requires that the head of the agency report periodically to committees in Congress about the status of NAD final determination implementation. The reported information is also to be published to the Department's web site.

The report by the head of the agency shall include **all** the following:

- a description of all cases returned pursuant to a final determination by NAD  
**Note:** Returned, according to 7 CFR 11.12, is when FSA receives the final NAD determination.
- the status of implementation of final determinations
- for any final determination that has **not** been implemented, the reason the final determination has **not** been implemented and the projected implementation date.

**B ALS Responsibility**

ALS will:

- compile the information required for reporting implementation of returned NAD appeals pursuant to the 2008 Farm Bill
- establish a staff point of contact for reporting by States on implementation of NAD determinations returned to the agency.--\*

**\*--136 Reporting Implementation Status (Continued)**

**C State Office Actions**

To facilitate FSA reporting, each month SAC’s shall report final determinations to ALS on implementing decisions returned to FSA for appeals from their States where FSA received notice of the final determination by NAD more than 30 calendar days before the monthly reporting date, as follows.

- For reporting purposes, implementation occurs when the next step required to correct the error identified by NAD in its final determination have been initiated. The following table has examples of “implementation”.

<b>Error Identified</b>	<b>Implementation</b>
Payment Error	Determine sum to be paid.
Error in Claim	Reverse claim.
Error in Servicing Notice	Issue corrected notice.
Error in Appraisal	Initiate procurement of a new or corrected appraisal.

- **Negative Reports:** If every appeal determination returned by NAD since the last report date has been implemented within 30 calendar days of its return date, SAC will file a negative report; that is, no appeal returned to the State has **not** been implemented within 30 calendar days of its return date.
- In cases where implementation **cannot** be initiated within 30 calendar days, SAC shall briefly state the reason for any delay and the expected time for implementation.--\*

**137-150 (Reserved)**





**177 Civil Remedies (Continued)****B Refusing to Amend a Record**

The court may order FSA to amend the individual's record according to the request for amendment, or as the court directs, and assess reasonable attorney fees and other litigation costs against the U.S.

**C Denying Access to Records**

The court may order FSA to produce any record improperly withheld and assess reasonable attorney fees and other litigation costs against the U.S.

**Note:** In this case, the court may examine the contents of any FSA records in camera, a judge's private consideration, to determine whether the records or any portion of the records may be withheld under proper examination of the Privacy Act.

**D Adverse Determinations and Other Failures to Comply**

If the court determines that FSA acted in a manner that was willful or intentional in subparagraph A, the U.S. will be liable to the individual in an amount equal to the sum of actual damages sustained by the individual as a result of the adverse determination or \$1,000, whichever is greater, as well as court costs and attorney fees.

**E Rights of Legal Guardians**

The parent of any minor, or the legal guardian of an individual who has been declared incompetent because of physical or mental incapacity or age by a court, may act on behalf of the individual.

**178 Criminal Penalties****A USDA Regulation**

**[7 CFR 1.121] The criminal penalties which have been established for violations of the Privacy Act of 1974 are set forth in 5 U.S.C. 552a(i). These penalties are applicable to any officer or employee of an agency who commits any of the acts enumerated in 5 U.S.C. 552a(i). These penalties also apply to contractors and employees of such contractors who enter into contracts with an agency of USDA and who are considered to be employees of the agency within the meaning of 5 U.S.C. 552a(m)(1).**

**B Unauthorized Disclosures**

Any FSA employee may be convicted of a misdemeanor and fined not more than \$5,000, if the employee has possession or access to records and knowingly and willfully discloses any individual protected data or information that is included in a system of records to any person or agency.

**C Failure to Publish a Public Notice**

Any employee who willfully maintains a system of records without meeting the public notice requirement, according to 3-INFO, shall be guilty of a misdemeanor and fined not more than \$5,000.

**D Obtaining Records Under False Pretenses**

Any person who knowingly and willfully requests or obtains any record about an individual under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000.

**179-190 (Reserved)**

**\*--Part 8 Litigation****191 Settlements****A Authority to Settle for the Government**

The Department of Justice is vested with authority to settle in its sole discretion all litigation in which Government is a party. As a matter of Department of Justice policy, the concurrence of the affected agency will be sought before a settlement is agreed to. The FSA Administrator or Executive Vice President, CCC, will accordingly be afforded an opportunity to concur or **not** concur with terms contemplated for settlement of litigation.

**B ALS Role**

ALS assists the Administrator and Executive Vice President, CCC, in exploration and review of settlement terms and coordination and clearance of settlements through the affected program offices.

To allow for an orderly consideration of settlement proposals by the National Office, terms that may be considered or proposed for settlement of litigation should be brought to ALS's attention at the very earliest practicable opportunity.

**Notes:** STC's and State Offices do **not** have authority to concur with settlements for FSA.

This paragraph does **not** apply to servicing and resolving debts under authorities provided in specific regulations; such as 7 CFR Part 766 and other regulations.--\*

**\*--191 Settlements (Continued)**

**C Processing Approved Settlements**

ALS will coordinate with FMD to furnish information required to effect payment of litigation settlements.

No payment will be processed by FSA or CCC until a settlement agreement has been executed by **all** parties and has been approved by the court, the litigation has been dismissed, and all claims arising from the matter have been released either under terms of the settlement agreement or under a separately executed release.

Before a claim is processed for payment or to establish a claim for payments to be received under the settlement terms, ALS **must** receive a copy of the settlement agreement, and any separately executed release, showing its execution by all parties.--\*

**\*--191 Settlements (Continued)**

**D Information Required From Parties for Payment Under Terms of a Settlement or Court Order**

Generally, FMD processes payments under settlement agreements through EFT's. The following information is often required from the parties to effect payment:

- names of parties and mailing addresses of parties to receive payments
- Social Security or tax ID numbers of parties
- sums to be paid, total or respective payments depending on settlement terms
- name of financial institution, mailing address, tax ID number, and bank routing number of the financial institution to receive EFT
- name of the bank account and account number of the account to which the financial institution is to credit the transferred funds.

See Exhibit 61 for an example letter for EFT's that may be sent to parties seeking payment.--\*

**\*--192 Employees Appearing as Witnesses in Judicial or Administrative Proceedings**

**A Authorization**

**[7 CFR 1.212] No USDA employee may provide testimony or produce documents in a judicial or administrative proceeding unless authorized in accordance with regulations.**

FSA employees **must** obtain authorization **before** appearing in any judicial or administrative proceeding arising out of the employee's official duties with USDA or related to his or her employment with USDA. Appearance means testimony or production of documents and includes an affidavit, deposition, interrogatory, or other required written submission.

**Notes:** For the purposes of this Part, COC and STC members are treated the same as FSA employees.

Judicial proceeding means any case or controversy pending before any federal, state, or local court. Administrative proceeding means any proceeding pending before any federal, state, or local agency and undertaken for the purpose of the issuance of any regulations, orders, licenses, permits, or other rulings, or the adjudication of any matter, dispute, or controversy.

This Part does **not** apply to:

- proceedings that are purely personal or do **not** arise out of or relate to employment with USDA
- Congressional requests or Congressional subpoenas for testimony or documents.

Follow paragraph 98 for NAD proceedings.

**B Appearance on Behalf of the U.S.**

**[7 CFR 1.213] An employee of USDA may appear as a witness on behalf of the United States in any judicial or administrative proceeding without the issuance of a summons, subpoena, or other compulsory process.**

Employees in State or County Offices shall obtain written permission to appear as a witness on behalf of the U.S. from their SED. SED's and National Office employees shall obtain permission from their immediate supervisor.

Follow paragraph 98 for NAD proceedings.--\*

**\*--192 Employees Appearing as Witnesses in Judicial or Administrative Proceedings (Continued)****C Appearing as a Witness on Behalf of a Party Other Than the U.S. Where the U.S. is Not a Party, With a Subpoena**

**[7 CFR 1.214 (b)(1)] An employee of USDA served with a valid summons, subpoena, or other compulsory process, or requested to appear as a witness on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, may appear only if such appearance has been authorized by the head of his or her USDA agency, with the concurrence of the General Counsel, based upon a determination that such an appearance is in the interest of USDA.**

When an FSA employee is served with a valid summons, subpoena, or other compulsory process demanding his or her appearance, or is otherwise requested to appear on behalf of a party other than the U.S. in a judicial or administrative proceeding in which the U.S. is not a party, the employee shall promptly notify his or her supervisor of the existence and nature of the order compelling his or her appearance, and of the document requesting his or her attendance. He or she shall also specify, if known, the nature of the judicial or administrative proceeding and the nature of the testimony or documents requested.

The State Office shall forward the submitted information, along with a recommendation as to whether or not the testimony should be authorized, to ALS. ALS will coordinate the Administrator's authorization and OGC's concurrence.

Valid summons, subpoena, or other compulsory process means an order that is served properly and within the legal authority and the jurisdictional boundaries of the court or administrative agency or official that has issued it. If there is any question about the validity of a summons, subpoena, or other compulsory process, an employee shall contact the Regional Attorney for advice.--\*

**\*--192 Employees Appearing as Witnesses in Judicial or Administrative Proceedings (Continued)**

**D Appearing as a Witness on Behalf of a Party Other Than the U.S. Where the U.S. is Not a Party, Without a Subpoena**

**[7 CFR 1.214 (b)(2)] An employee of USDA requested to appear as a witness on behalf of a party other than the United States in a judicial or administrative proceeding in which the United States is not a party, without the service of a valid summons, subpoena, or other compulsory process, may appear only if such appearance has been authorized by the head of his or her USDA agency and approved by the appropriate Assistant Secretary, Under Secretary or other general officer, and by the General Counsel, based upon a determination that such an appearance is in the interest of USDA.**

**[7 CFR 1.219(d)] The responsibilities assigned to heads of agencies and to Assistant and Under Secretaries in 1.214(b)(2) of this part may not be redelegated.**

When an FSA employee is requested to appear on behalf of a party other than the U.S. in a judicial or administrative proceeding in which the U.S. is not a party, the employee shall promptly notify his or her supervisor of the existence and nature of the request, and of the document requesting his or her attendance. He or she shall also specify, if known, the nature of the judicial or administrative proceeding and the nature of the testimony or documents requested.

Forward the submitted information, along with a recommendation as to whether or not the testimony should be authorized, to ALS who will coordinate the authorization of the Administrator, the approval of the Under Secretary, and the approval of OGC.

**Note:** Crop insurance companies are considered parties other than the U.S.--\*



**\*--192 Employees Appearing as Witnesses in Judicial or Administrative Proceedings (Continued)**

**E Appearing on Behalf of a Party Other Than the U.S. Where the U.S. is a Party**

When an FSA employee is served with a valid summons, subpoena, or other compulsory process demanding his or her appearance, or otherwise requested to appear or produce documents on behalf of a party other than the U.S. in a judicial or administrative proceeding in which the U.S. is a party, the employee shall promptly notify his or her supervisor and OGC of the existence and nature of the order compelling his or her appearance, and of the document requesting his or her appearance. He or she shall also specify, if known, the nature of the judicial or administrative proceeding and the nature of the testimony or documents requested.

The State Office shall forward a summary of the information to ALS who will coordinate the approval or disapproval to appear.

An employee requested to appear as a witness or produce records on behalf of a party other than the U.S. in a judicial or administrative proceeding in which the U.S. is a party, without being served a valid summons, subpoena, or other compulsory process, may appear or produce records only if such appearance or production has been authorized by a representative of the Department of Justice, the U.S. Attorney, or other counsel who is representing the U.S. in the case of a judicial proceeding; or by the official or attorney representing the U.S., in the case of an administrative proceeding.

An employee may appear as a witness or produce records on behalf of a party other than the U.S. in a judicial or administrative proceeding in which the U.S. is a party if such appearance or production has been ordered by the service on the employee of a valid summons, subpoena, or other compulsory process issued by a court, administrative agency, or other official authorized to compel his or her appearance.

ALS will consult with OGC as to whether there are grounds to oppose the employee's attendance or production of documents and, if so, whether to seek to quash the summons, subpoena, compulsory process, or to deny authorization to testify.

Follow paragraph 98 for NAD proceedings.--\*

**\*--192 Employees Appearing as Witnesses in Judicial or Administrative Proceedings (Continued)****F Subpoenas Duces Tecum**

A subpoena duces tecum is a compulsory judicial process that directs a person served to appear producing documents as directed by the subpoena. These actions are handled as FOIA requests.

**[7 CFR 1.215 (a)] Subpoenas duces tecum for USDA records in judicial or administrative proceedings in which the United States is not a party shall be deemed to be requests for records under the Freedom of Information Act and shall be handled pursuant to the rules governing public disclosure.**

Whenever a subpoena duces tecum compelling the production of records is served on an FSA employee in a judicial or administrative proceeding in which the U.S. is not a party, the employee shall consult with OGC. The production of the records involved will be handled according to 2-INFO and 3-INFO.

**[7 CFR 215(b)] Whenever a subpoena duces tecum compelling the production of records is served on a USDA employee in a judicial or administrative proceeding in which the United States is not a party, the employee, after consultation with the General Counsel or his or her designee, shall appear in response thereto, respectfully decline to produce the records on the grounds that it is prohibited by this section and state that the production of the records involved will be handled in accordance with subpart A of this part.**

If OGC determines that service of process on the FSA employee is defective, the employee simply need **not** appear.

When the appearance of an FSA employee has **not** been authorized, but service of the subpoena duces tecum on the FSA employee is valid, SED will determine the need for any assistance by counsel and will request assistance of counsel by directing the request to the Regional Attorney serving the State.--\*

**\*--193 Administrative Tort Claims**

**A Overview**

Under FTCA provisions, as amended, 28 U.S.C. 2671–2680, and the regulations issued by the Department of Justice contained in 28 CFR Part 14, USDA may, subject to FTCA provisions and Department of Justice regulations, consider, ascertain, adjust, determine, compromise, and settle claims for money damages against the U.S. for personal injury, death, or property loss or damage caused by the negligent or wrongful act or omission of any employee of USDA while acting within the scope of his or her office or employment, under circumstances where the U.S., if it were a private person, would be liable, according to the law of the place where the act or omission occurred.

The procedures for determination and disallowance of claims are set forth in 7 CFR 1.51. Pursuant to 7 CFR 1.51(c)(1), determination and disallowance of claims under FTCA provisions, and Department of Justice and USDA regulations, is delegated to OGC and employees in OGC designated by OGC to determine claims pursuant to the applicable Department of Justice regulations.

**B Procedure for Filing Tort Claims**

See 58-FI, paragraphs 480 through 484 for FSA procedure on filing tort claims.--\*

**\*--194 Awards Under EAJA**

**A Overview**

USDA regulations implementing EAJA are found at 7 CFR Part 1, subpart J. NAD Hearing Officers and the NAD Director are Adjudicative Officers within the scheme of EAJA regulations.

Pursuant to the EAJA regulations, NAD hearing officers and the NAD Director make determinations on EAJA fee applications submitted by appellants prevailing in appeals to NAD.

See paragraph 29 for additional information and instructions regarding EAJA.--\*

**\*--194 Awards Under EAJA (Continued)****B Payment of EAJA Fee Awards**

No EAJA fee award payment will be processed by FSA or CCC until either of the following take place:

- a decision on a fee application by a NAD adjudicative officer (the USDA Juridical Officer or a reviewing court) has been issued and OGC has recommended, in writing, that the fee award should be paid, the amount of the award, and that the prevailing applicant has stated in writing that the fee award will not be appealed to a higher reviewing authority; or
- a fee settlement has been executed by all parties, including OGC on behalf of FSA, that has been approved by NAD or the court, the fee litigation has been dismissed, and all other claims arising from the matter have been released either under terms of the settlement agreement or under a separately executed release.

**Before** an EAJA claim is processed for payment, ALS **must** receive a copy of the fee award and supporting documentation or of any settlement agreement and any separately executed release showing its execution by all parties.

Generally, at ALS's request, FMD processes payments to be made under EAJA fee awards or fee settlement agreements through EFT's. The following information **must** be obtained from the parties:

- names of parties and mailing addresses of parties to receive payments
- Social Security or tax ID numbers of parties
- sums to be paid, total or respective payments depending on settlement terms
- name of financial institution, mailing address, tax ID number, and bank routing number of the financial institution to receive EFT's
- name of the bank account and account number of the account to which the financial institution is to credit the transferred funds; such as (*Law Firm Name*) Client Account number (*nn-nnnn-n*).

See Exhibit 61 for an example letter that may be sent to parties seeking payment.--\*



**Reports, Forms, Abbreviations, and Delegations of Authority**

**Reports**

None.

**Forms**

This table lists all forms referenced in this handbook.

<b>Number</b>	<b>Title</b>	<b>Display Reference</b>	<b>Reference</b>
FSA-533	Public Information Requested		151

**Abbreviations Not Listed in 1-CM**

The following abbreviations are not listed in 1-CM.

<b>Approved Abbreviation</b>	<b>Term</b>	<b>Reference</b>
2008 Farm Bill	Food, Conservation, and Energy Act of 2008	136
ADR	alternative dispute resolution	1, 13-15, 51, 74, 81, Ex. 8, 15
ALS	Appeals And Litigation Staff	Text, Ex. 4
EAJA	Equal Access to Justice Act	29, 73, 182
EQIP	Environmental Quality Incentives Program	41, 42
EFT	electronic funds transfer	191, 194
FLC	farm loan chief	104, 115
FLM	farm loan manager	13, 14, 24, 31, 115
FLO	farm loan officer	13, 14, 16, 24, 31
FTCA	Federal Tort Claims Act	193
GRP	Grassland Reserve Program	42
SAC	State appeals coordinator	4, 5, 78, 84, 86, 89, 98
TAA	Trade Adjustment Assistance	10
Title XII	Food Security Act of 1985, Title XII	3, 9, 13, 19, 21, 41-43
USPAP	Uniform Standards of Appraisal Practice	98

**Delegations of Authority**

None.





**Definitions of Terms Used in This Handbook (Continued)****\*--Civil Judgment**

[7 CFR 3017.920] **Civil judgment** means the disposition of a civil action by any court of competent jurisdiction, whether by verdict, decision, settlement, stipulation, other disposition which creates a civil liability for the complained of wrongful acts, or a final determination of liability under the Program Fraud Civil Remedies Act of 1988 (31 U.S.C. 3801–3812).--\*

**Confidential Mediation**

[7 CFR 780.2] **Confidential mediation** means a mediation process in which neither the mediator nor parties participating in mediation will disclose to any person oral or written communications provided to the mediator in confidence, except as allowed by 5 U.S.C. 574 [Administrative Disputes Resolution Act] or 7 CFR part 785 [regulations governing the Certified Agricultural Mediation Program].

**Constructive Knowledge**

Constructive knowledge is knowledge that a person using reasonable care or diligence should have, and; therefore, is attributed by law to a given person.

**\*--Conviction**

[7 CFR 3017.925] **Conviction means** — (a) A judgment or any other determination of guilt of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or plea, including a plea of nolo contendere; or (b) Any other resolution that is the functional equivalent of a judgment, including probation before judgment and deferred prosecution. A disposition without the participation of the court is the functional equivalent of a judgment only if it includes an admission of guilt.--\*

**De Novo Review**

A de novo review means reviewing the issue as if there had been no earlier ruling.

**\*--Debarment**

[7 CFR 3017.930] **Debarment** means an action taken by a debarring official under subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR Chapter 1). A person so excluded is debarred.--\*

**Discovery**

Discovery is the legal act or process of finding or learning something that was previously unknown. In general, discovery does **not** apply to NAD proceedings.

## Definitions of Terms Used in This Handbook (Continued)

### \*--Disqualified

[7 CFR 3017.940] **Disqualified** means that a person is prohibited from participating in specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under— (a) The Davis-Bacon Act (40 U.S.C. 276(a)); (b) The equal employment opportunity acts and Executive orders; or (c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

### Excluded or Exclusion

Excluded or exclusion means that, either by court order, agreement, settlement, or administrative process, a participant is prohibited from participating in or receiving benefits under some or all agency programs or may participate or receive benefits only under certain conditions. The time period of an exclusion may be limited or lifetime.--\*

### Handbooks, Notices, and Other Directives

Handbooks, notices, and directives are internal operating guidelines issued to field offices and employees to facilitate the implementation of a program or delivery of services as prescribed in enabling legislation (statute), regulation, or Federal Register notice. Generally, FSA handbooks, notices, and directives should be considered FSA's official generally applicable interpretation of enabling legislation or statute, regulation, or Federal Register notice.

### Hearing

[7 CFR 780.2] A **hearing** is an informal proceeding on an appeal to afford a participant opportunity to present testimony, documentary evidence, or both to show why an adverse decision should be reversed or modified.

### Hearsay

Hearsay, generally, is:

- second-hand knowledge
- testimony given by a witness based not what she or he knows personally, but what others have said.

## Definitions of Terms Used in This Handbook (Continued)

### Leading Question

A leading question is a question that:

- suggests an answer to the person being asked or interrogated
- requires either a yes or no answer or an answer on whether the person being questioned agrees or disagrees.

### Mediation

**[7 CFR 780.2] Mediation means a technique for resolution of disputes in which a mediator assists disputing parties in voluntarily reaching mutually agreeable settlement of issues within the laws, regulations, and the agency's generally applicable program policies and procedures, but in which the mediator has no authoritative decision making power.**

Mediation is a dispute resolution process in which a neutral person, who has received special training as a mediator, helps 2 or more parties:

- look at the issues
- attempt to identify and consider additional available options for resolution of a dispute
- determine whether they can agree on a solution to the dispute that complies with statutory, regulatory, and Agency procedural requirements.

### Mediator

**[7 CFR 780.2] Mediator means a neutral individual who functions specifically to aid the parties in a dispute during a mediation process.**

A mediator who meets and agrees to the requirements for impartiality will be considered neutral.

**Note:** A uniform minimum standard of training for qualified mediators is in 7 CFR Parts 780 and 785.

**Definitions of Terms Used in This Handbook (Continued)****Personal Hearing**

A personal hearing is an in-person hearing conducted either under FSA's informal appeals procedures or under NAD's procedures where the participant/appellant personally appears before the appeal reviewing authority to present evidence in the hearing proceeding.

**\*--Preponderance of the Evidence**

Preponderance of the evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.--\*

**Qualified Mediator**

**[7 CFR 780.2] Qualified mediator means a mediator who meets the training requirements established by State law in the State in which mediation services will be provided or, where a State has no law prescribing mediator qualifications, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by USDA, by an accredited college or university, or by one of the following organizations: State Bar of a qualifying State, a State mediation association, a State approved mediation program, or a society of dispute resolution professionals.**

In States without a USDA Certified State Mediation Program, FSA will not participate in mediation if a qualified mediator is not available. If a qualified mediator is available and accepted by the participant, FSA will notify third parties and interested parties of the mediation (paragraph 14).

**Note:** In loan servicing actions, FSA will not participate in mediation if a qualified mediator is not available, but will attend any meeting of creditors requested by a participant to the extent that it may be required under any applicable regulation or other regulation.

Definitions of Terms Used in This Handbook (Continued)

**Reconsideration**

[7 CFR 780.2] **Reconsideration** means a subsequent consideration of a program decision by the same level of decision-maker or reviewing authority.

**Record Review**

A record review is an appeal considered by a NAD hearing officer without any hearing in which the hearing officer's determination is based on FSA's record and other written information submitted by the appellant and FSA.

**Relevant Evidence**

Relevant evidence means evidence that has any bearing on any fact that is of consequence to the case or decision.

**Res Judicata**

Res judicata means something that was already decided or settled and **cannot** now be brought up for review or decision.

**Definitions of Terms Used in This Handbook (Continued)****Stipulation**

A stipulation is a voluntary agreement between opposing parties in an administrative appeal proceeding.

**Subpoena**

A subpoena is an order compelling someone to appear and give testimony or produce documents.

**\*--Suspension**

**[7 CFR 3017.1015] Suspension is an action taken by a suspending official under subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.--\***

**Telephone Hearing**

A telephone hearing is a hearing that is:

- held on the telephone
- essentially the same as if the hearing were in person.

**Verbatim Transcript**

**[7 CFR 780.2] A verbatim transcript means an official written record of proceedings in an appeal hearing or reconsideration of an adverse decision appealable under 7 CFR Part 780.**

Example Letter to Participants or Payees for EFT's



United States  
Department of  
Agriculture

Farm and Foreign  
Agricultural  
Services

Farm Service  
Agency

1400 Independence  
Ave, SW  
Stop 0570  
Washington, DC  
20250-0570

**TO:** (Enter name of participant or payee; such as, "I. Am Farms")

**THROUGH:** (Enter name and address of the participant's attorney or representative; such as, "Lawyers are Us, P.O. Box 1, Fargo, ND 58103")

**FROM:** Farm Service Agency  
Appeals and Litigation Staff, Room 6722-S  
1400 Independence Ave., SW  
Washington, D.C. 20250

**PHONE:** 202-690-3297 FAX: 202-690-3003

**SUBJECT:** Data Required for Electronic Funds Transfer

In connection with an agreement or order directing that payment be issued, the Farm Service Agency requests the following information.

<b>Participant's Name:</b>	<i>I. Am Farms</i>
<b>Last 4 of Participant's Tax ID:</b>	<i>1234</i>
<b>Participant's Mailing Address:</b>	<i>P.O. Box A, Fargo, ND 58103</i>
<b>Participant's Phone:</b>	<i>701-555-1515</i>
<b>Do you want payment to go to you as participant or someone else?</b>	If participant wants payment to be issued directly to the participant, <b>leave this block blank</b> . If participant wants payment issued to another designated account; such as the attorney or a law firm, enter name and address where the participant wants the payment issued: <i>Lawyers are Us P.O. Box 1 Fargo, ND 58103</i>
<b>Please complete the following for the account where you want funds deposited.</b>	
<b>Name and address of bank or financial institution where you want payment to go:</b>	<i>Dakota Financial Financial Street Fargo, ND 58103</i>
<b>Bank Routing Number:</b>	<i>123456789</i>
<b>Account Number:</b>	<i>987654</i>
<b>Name of Owner on Account:</b>	<i>Lawyers are Us, Escrow and Trust Account</i>
<b>Tax ID of owner of account (only to assist in identification of owner with bank):</b>	If this is the same as the participant, <b>leave this block blank</b> . <i>12-3456789</i>
<b>PLEASE SUBMIT THIS FORM TOGETHER WITH A COPY OF A VOIDED CHECK AND BLANK DEPOSIT SLIP OF THE ACCOUNT WHERE YOU WANT FUNDS DEPOSITED.</b>	

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