

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

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

Amendment 14

Approved by: Administrator



Amendment Transmittal

A Reason for Amendment

Paragraph 42 has been amended to clarify if the NRCS determination is a program determination, the landowner or program participant may also appeal to the NRCS State Conservationist.

Subparagraph 117 B has been amended to update STC actions.

Paragraph 129 has been amended to clarify procedure for FSA requests for reconsideration of NAD Director reconsideration.

Paragraph 130 has been added to provide procedure for appellant requests for reconsideration of NAD Director's determinations.

Paragraph 131 has been added to provide procedure for the timing of reconsideration determinations.

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42 Procedures for Reviewing NRCS * * * Determinations (Continued)**B Summary of NRCS Procedure for Appeals of Title XII Determinations**

Landowners and program participants may dispute NRCS Title XII determinations * * * made by NRCS under NRCS's informal appeals procedures in 7 CFR Part 614. The following are some examples of Title XII programs:

- CRP
- EQIP
- GRP
- HELC and WC, including wetland * * * determinations made by NRCS officials even when **not** about a request for USDA program benefits
- WRP.

Note: GRP, WRP, and other easement program appeals are limited to decisions about landowner and land eligibility. Any decision made by NRCS following acquisition and payment of those real property rights acquired under the easement is **not** subject to appeal under USDA administrative appeals procedures according to 7 CFR 614.4(d).

42 Procedures for Reviewing NRCS Determinations (Continued)

C Title XII Determinations

If there is any question about an NRCS decision, FSA **must** consult with NRCS.

If NRCS determines that an initial determination is **not** adverse to the participant, NRCS may issue the initial determination as a final decision and FSA may rely on the initial determination.

Regulations at 7 CFR 614.6 require NRCS to notify the landowner and/or program participant of a preliminary determination, in writing, by mail or hand delivery. The preliminary determination will become final after 30 calendar days if the landowner or program participant does **not** arrange with the designated conservationist for either or both of the following options:

- a field visit to the site to gather additional information and to discuss the facts about the preliminary determination together with, at the option of the conservation district, a district representative
- mediation.

Once an adverse Title XII determination is final, either because the initial determination was final or because the preliminary determination became final, the landowner or program participant may appeal to * * * FSA or NAD.

--If the NRCS determination is a program determination, the landowner or program participant may also appeal to the NRCS State Conservationist.--

42 Procedures for Reviewing NRCS Determinations (Continued)

H Notice of Final Determination

The final determination **must**:

- furnish notice to the landowner or program participant of the following:
 - decision and its basis, including all factors and facts relied on in making the decision
 - procedures for requesting and pursuing further reviews of the final technical determination
- provide applicable appeal rights
- be furnished, as a copy, to FSA by NRCS.

I FSA's County Office Action

After NRCS has notified FSA of the final determination, the County Office shall:

- determine the effect of NRCS's determination on participation or requested participation in any FSA-administered program
- if applicable, issue a notification letter to the participant, within 10 calendar days of the date the County Office received the final NRCS determination that will inform the participant of any FSA decision that results from the final NRCS determination.

Note: The 10 calendar days will allow the participant to file an appeal on both the NRCS determination and any related adverse FSA decision so the hearing can be held on both issues concurrently.

J Participant Appeal Options

--Participants may appeal the NRCS final determination to either FSA or NAD and may appeal an NRCS program determination to the NRCS State Conservationist.--

Note: NRCS determinations are subject to administrative review by NAD.

43 FSA’s Consideration of NRCS Determination Appeals

A COC/STC Consideration of NRCS Appeals

Handle COC/STC considerations of NRCS appeals according to this table.

IF COC and/or STC determine that a participant’s appeal of the NRCS determination has...	THEN COC and/or STC shall...
merit or is not frivolous	refer the case, through SED, to State Conservationist to review the * * * determination before issuing a decision. The referral must include, in writing, the reasons COC or STC determined the case had merit or was not frivolous. Note: If other FSA issues have been made a part of the appeal and depend on NRCS’s determination, COC or STC shall not make a decision about FSA issues until State Conservationist’s determination is received.
no merit or is frivolous	issue the decision and provide appropriate appeal rights according to subparagraph 13 B. Document reasons why COC or STC considered the appeal to have no merit or is frivolous.

Note: Review by State Conservationist is pursuant statute and to NRCS appeal regulations.

B Action Following State Conservationist Review

[7 CFR 780.11(d)] The county or State committee decision must incorporate, and be based upon, the results of the NRCS State Conservationist’s review and subsequent determination.

117 Appellant Requests for NAD Director Review of Hearing Officer Determinations**A Responding to Appellant-Filed Requests for NAD Director Review**

[7 CFR 11.9(c)] Other parties to an appeal may submit written responses to a request for NAD Director review within 5 business days from the date of receipt of a copy of the request for review.

FSA has 5 workdays from first receiving a copy of an appellant request for NAD Director review in which to file its response.

Notes: In some instances, it may be appropriate for FSA to submit a timely response to an appellant-filed request for NAD Director review even though FSA may later or subsequently submit its own NAD Director review request. For example, a response to an appellant-filed request for NAD Director review may help keep NAD focused clearly on what is at issue or why FSA's overall position should be upheld or affirmed.

FSA sometimes may receive a copy of an appellant-filed request for NAD Director review before FSA has received an official copy of the NAD hearing officer determination. In such cases, FSA shall indicate in its response that FSA has not yet received a copy of the hearing officer determination.

117 Appellant Requests for NAD Director Review of Hearing Officer Determinations (Continued)

B SED Action

Because of the limited time * * * which FSA has to submit responses to appellant-filed requests for NAD Director review, SED's are responsible and authorized to do all of the following:

- prepare and sign FSA responses to appellant-filed requests for NAD Director review
- send FSA responses directly by FAX to the applicable NAD Regional Office
- *--send copies to ALS, appellant, appellant representatives, and all appeal parties--* involved (that is, as shown on the hearing officer determination).

Note: If the hearing officer determination reversed FSA or found FSA error, coordinate the response with ALS to ensure that submissions do **not** conflict with an FSA request for NAD Director review.

In general, FSA shall attempt to submit a timely response to **any** appellant-filed request for NAD Director review, even if the appellant-filed request contains no new information or *--information showing substantial error on the part of the hearing officer. In its response for these cases, FSA should point out that the appellant has not provided any new information or shown a substantial error and reaffirm why FSA believes its adverse decision that was--* upheld by the hearing officer is correct.

If an appellant requests the NAD Director review in a case where a NAD hearing officer upheld FSA's determination and the FSA National Office has been involved, the State Office must consult with the appropriate program division in the National Office to coordinate a response to the appellant's Director's review request. If the State Office believes a response is not appropriate in such cases, the State Office must obtain concurrence from the appropriate program division in the National Office.

See Exhibit 51 for an example of a response to an appellant-filed request for NAD Director review.

***--129 FSA Requests for Reconsideration of Director Review Determinations**

A Justification for FSA to Seek NAD Director Reconsideration--*

[7 CFR 11.11] Reconsideration of a determination of the Director may be requested by the appellant 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 to 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, will 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.

* * *

--130 Appellant Requests for Reconsideration of Director Review Determinations*A Justification for Appellant to Seek NAD Director Reconsideration**

[7 CFR 11.11] Reconsideration of a determination of the Director may be requested by the appellant 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 to statute or regulation, which would justify the reversal or modification of the determination.

B SED Action

Because of the limited time which FSA has to submit responses to appellant-filed requests for NAD Director reconsideration, SED's are responsible and authorized to do all of the following:

- prepare and sign FSA responses to appellant-filed requests for NAD Director reconsideration
- send FSA responses directly by FAX to the NAD Director's office
- send copies to ALS, appellant, appellant representatives, and all appeal parties involved (that is, as shown on the NAD Director determination).

Note: If the NAD Director determination reversed FSA or found FSA error, coordinate the response with ALS to ensure that submissions do **not** conflict with an FSA request for NAD Director reconsideration.

In general, FSA shall attempt to submit a timely response to **any** appellant-filed request for NAD Director reconsideration, even if the appellant-filed request contains no new information or information showing substantial error on the part of the NAD Director. In its response for these cases, FSA should point out that the appellant has not provided any new information or shown a substantial error and reaffirm why FSA believes its adverse decision that was previously upheld by the NAD Director is correct.

If an appellant requests NAD Director reconsideration in a case where the NAD Director upheld FSA's determination and the FSA National Office has been involved, the State Office must consult with the appropriate program division in the National Office to coordinate a response to the appellant's Director's reconsideration request. If the State Office believes a response is not appropriate in such cases, the State Office must obtain concurrence from the appropriate program division in the National Office.--*

***--131 Timing of Reconsideration Determinations**

A Reconsideration Determinations

[7 CFR 11.11] 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.

Although the regulations include a limited time for the NAD Director to issue a determination when an agency or appellant requests NAD Director reconsideration, courts have consistently held that such deadlines are aspirational. There is no penalty or sanction if NAD fails to meet such deadlines. Courts have concluded that it is more important to have sound, correct, well-reasoned determinations than hasty determinations.--*

132-134 (Reserved)

