



United States
Department of
Agriculture



FACT SHEET

UNITED STATES DEPARTMENT OF AGRICULTURE
FARM SERVICE AGENCY

January 2011



Appeals

Background

The National Appeals Division (NAD) of the U.S. Department of Agriculture (USDA) was established by the Secretary of Agriculture on October 20, 1994, pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. The Act consolidated the appellate functions and staffs of several USDA Agencies to provide for independent hearings and reviews of adverse Agency decisions.

NAD is responsible for all administrative appeals arising from program activities or assigned Agencies, as well as such other administrative appeals arising from decisions of Agencies of USDA designated by the Secretary. NAD appeals involve program decisions of the Farm Service Agency (FSA), Risk Management Agency (RMA), Natural Resources Conservation Service (NRCS), and Rural Development (RD).

NAD Process

Who can appeal to NAD?

A participant in a program administered by certain USDA agencies that has received an adverse decision by the agency may be able to appeal the adverse decision to NAD to adjudicate if the agency erred in its decision.

What can be appealed to NAD?

The law provides that a decision by an agency over which NAD had jurisdiction, which is adverse to a

participant, can be appealed to NAD by the participant.

Some adverse decisions may be initially determined by an agency as not appealable, but the FSA State Executive Director or the Director of NAD may finally determine if it is appealable. A timely request may be made to NAD for determination of the appealability of a specific adverse decision and the Director determines if:

- the adverse decision is a matter of general applicability and not subject to appeal, or
- adverse to the individual participant and thus appealable.

How to File an Appeal

An appeal must be in writing and must be submitted by the participant who receives the adverse decision. The appeal must be signed personally by an appellant, but does not need to be notarized.

An appeal in Montana should be filed at:

Western Regional Office

755 Parfet Street
Suite 494
Lakewood, Colorado 80215-5506
Phone: 1-800-541-0483
(303) 236-2862
TTY: 1-800-497-0253
Fax: (303) 236-2820

An appeal must be received in the Western Regional Office no later than 30 calendar days after the participant received a NAD

determination that an agency decision is appealable. The appeal should state what agency decision is being appealed and should include a copy of the adverse decision and a brief statement of why the decision is wrong. A copy of the appeal request should be sent to the agency.

How the Appeal is Processed

When a perfected appeal is received in the Western Regional Office, it is assigned to a Hearing Officer. An appellant may elect a:

- telephone-hearing,
- request a record review, or;
- an evidentiary hearing in person.

The Hearing Officer will consider the agency record, together with evidence submitted by the appellant and the agency. The hearing will be conducted in a manner that will obtain the facts relevant to the matters at issue. There are no formal rules of evidence. An in-person hearing will be held in the appellant's state of residence or at a location that is otherwise convenient. A tape recording constitutes the official record of the hearing and the parties have a right to a copy of the official records.

The Prehearing Teleconference

The hearing officer may hold a telephone conference call with the appellant and the agency before the hearing. The prehearing conference is designed to attempt to resolve the dispute or narrow

the issues involved. During the prehearing teleconference, the hearing officer assures that everyone is prepared for the hearing, and sets the time and place of the hearing. Stipulations may be made, the need for specific witnesses discussed, and the need for certain evidence decided.

The Hearing

Hearings are scheduled within 45 days of the date the appeal was received in the Western Regional Office. At the hearing, the appellant and the agency may present relevant testimony and documentary evidence. The hearing officer conducts the hearing in a manner to afford the appellant an opportunity to prove by preponderance of evidence that the agency's decision was erroneous. The Hearing Officer is not bound by previous finding of fact on which the agency's decision was based, and issues a determination consistent with the laws and regulations of the agency and their generally applicable interpretations. The Hearing Officer may leave the hearing record open for a reasonable period following the hearing for the submission of additional information. At the end of that period, the hearing record is deemed closed.

The Appeal Determination

The hearing officer issues a determination in the case within 30 days of closing the hearing record if the hearing was in-person or by telephone. If the appellant requested a record review, a determination is issued within 45 days of receipt of the request for a record review.

In the determination, the hearing officer determines if the appellant proved that the agency erred in its adverse decision.

The determination may be subject to a review by a NAD Director, if a timely request is made by the

appellant or the head of the agency.

If no request for a Director's review is timely filed, the hearing officer's determination becomes final.

The Director's Review

If the hearing officer determined that the agency erred, the head of the agency has 15 business days from receipt of the determination to request that the Director review the hearing officer's determination. The request must be signed by the head of the agency and must include specific reasons why the hearing officer's determination is wrong, including citations of law or regulation the agency believes that determination violates.

If the hearing officer determined that the agency was not in error, the appellant has 30 calendar days from the day he/she receives the determination to request that the Director review the hearing officer's determination. An appellant's request for a Director's review must be signed by the appellant and must include specific reasons why the appellant believes the hearing officer's determinations are wrong.

For Additional Information

Additional information may be obtained at local FSA offices or through the Montana FSA Web site at www.fsa.usda.gov/mt. The telephone numbers are usually listed in the telephone directory under the United States Government, U.S. Department of Agriculture.

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