

**DECISION MEMORANDUM FOR THE DEPUTY CHIEF, STRATEGIC
PLANNING AND ACCOUNTABILITY AND FOR THE DEPUTY CHIEF,
PROGRAMS
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FROM: Carlos Henning
Director
Conservation Planning and Technical Assistance Division

SUBJECT: Appointing Collateral-Duty NRCS State Appeals Coordinators

ISSUE:

The National Appeals Division (NAD) has requested that the Natural Resources Conservation Service (NRCS) establish a “Point-of-Contact” (POC) in each State, the Caribbean Area and the Pacific Basin to serve as a point of contact for all NAD appeals of NRCS program decisions not subject to prior Farm Service Agency (FSA) jurisdiction.

This collateral duty assignment is needed in order for the agency to be appropriately responsive to a program participant’s request for appeals or appealability reviews from the National Appeals Division (NAD).

BACKGROUND:

NRCS, has, since the 1996 and 2002 Farm Bills, been responsible for an ever increasing variety of financial, technical, and educational assistance conservation programs. Included in this responsibility is the provision of appeals and mediation rights to all program participants that receive an adverse program decision or technical determination from an NRCS official. Prior to the 1996 and 2002 Farm Bills, the majority of appeals that involved NRCS were for technical determinations of the Highly Erodible Land and Wetland Conservation provisions. Appeals of these decisions must be appealed through the FSA COC as a requirement of the appeals statutory authority (*see 7 U.S.C 6932(d)(1)*).

Program decisions issued by NRCS officials can, by law, follow several paths to the National Appeals Division, depending upon the program authority. Most of the programs over which NRCS has administrative authority are authorized under Title XII of the Food Security Act of 1985, as amended. This includes all of the following programs:

- Conservation Security Program (CSP)
- Environmental Quality Incentives Program (EQIP) including:
 - Conservation Innovation Grants (CIG)
 - Conservation Partnership Initiative (CPI)
- Farm and Ranch Lands Protection Program (FRPP)
- Grassland Reserve Program (GRP)
- Wildlife Habitat Incentives Program (WHIP)
- Wetlands Reserve Program (WRP), including the EWRP.

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A USDA participant must be provided the following appeal rights when NRCS issues an adverse *program decision* in any of the programs listed above:

- Optional appeal to the FSA COC; or
- Mediation; or
- Appeal to NAD

Other programs authorities, including those listed previously, or provisions for which NRCS has technical responsibilities include:

- Conservation Reserve Program (CRP), including:
 - Conservation Reserve Enhancement Program (CREP)
- Highly Erodible Land Conservation Provisions
- Wetland Conservation Provisions

A USDA participant must be provided the following appeal rights when NRCS issues an adverse *technical determination* in any of the programs or provisions listed above:

- Mandatory appeal to the FSA COC; or
- Mediation.
- FSA will provide rights to Appeal to NAD

Those programs administered by NRCS not authorized under Title XII of the Food Security Act of 1985, as amended are as follows:

- Agricultural Management Assistance (AMA)
- Emergency Watershed Program, (EWP) Floodplain Easement Program
- Resource Conservation & Development (RC&D) (individual landowner decisions)
- Soil and Water Conservation Assistance (SWCA)
- Watershed Protection and Flood Prevention Program (WPFPP) Land Treatment Contracts with individual landowners.

A USDA participant must be provided the following appeal rights when NRCS issues an adverse *program decision* in any of the programs listed above:

- Appeal to the State Conservationist; or
- Mediation; or
- Appeal to NAD

Procedure in the NAD Hearing Officers Guide requires that when a USDA program participant appeals to NAD, that the agency POC receive all notification of requested, required, or pending NAD action. Because NRCS has, in most cases, not established a POC with NAD, most communications are sent either to the STC or to the

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Chief. In either case, notifications sent via this route result in major delays due to routing through multiple levels before the agency is able to act upon the information provided.

With a majority of decisions now being issued by NRCS falling into the category where NRCS is responsible for all the administrative appeal procedures, it would be remiss of the agency not to act on NAD requests timely. These can include any or all of the following actions:

- Receiving and distributing all notices sent by NAD relative to appeal activities in the State.
- Reviewing all NAD documents regarding decisions rendered on NRCS program decisions.
- Recommending requests for NAD Director Review to the STC of any decision overturned by the NAD Hearing Officer on appeal.
- Assembling the Agency Record and providing any information requested by NAD to both NAD and the Appellant.
- Assembling all information needed to develop a request for a NAD Director Review.
- Ensuring that the NAD decision, if upheld by the NAD director, has been implemented within the statutory timeframe.

Since the Environmental Quality Incentives Program (EQIP) program administration was switched from FSA totally to NRCS, appeals of EQIP decisions, which have increased by approximately 300 percent over the last two years. However, because NAD does not have an appropriate NRCS point-of-contact for each State Office of NRCS, many of the appeal notices and decisions are not timely enacted upon by NRCS due to being sent to the State Conservationist for action. If the STC is not available to review his or her mail timely, the NAD communication will be and, in the past, has been delayed in processing.

Because all appeals actions have a statutorily mandated time line for action (usually 5 to 15 working days for response) any delay in transmission to the correct person for action decreases that agency's ability to prepare the required document for timely response. Accordingly, it is important that each State have a NAD "point-of-contact" in order to fully implement the agency's program authorities.

RECOMMENDATION:

Option 1: NRCS will appoint a State Appeals Coordinator, collateral duty assignment to assist in appeals of NRCS program and technical determinations.

Pros:

- Statutory deadlines will be met more efficiently.
- Program administration will be implemented effectively.
- Agency program decisions and technical determinations will receive appropriate consideration and defense as needed before NAD.

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Cons:

- Statutory deadlines will not be met more efficiently.
- The agency's administration of conservation programs will not be as effective.
- An additional workload (approximately 5% of time) will be imposed on the State appeals POC.

Option 2: Have all NAD notices and decisions sent through the NRCS National Appeals Coordinator for further routing to the appropriate State program manager.

Pros:

- Statutory deadlines will be met somewhat more efficiently.
- Program administration will be implemented somewhat effectively.
- Agency program decisions and technical determinations will receive appropriate consideration and defense as needed before NAD.

Cons:

- National Appeals Coordinator will need to log, date, and forward all NAD notices and determinations to the appropriate State program manager, possibly resulting in delays.
- An additional workload (approximately 5% of time) will be imposed on the State program managers.
- An additional workload will be imposed on the National Appeals Coordinator.
- STC's will still need to provide a current listing of State program managers to the National Appeals Coordinator.

Option 3: Do nothing.

Pros:

- Status quo will be maintained.
- No additional workload will be imposed at the State level of NRCS.

Cons:

- Statutory deadlines will not be met efficiently.
- The agency's administration of conservation programs will not be as effective.

Recommended Option:

Option Number 1

DECISION BY THE DEPUTY CHIEF FOR PROGRAMS

Approve _____

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Disapprove _____

Discuss with me _____

Date _____

Reviewed by _____

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