

UNITED STATES DEPARTMENT OF AGRICULTURE

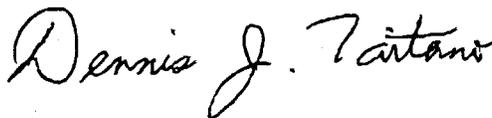
Farm Service Agency

Washington, DC 20250

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

Amendment 4

Approved by: Acting Administrator



Amendment Transmittal

A Reason for Amendment

Mediation is:

- part of FSA's informal appeals process
- the **only** ADR form that applies to FSA program decisions.

Therefore, without changing any policy or administrative review rights, subparagraphs 1 A, 14 E, 15 C, and 74 B, paragraph 13, and Exhibits 8 and 15 have been amended to replace ADR with mediation.

Note: Some references to ADR have been left because ADR is used in some original regulatory text.

Subparagraph 2 B has been amended to clarify shipping procedure.

Subparagraph 2 C has been amended to update ALS contact information.

Subparagraph 6 has been amended to add references to temporary directives.

Paragraph 9 has been amended to clarify that decisions must be related to a program application form, contract, or agreement in order to be considered a decision subject to appealability, reconsideration, mediation, or appeal.

Paragraphs 10 and 11 have been amended to provide:

- additional guidance to distinguish between matters that are outside the scope of program appeals and nonappealable program decisions
- examples of situations that are outside the scope of program appeals or are nonappealable program decisions.

Paragraph 13 has been amended to provide guidance on decisions of State Office employees.

Amendment Transmittal (Continued)

A Reason for Amendment (Continued)

Paragraph 19 has been amended to clarify FSA record procedure.

Subparagraph 25 B has been amended to clarify procedure for obtaining ALS written concurrence before reopening any case or decision that has become administratively final.

Subparagraphs 135 B, 136 B, and 136 C have been amended to clarify reporting procedure for implementing NAD decisions.

Paragraph 151 and Exhibit 1 have been amended to remove reference to FSA-533 because it is not longer applicable to this handbook.

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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:
 - * * * 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 http://www.gpoaccess.gov/cfr/index.html .
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.

For FedEx, UPS, or other Approved Overnight Mail Delivery	For USPS Delivery
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 to send case files or packages to ALS, or when time is a factor. USPS regular mail should be used **only** for routine letter--* correspondence.

C ALS Contact Information

ALS contacts are as follows.

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

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

* * *

- 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.

* * *

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

***--6 State Supplements and Temporary Directives About Appeals and Litigation Matters**

A SED Responsibilities

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

B State Supplement and Temporary Directive Approval

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

7 (Reserved)

9 Appealable Issues

A Issues for Which Appeals are Applicable

--[7 CFR 780.4(b)] With respect to the matters identified in 780.4(a) (quoted in--
subparagraph 8 A), **participants may request appealability review, reconsideration,**
mediation, or appeal under the provisions of this part of decisions made with respect to:

- (1) Denial of participation in a program;**
- (2) Compliance with program requirements;**
- (3) Issuance of payments or other program benefits to a participant in a program; and**
- (4) Determinations under title XII of the Food Security Act of 1985, as amended, made by NRCS.**

***--Participants may seek appealability review, reconsideration, mediation, or appeal of decisions made along with a program application, form, agreement, or contract. The decision may be any of the following:**

- a denial of benefits or payment under an application or contract--*
- compliance with program requirements

Example: Livestock are discovered grazing on a participant's CRP crop acreage. The participant is notified that the participant is violating CRP provisions because the participant has failed to comply with the requirement **not** to permit or allow livestock to graze CRP crop acreage. Although the participant **cannot** appeal the program provision that prohibits grazing, the participant could attempt to show on appeal that FSA's findings are inaccurate.

- NRCS technical determinations according to Part 4
- errors in documentation and calculations necessary to determine program eligibility
- errors in calculations and documentation to determine ability to repay FLP assistance, either in connection with loan servicing or a request for a new loan
- all matters relating to correctly applying regulations pertinent to an issue of fact

9 Appealable Issues (Continued)

A Issues for Which Appeals are Applicable (Continued)

- appraising security except negotiated appraisals related to primary loan servicing
- whether a participant is farming in a farmer-like manner.

B Who May Seek Review of FSA Program Decisions

[7 CFR 780.4(c)] Only a participant directly affected by a decision may seek administrative review under 7 CFR 780.5(c).

*--Participants include third parties who are directly affected by a determination.

Determinations only result after an application, form, or contract is signed by a participant.

10 Matters Outside the Jurisdiction of 7 CFR Part 780 and the Informal Appeals Process

A Matters Outside the Scope

Generally, only program determinations, including eligibility decisions and extent of eligibility decisions **issued in response to particular applications, contracts, loan agreements, or similar instruments**, are subject to appeal, mediation, or appealability. Other matters (see examples this subparagraph), are **not** decisions issued to participants or matters subject to appeal, mediation, or appealability. Accordingly, verbal or written communications about the following issues or examples shall **not** be construed to be an adverse decision that gives rise to any appeal, mediation, or appealability review right.

The following are examples of matters or issues outside the scope of 7 CFR Part 780 and the informal appeals process:

- written or verbal responses to inquiries about eligibility, extent of eligibility, or status that are **not** the result of a specific application, contract, or other similar document under which a participant is seeking an administrative determination.

Note: A response to an inquiry, even if about an earlier determination or decision or appeal, shall **not** be construed to be a reopening of a case or a new determination giving rise to any sort of appeal, review, or appealability rights (paragraph 25).

- matters decided by FSA or someone else, but **not** in response to an individual applicant or participant
- issues that do **not** result in individual determinations, but which may or may **not** impact individual applications; such as definitions of eligible crops, prices, average yields, factors, signup dates or deadlines, or other generally applicable matters **not** decided in response to any specific application, applicant, or participant--*

***--10 Matters Outside the Jurisdiction of 7 CFR Part 780 and the Informal Appeals Process (Continued)**

A Matters Outside the Scope (Continued)

- decisions resulting from matters administered with funding furnished by non-Federal providers
- matters administered by FSA for or on behalf of others under Memorandums of Understanding with USDA agencies

Example: TAA programs are **not** CCC or FSA programs and are **not** subject to FSA or CCC regulations, including relief regulations. Accordingly, adverse decisions under TAA are **not** reviewable administratively by FSA or NAD.

- decisions or communications about nonprogram loans
- anything about FSA's handling or priority of assignments of payments
- denying access to records or other information under FOIA or Privacy Act and implementing regulations, directives, and notices that are appealable under FOIA or the Privacy Act (Part 7)
- an FSA reviewing authority's refusal to consider equitable relief

Note: Relief determinations are subject to appeal; however, FSA's electing **not** to consider relief is **not** an adverse decision giving rise to any appeal, mediation, or appealability right. Relief is entirely discretionary; participants are **not** entitled to relief or consideration of relief.

- administrative matters, such as where FSA locates Service Centers or provides structures for conducting FSA business
- a lack of program funding
- U.S. grain standard determinations made under CCC loan and purchase programs
- interest rates established by either FSA or CCC
- refusal by SED or any other FSA official or committee to consider, request, or further a request for administrative waiver, variance, or relief
- requirements that participants furnish information such as cash flow statements, farm operating plans, applications, etc.
- withholding payments according to 7 CFR Part 1403 and 58-FI.--*

***--10 Matters Outside the Jurisdiction of 7 CFR Part 780 and the Informal Appeals Process (Continued)**

B Handling Decisions Outside the Scope

If FSA issues a verbal or written communication or statement for any of the matters or issues identified in subparagraph A, the communication or statement shall **not** do either of the following:

- include a determination of eligibility or extent of eligibility
- provide any appeal, mediation, or appealability review rights.--*

11 Nonappealable Decisions

A Decisions That Are Not Appealable

--[7 CFR 780.5(a)] Decisions that are not appealable under this part shall include those based on the following:--

- (1) Any general program provision or program policy or any statutory or regulatory requirement that is applicable to similarly situated participants;**
- (2) Mathematical formulas established under a statute or program regulation and decisions based solely on the application of those formulas;**
- (3) Decisions made pursuant to statutory provisions that expressly make agency decisions final or their implementing regulations;**
- (4) Decisions on equitable relief made by a State Executive Director or State Conservationist pursuant to Section 1613 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107-171;**
- (5) Decisions of other Federal or State agencies;**
- (6) Requirements and conditions designated by law to be developed by agencies other than FSA;**
- (7) Disapprovals or denials because of a lack of funding;**
- (8) Decisions made by the Administrator or a Deputy Administrator that may otherwise be appealable under this part.**

--Only decisions are subject to appeal, mediation, or appealability provisions. For examples of matters or issues that are **not** decisions, see paragraph 10.--

11 Nonappealable Decisions (Continued)

B Examples of Decisions That Are Not Appealable

The following are examples of some things that are **not** appealable:

- *--decisions based on program or administrative provisions, policies, or statutory or regulatory requirements that are generally applicable to all similarly situated participants and there is no dispute of fact--*
- determinations that are solely the result of mathematical calculations made according to a prescribed formula
- *--determinations based on U.S. grain standard determinations made under the CCC loan and purchase programs
- decisions based on interest rates established by either FSA or CCC--*
- denying assistance or payment because of a lack of program funding

* * *

- *--determinations based on program provisions precluding any particular type of--* organization, individual, or entity from being considered an eligible participant

* * *

- negotiated appraisals relating to primary loan servicing programs

* * *

- *--decisions based on requirements and conditions designated by law to be developed by agencies other than FSA; such as flood plain designations, archaeological and historical area preservation requirements, areas designated as inhabited by endangered species, etc.

Note: In these examples, the program determination or decision would be considered a nonappealable decision if there were no other facts in dispute. Follow paragraph 15.--*

12 Required Elements of an Adverse Decision Letter

A FSA Policy About Required Elements of an Adverse Decision Letter

Generally, to minimize confusion on the part of participants, FSA does **not** issue letters notifying participants of the opportunity to challenge, seek reconsideration, or appeal, favorable decisions. However, FSA is required by law and regulation to notify participants of adverse decisions. Those notification letters **must** contain the following common elements:

- background; a brief narrative explaining the reason for the letter
- general program provisions; a statement about the program for which the participant filed an application, executed a contract, sought a determination, or the provision that brought about the need for an administrative determination
- FSA's findings; a general discussion of the pertinent facts based on specific references to either the application, contract, information submitted by the participant, or other relevant information or evidence that can be and is specifically cited and referenced in the decision letter
- discussion; a narrative explaining the findings together with the general program provisions
- determination; FSA's decision based on the general program provisions, findings, and discussion
- mandatory language for adverse decision letters, as applicable (paragraph 14).

12 Required Elements of an Adverse Decision Letter (Continued)

B Letter Content

Use plain and simple language and terminology, with a minimum of acronyms and abbreviations that participants and others can easily understand.

Decision letters should contain as much information as possible summarizing all pertinent information and program provisions that could be relevant to the determination. A good decision letter:

- is a letter that adequately summarizes and explains everything that matters about a case
- should require little additional information to explain what is really at issue in a case.

The decision letter is the starting point for the next administrative review authority.

See Exhibits 8 and 15 for examples of adverse decision letters.

13 Appeal and Review Options in FSA’s Informal Appeals Process

A Options to Give Participants in Appealable Adverse Decisions

When notifying a participant of an adverse decision, use the applicable language in *-paragraph 14 to provide the right to request reconsideration, appeal, or mediation according to the following table.

Note: This does **not** apply to:

- matters that do **not** fall within the scope or jurisdiction of 7 CFR Parts 11 and 780 (paragraph 10)
- decisions that are **not** appealable (paragraph 15).--*

IF the adverse decision is made by...	THEN provide the right to...
COC employee	appeal to COC.
*--COC	reconsideration, appeal to STC, mediation, and appeal to NAD.
STO employee (not FLO, FLM, or SED)	
FLO	
FLM	
SED	
Exception: SED relief determinations have no review or appeal rights.	reconsideration, mediation, and appeal to--* NAD.
STC	
National Office official	appeal to NAD.

Exhibit 8 provides examples of some decisions made by various FSA officials or committees.

13 Appeal and Review Options in FSA’s Informal Appeals Process (Continued)

B Options to Give Participants in Reconsideration Decisions

When notifying a participant of an adverse reconsideration, use the applicable language in paragraph 14 to provide the right to appeal and request decision according to the following table.

IF the reconsideration decision is made by...	THEN provide the right to...
*--COC	appeal to STC, mediation, and appeal to NAD.
STO employee (not FLO, FLM, or SED)	
FLO	
FLM	
SED	
Exception: SED relief determinations have no review or appeal rights.	
STC	mediation and appeal to NAD.*

C Options to Give Participants in Appeal Decisions

When notifying a participant of an adverse appeal decision, use the applicable language in paragraph 14 to provide the right to appeal and request mediation according to the following table.

IF the adverse appeal decision is made by...	THEN provide the right to...
COC	*--appeal to STC, mediation, and appeal to NAD.
STC	mediation and appeal to NAD.

Exceptions: Do **not** provide the right to mediation if FSA and the participant have previously mediated the issue or otherwise completed mediation.

For NRCS Title XII determinations, follow Part 4.

14 **Mandatory Language to Insert in Adverse Decision Letters**

A Language Requirements

*--The applicable **mandatory** language in subparagraphs B through F shall be used, as--* applicable pursuant to paragraph 13, in **all** adverse decision letters.

Exceptions: For farm loan servicing actions, the forms and exhibits provided in pertinent FLP directives or regulations **must** be used when notifying participants of adverse decisions.

For NRCS technical determinations, follow Part 4.

Exhibit 8 provides examples of some decisions made by various FSA officials or committees.

B Appeal to COC

--The following language shall be used, as applicable pursuant to paragraph 13:--

“You may appeal this determination to the County 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 County Committee, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you appeal this determination to the County Committee, you may later appeal an adverse determination of the County Committee to the FSA State Committee or the National Appeals Division. To appeal, write to the County Committee at the following address and explain why you believe this determination is erroneous. (*Insert COC address.*)”

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

--The following language shall be used, as applicable pursuant to paragraph 13:--

“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 language shall be used, as applicable pursuant to paragraph 13:--

“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 Mediation--

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.)*” * * *

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.)*” * * *

14 Mandatory Language to Insert in Adverse Decision Letters (Continued)**F Appeal to NAD**

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

“You may appeal this determination to the National Appeals Division (NAD) by filing a written request no later than 30 calendar days after you receive this notice according to the NAD appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing that you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter. (*Insert NAD address.*)

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter according to the regulations at 7 CFR Part 780 and 7 CFR Part 11.”

--15 Decisions Based on Issues That Are Nonappealable*A Nonappealable Adverse Determinations**

Paragraph 11 describes some decisions based on issues that are not appealable. Decisions--* involving cases that do not have any disputes of fact are not appealable. Participants have the right to appeal when there is a question of fact or when there is some dispute as to the correct application of a rule, regulation, or generally applicable provision. However, participants **cannot** appeal the rules, regulations, or generally applicable provisions themselves. Letters notifying participants that a decision is not appealable **must** clearly explain to the participant the reasons that the decision is not appealable. Avoid using general and vague statements that do not sufficiently demonstrate the reasons that the decision is not appealable.

--15 Decisions Based on Issues That Are Nonappealable (Continued)--

B Mandatory Language to Insert in a Nonappealable Adverse Determination Letter About the Right of Appealability Review

Participants may request that SED or NAD Director review the FSA determination that an adverse decision is **not** appealable. After fully explaining the adverse decision according to paragraph 5, and the reasons why the facts in the case are **not** in dispute, include the following mandatory language in the adverse decision:

“(Insert, as applicable, “I have”, The COC has” or The STC has”) determined that the issue is not appealable. You may seek a review of this determination by filing with either the FSA State Executive Director or the National Appeals Division (NAD) Director a written request no later than 30 calendar days after the date you receive this notice according to the FSA appeal procedures found at 7 CFR Part 780 or the NAD appeal procedures found at 7 CFR Part 11. If you believe that this issue is appealable, you must write to either the FSA State Executive Director or the NAD Director at the applicable address shown and explain why you believe this determination is appealable. If you choose to seek an appealability review of this determination with the FSA State Executive Director, you need not send the NAD Director any information. If you seek an appealability review with the NAD Director, provide FSA a copy of your request. If you request an appealability review by the State Executive Director and the State Executive Director determines that the issue is not appealable, you will be afforded the right to request an appealability review by the NAD Director. (Insert SED and NAD addresses.)”

Exception: If a COC employee determines that a decision is **not** appealable, replace the mandatory language in this subparagraph with the following:

“I have determined that the issue is not appealable. You may seek a review of this determination by filing with the FSA State Executive Director a written request no later than 30 calendar days after the date you receive this notice according to the FSA appeal procedures found at 7 CFR Part 780. If you believe that this issue is appealable, you must write to the FSA State Executive Director at the address shown and explain why you believe this determination is appealable. If the FSA State Executive Director determines that the issue is not appealable, you will be afforded the right to request an appealability review by the National Appeals Division Director. (Insert SED address.)”

***--15 Decisions Based on Issues That Are Nonappealable (Continued)**

C Actions Required Following SED Appealability Determination

The following table describes the action required for the various SED appealability determinations.--*

IF SED’s appealability determination is that the adverse decision is...	THEN provide the right to...
appealable	*--reconsideration, appeal, mediation, or--* appeal to NAD, as applicable, according to paragraph 13.
not appealable	seek an appealability review from NAD according to subparagraph 15 D.

D Mandatory Language to Insert in Notification of SED Non-Appealability Determination

If, after performing a review of appealability SED finds or determines that the matter or issue being contested is a matter or issue that is **not** appealable, the participant may request that the NAD Director review the FSA adverse determination and SED appealability determination. After fully explaining the adverse determination and basis upon which the SED determined it was not appealable, include the following **mandatory** language in SED’s non-appealability determination:

“(Insert, as applicable, “I have”, The SED has,”) determined that the issue is not appealable. You may seek a review of this determination by filing, with the National Appeals Division (NAD) Director, a written request no later than 30 calendar days after the date you receive this notice according to the NAD appeal procedures found at 7 CFR Part 11. If you believe that this issue is appealable, you must write to the NAD Director at the address shown and explain why you believe this determination is appealable. If you choose to seek an appealability review with the NAD Director, provide FSA a copy of your request. (Insert NAD address.)”

16 Time Limits for Issuing Adverse Determinations and Filing Requests for Appealability, Reconsideration, Mediation, or Appeal (Continued)**D Requests Not Timely Filed**

[7 CFR 780.15(d)] Notwithstanding the time limits in paragraphs (b) and (c) of this section, a request for an appealability review, reconsideration, mediation, or appeal may be accepted if, in the judgment of the reviewing authority with whom such request is filed, exceptional circumstances warrant such action. A participant does not have the right to seek an exception under this paragraph. FSA's refusal to accept an untimely request is not appealable.

SED, FLM, FLO, COC, or STC as reviewing authority, may consider a request for appealability, appeal, mediation, or reconsideration that is **not** filed timely if the circumstances warrant such action. The reviewing authority **must** document, in writing, the reasons for accepting a late-filed request.

Note: Even though requests for mediation may be made by participants directly to the State mediation program according to paragraph 13, it remains FSA's responsibility to determine if the request for mediation was timely filed. FSA's authority to render a decision about the timeliness of any request for mediation is **not** delegated to any State mediation program. FSA reserves the right to refuse to accept any untimely request for mediation.

16 Time Limits for Issuing Adverse Determinations and Filing Requests for Appealability, Reconsideration, Mediation, or Appeal (Continued)

E Misdirected Requests

If a request for appealability, reconsideration, mediation, or appeal is filed with an improper reviewing authority:

- acknowledge the request
- advise the appellant that the request is being referred to the proper authority for consideration.

Unless there is documentary evidence to show that the misdirected request for appealability, reconsideration, mediation, or appeal was itself **not** timely, do **not** deny appealability *--requests or requests for reconsideration, mediation, or appeal because of misdirection.--* Appealability decisions, reconsideration, mediation, or appeal should **not** be denied merely because the misdirection delayed receipt by the proper reviewing authority.

F Processing Late-Filed Requests for Appealability, Reconsideration, or Mediation or Appeal

Subparagraph D specifies that a participant does **not** have a right to an exception to the time limit set for filing requests for appealability, reconsideration, mediation, or appeal within FSA. FSA's authority and discretion, under subparagraph D and 7 CFR 780.15(d), to accept late filed requests, is **not** and should **not** be considered to be a relief determination giving rise to further appeals. An FSA decision **not** to accept a late-filed FSA appeal is final and **not** subject to further review or appealability review.

If written requests for appealability, reconsideration, mediation, or appeal are received beyond the time period specified in subparagraph B and 7 CFR 780.15, the FSA reviewing authority shall notify the participant that the request (for appealability, reconsideration, mediation, or appeal) was 1 of the following:

- **not** filed timely with FSA and; therefore, will **not** be further processed (Exhibit 10)
- considered **not** timely filed, but that the participant has 7 workdays to provide FSA a written explanation of why the late-filed request (for appealability, reconsideration, mediation, or appeal) should be accepted for further processing (Exhibit 11)
- accompanied by a satisfactory written explanation for such late-filing will be processed (paragraph 17).

17 Acknowledging Requests and Preparing for Informal Hearings, Meetings, and Appeals (Continued)

A Acknowledgement Letter (Continued)

IF the participant is seeking...	THEN in a...
mediation	<p>certified State, the USDA Certified State Mediation Program should make all arrangements for the mediation process.</p> <p>noncertified State, SED shall determine whether resources are available for mediation, locate and select a mediator, and issue a letter providing the participant notice of the mediation.</p>

B Reviewing Authority Action

Before each reconsideration or appeal hearing, meeting, or appeal, the reviewing authority shall take the following actions.

Step	Action
1	Review the letter from the participant seeking the reconsideration or appeal and obtain a copy of the adverse decision that gave rise to the participant's (appellant's) letter.
2	Obtain a copy of the administrative record that was the basis for the adverse *--decision. Provide a copy to appellant (paragraph 19). Ensure that all relevant--* documents referenced by the appellant and those mentioned or referenced in the decision letter are contained in the administrative record (paragraph 22).
3	<p>Using the format in Exhibit 9, prepare a written summary of the case that contains:</p> <ul style="list-style-type: none"> • all important issues pertinent to the matter being considered, about all regulations and FSA operating procedure applicable to the decision under review • a clear, concise statement of appellant's position to the extent known, before the hearing • a list of all the known individuals that will be present. <p>Note: The summary should be relatively easy to prepare if the FSA reviewing authority that made the decision issued a decision letter containing all the required elements mentioned in paragraph 12.</p>

17 Acknowledging Requests and Preparing for Informal Hearings, Meetings, and Appeals (Continued)

B Reviewing Authority Action (Continued)

Step	Action
4	<p>Send an acknowledgement letter according to paragraph 17 to the appellant and all persons affected by the matter notifying them of their right to be present or to submit information for consideration.</p> <p>Note: Persons affected could include all owners on a farm or participants listed on a contract or application, signatories to loan documents, etc.</p>
5	<p>Arrange for preparation of a verbatim transcript, if applicable (paragraph 18).</p>
6	<p>Review the summary prepared, in step 3, and have a thorough understanding of the issues and matter.</p>
7	<p>Obtain any additional information needed to ensure that sufficient facts are available to adequately address all the pertinent issues in the matter, whether or not the pertinent issues in the matter are brought up by the appellant.</p> <p>Note: See Part 4 about appeals of NRCS technical determinations.</p>

19 Due Process and Appellant Document Access

A Due Process

FSA's policy is to allow participants due process in administrative appeals. Accordingly, the reconsideration or appeal proceedings will be conducted according to established rules and principles for the protection and enforcement of participants' rights, including notice and the right to a fair hearing before a reviewing authority with the power to decide the case.

In all cases, the FSA reviewing authority **must** provide an appellant:

- *--a copy of FSA's record for the decision in advance of the hearing (subparagraph B)--*
- an opportunity to participate in an informal hearing * * *
- a written summary in advance of the hearing * * * (paragraph 17 and Exhibit 9) stating the issues to be considered
- the right to retain and be represented by counsel
- the right to present verbal and written evidence about the stated issues

Note: An appellant may ask FSA * * * questions in the course of the reconsideration or appeal hearing to obtain a better understanding of the administrative review process or of the case file circumstances. However, the reconsideration or appeal hearing or meeting is **not** a forum for subjecting FSA reviewing authorities, employees, or COC members to examination. Rather, the hearing is a means by which an appellant can furnish facts and evidence to show FSA's decision is in error or contrary to rules. FSA employees and COC members are under no obligation to subject themselves to examination by either the appellant or the appellant's authorized representative.

- *--the impartial decision based solely on the facts and arguments presented and in the--* case record

19 Due Process and Appellant Document Access (Continued)

A Due Process (Continued)

- a concise written statement of the decision reached (see Exhibit 15 for the suggested format); the determination **must**:
 - address **all** of appellant's arguments
 - state the factual basis for the determination of each issue under review
 - for each issue, cite and, where appropriate, quote from the authority for the determination, such as regulations, program procedure, contract provisions, security agreement, etc.
 - include the remaining available appeal or review rights.

B Providing Documents to Appellant

All records in the administrative file considered in making the determination under appeal, including information obtained from OIG, **must** be in FSA's record and be available to the appellant, unless the information in a record is protected by any of the following:

- attorney-client privilege
- deliberative process privilege
- FOIA or the Privacy Act, according to 2-INFO and 3-INFO
- other legally enforceable restrictions.

Any record that exists but **cannot** be made available, such as certain investigation reports, **cannot** be considered by the reviewing authority. Records or information that may reflect on the protected privacy interests of an individual or entity not a party to the appeal, **must** be redacted from copies released and before consideration (subparagraph C).

Requests by a participant for information not in a participant's administrative file should be handled pursuant to the procedures applicable to FOIA and Privacy Act requests, including notice of appeal rights under FOIA and the Privacy Act with respect to any denials of requests for information.

Note: Records that can be disclosed to an appellant in redacted form, or by extracting relevant pages only, should be used and placed in the record **only** as made available in redacted form.

25 **Finality of Administrative Decisions and Reopening FSA Appeals Cases (Continued)****B Reopening Cases or Revisiting Decisions**

*--A reviewing authority may reopen a case based on its own motion provided that authority is satisfied **all** of the following apply or are true:

- the matter has **not** been further appealed or is **not** under consideration in another administrative appeal or mediation forum (subparagraph C)
- the case is **not** being reopened merely to provide participants with additional time in--* which to appeal or further appeal

Note: The following are insufficient basis or justification for reopening a case; a participant's or appellant's:

- **not** having filed an appeal
- **not** having timely filed an appeal
- having been unsuccessful with earlier appeals
- remaining dissatisfied with an FSA decision or outcome.

FSA officials shall **not** reopen cases merely to provide participants with additional time in which to further appeal.

- *--the case is **not** being reopened to merely consider decisions in other cases, even if those cases appear to be similar
- the decision is **not** administratively final under either FSA's or NAD's appeal regulations.

Notes: Cases and decisions become administratively final because of either the passage of time or conclusion of appeals. Reopening cases that are already administratively final puts FSA and USDA at risk. Reviewing authorities shall **not** reopen cases or decisions that are administratively final without express written ALS concurrence.--*

If there is **any** question whether a case may be administratively final or if there is reason to believe a case is already administratively final, the case shall **not** be reopened; follow subparagraph D.

C Cases Under Consideration by Higher Authority

If a case was either acted on or is under consideration by a higher authority within FSA, the higher authority **must** agree, in writing, **before** the case can be reopened at the lower level.

Do **not** take any action on an issue if the issue is pending before NAD. This includes, but is **not** limited to, submitting requests to a higher review authority for relief.

25 **Finality of Administrative Decisions and Reopening FSA Appeals Cases (Continued)****D Reopening Cases That May Be Administratively Final**

If a reviewing authority has reason to believe a case may be administratively final or if the authority knows a case is administratively final, the reviewing authority shall **not** reopen the case. Any action to reopen a case that is already administratively final **must** be requested, in writing, by SED to the Director, ALS (see subparagraph 2 B for the address).

Requests to reopen cases that are administratively final **must** be, in writing, and contain **all** of the following information:

- a short narrative background of the case, matters reviewed, and outcome of the case
- a detailed explanation and information about facts that are now available that were **not** available at the time of the administrative decision; the explanation should detail how these facts justify reopening the case
- an explanation stating how the final administrative decision, if **not** reopened, is problematic for FSA
- how the final administrative decision, if left to stand, is contrary to either regulations or law.

Note: A reviewing authority's disagreement with another or higher reviewing authority's decision is **not** justification for showing that a decision is contrary to regulation or law.

No action whatsoever, including advising a participant that a request for reopening of a case that may be administratively final may or will be made, shall be taken without written concurrence of ALS.

A decision by the Director, ALS, to decline authorizing reopening a case shall **not** be construed to be a new administrative decision giving rise to any sort of appeal or right of review. If a request is disallowed, **no** further action shall be taken on the case whatsoever.

54 Processing Requests for Mediation (Continued)

B States With a USDA Certified State Mediation Program

[7 CFR 780.9(f)(1)] If the participant desires mediation, the participant must request mediation in writing by contacting the certified mediation program or such other contact as may be designated by FSA in an adverse decision letter. The request for mediation must include a copy of the adverse decision to be mediated.

[7 CFR 780.9(f)(2)] Participants in mediation may be required to pay fees established by the mediation program.

[7 CFR 780.9(f)(3)] A listing of certified State mediation programs and means for *--contact may be found on the FSA Web site at <http://www.usda.gov/fsa/dispute-mediation.htm>--*

If the State has a USDA Certified State Mediation Program, FSA **must** use the services of the USDA Certified State Mediation Program unless the USDA Certified State Mediation Program does **not** offer mediation for the specific FSA issue in question.
5 U.S.C. 5103(a)(1)(A).

If the USDA Certified State Mediation Program does **not** offer mediation for the specific FSA issue in question, the request to mediate the issue should be processed by SED's under the procedures for processing mediation requests in noncertified States according to subparagraph C.

The participant is responsible for contacting the USDA Certified State Mediation Program that mediates FSA issues. The USDA Certified State Mediation Program should make all arrangements for the mediation process.

54 Processing Requests for Mediation (Continued)

C Noncertified States

[7 CFR 780.9(g)(1)] It is the duty of the participant to contact the State Executive Director in writing to request mediation. The request for mediation must include a copy of the adverse decision to be mediated.

[7 CFR 780.9(g)(2)] If resources are available for mediation, the State Executive Director will select a qualified mediator and provide written notice to the participant that mediation is available and the fees that the participant will incur for mediation.

[7 CFR 780.9(g)(3)] If the participant accepts such mediation, FSA may give notice of the mediation to interested parties and third parties whose interests are known to FSA.

SED's shall:

- determine whether resources are available for mediation

Note: Although an SED determines available resources, an SED **cannot** unilaterally decide **not** to mediate because of resources.

- locate and select a qualified mediator
- provide the participant written notice of the mediation
- provide written notice of the mediation to third parties and interested parties.

If the participant objects to the selected mediator, the participant may request that another mediator be selected.

74 Appealing to NAD (Continued)

B NAD Director Review of FSA Decisions of Nonappealability (Continued)

After determining appealability, NAD docketing an appeal and assigns a hearing officer to the appeal.

Note: It is FSA’s position that a determination of appealability by the NAD Director does **not** eliminate or reduce any of a participant’s appeal options. The time limit for exercising appeal options a participant may have in FSA’s informal appeals process begins when the participant receives notice of NAD’s determination that an agency’s decision is appealable.

IF NAD appealability determination is that the adverse FSA decision is...	THEN, with respect to the agency’s adverse decision that gave rise to the appealability review...
appealable	<p>immediately provide the participant with a written notice not advising of the right to reconsideration, appeal, mediation, or appeal to NAD, as applicable, the same as would have been done had FSA decided the matter was not appealable, according to paragraph 13.</p> <p>Notes: If NAD has already scheduled a NAD hearing for the participant and the participant should have had other appeal options, such as reconsideration or not appeal to FSA and/or mediation, advise the participant of the other appeal options. If, after FSA gives the participant this advice, the not participant chooses to proceed with the scheduled NAD appeal, the participant will be considered to have waived the right to those other appeal or mediation options. It is FSA’s policy that it is the participant’s choice of what available option to elect following an appealability decision.</p> <p>If a NAD appeal proceeds and FSA continues to believe the matter is outside NAD’s jurisdiction, follow subparagraph C.</p>
not appealable	not consider the matter closed. No further action by FSA or notification to appellant is required. not

74 **Appealing to NAD (Continued)****C Preserving Objections to NAD Jurisdiction Following an Appealability Decision**

Because a NAD appealability determination may be based on limited information, the issue of whether an issue properly falls within NAD's jurisdiction may still exist even though the NAD Director had ruled that the FSA decision is appealable. Under NAD procedure, a hearing officer may consider FSA's position that NAD does **not** have jurisdiction to conduct an appeal. A hearing officer's determination on an issue of NAD jurisdiction is reviewable by the NAD Director.

Raising the issue of jurisdiction is appropriate when a participant's appeal challenges the substance of regulations or their generally applicable interpretation rather than application of the regulations to a participant's individual circumstances or when it appears that an appellant is trying to challenge a determination under an area that is outside NAD's jurisdiction; for example, a NASS decision on which FSA has relied.

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 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.

***--Notes:** Under NAD's internal procedure, a hearing officer determination is treated as final 45 calendar days after the decision date unless a request for review by the NAD Director is filed by the appellant, third party to the appeal, or FSA.--*

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)**

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.

IF...	THEN contact...
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 implementation and NAD final determinations. 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
- *--maintain a staff point of contact for reporting by States on implementation of NAD determinations returned to FSA
- track when NAD determinations become final and request monthly updates from SAC's about final appeal determinations pending implementation.--*

136 Reporting Implementation Status (Continued)

C State Office Actions

--To facilitate FSA reporting, ALS will contact SAC's monthly in States with final appeal determinations that are pending implementation, to obtain a report on implementation status, as follows.--

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

Error Identified	Implementation
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.

- Final determinations where the decision was **not** based on merits will **not** be included in the report. Examples include the following:
 - dismissal by NAD for failure to appear
 - dismissal following withdrawal of decision by FSA
 - dismissal on a determination of no jurisdiction by NAD.

•*--For reporting on implementation status:

- if no further steps are required for implementation after the final NAD determination, SAC will report, "no steps required" and "implemented"
- if all steps required to process a payment to a prevailing appellant or to process a recovered overpayment have occurred as of the reporting date, SAC will report that implementation of the determination is "pending"

Note: If steps necessary to begin processing payment have been taken or if demand for an overpayment has been sent, SAC will report, "implemented", but will furnish additional information about status and timing for payment or steps in process to recover any overpayment.

- in cases where implementation **cannot be initiated** with 30 calendar days after the appeal becomes final, SAC will briefly state the reason for any delay and the expected time for implementation
- in all other cases, SAC will report the final determination "implemented", if the first steps to implement the final determination have been taken.--*

137-150 (Reserved)

151 Administrative Appeal Rights (Continued)

C Requester Action

FOIA appeals shall be submitted to FSA’s Administrator within 45 calendar days from the date of the adverse determination. If the requester mails the appeal, “**STOP 0570**” **must** be included in the address. To facilitate the processing of an appeal, the requester should place “**FOIA APPEAL**” in capital letters on the front of the envelope or on the cover sheet of the FAX transmittal.

* * *

152 State FOIA Coordinators

A Designation

Each State Office shall designate at least 1 employee to act as FOIA coordinator who, in addition to assisting the record holding office in processing FOIA requests, will be responsible for providing all necessary assistance to enable ALS to review and process FOIA appeals within the administrative deadline or any extension of the administrative deadline.

Reports, Forms, Abbreviations, and Delegations of Authority

Reports

None.

Forms

None.

Abbreviations Not Listed in 1-CM

The following abbreviations are not listed in 1-CM.

Approved Abbreviation	Term	Reference
2008 Farm Bill	Food, Conservation, and Energy Act of 2008	136
ADR	alternative dispute resolution	51, 81
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, 136
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.

FSA Prepared NAD Appeal Activity Summary (Continued)

*--

Notice of Appellant's Request for Director Review/Reconsideration Received	State	Deputy Administrator	Outcome/Action Required
Doublemint, June (2006W000000)	TX	DAFLP	Appellant request accepted by NAD.
Cassidy, H. Long (2005W000000)	WY	DAFP	Appellant request for reconsideration denied by NAD Director.
Appealability/Timeliness Determinations Received	State	Deputy Administrator	Outcome/Action Required
Times, Hard (2007E000000)	NY	DAFLP	Agency decision is appealable.
Better, Get N. (2006W000000)	CA	DAFP	Agency decision not appealable/NAD has no jurisdiction.
Remaining Cases Due on or Before February 23, 2007, Pending Disposition	State	Deputy Administrator	Comments
Grand Farms (2007W000000) Dilbert, C. (2005E000000)	AZ OH	DAFP DAFLP	No action may be taken to implement the hearing officer's decision while the review is pending.

--*

Note: If there are questions about the implementation of a final decision, contact ALS or the appropriate program area of guidance. State Offices should ensure all final decisions are implemented timely.

Example Initial Determination Letters

The following example letters are for illustration purposes **only** and are **not** intended to be accurate descriptions of program or eligibility provisions.

Example 1 (COC Determination)

Date

Ms. Helga Moe
12 Farmville Rd
Taneyburg VA 12345-9876

Dear Ms. Moe:

This letter is in reference to the two applications you filed seeking benefits under the Crop Disaster Program for 2005 sweet pea losses on unit numbers 4 and 5. We have processed those applications.

Under the rules governing the program, payment eligibility occurs if the eligible loss of quantity of an eligible crop is in excess of 35 percent of expected production. As shown on the attached computation worksheets, and based on the information you certified to concerning unit crop acreage and 2005 crop year net production of sweet peas, the Somewhere County FSA Committee determined that units 4 and 5 did not suffer a loss great enough to trigger payment eligibility. Consequently, quantity loss payments are not computed for these units.

If you believe that the county committee has not properly considered the individual facts of your applications for unit numbers 4 and 5, you have the following options:

Reconsideration

You may request that the county committee reconsider this determination by filing a written request no later than 30 calendar days after you receive this notice in accordance with FSA appeal procedures found at 7 CFR Part 780. If you request reconsideration, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you choose to seek reconsideration, you may later appeal the determination to the National Appeals Division. To request reconsideration, write to me at the following address and explain why you believe this determination is erroneous. The address of the county committee is:

(Insert applicable address.)

--Mediation--

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 time frame 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 State FSA State Executive Director at the following address:

(Insert applicable address.)

* * *

Example Initial Determination Letters (Continued)

Example 1 (COC Determination) (Continued)

Appeal to STC

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 which 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 NAD. 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 applicable STC address.)

Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD Appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter.

(Insert applicable NAD address.)

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

Sincerely,

Jon Rodriguez
County Executive Director

Attachment

Example Initial Determination Letters (Continued)

Example 2 (COC Employee Determination)

Date

Mr. Arch Stanton
3 Littleton Rd
Somewhere OH 12345-9876

Dear Mr. Stanton:

This letter is in response to your application for cost share assistance under the Emergency Conservation Program (ECP).

You submitted an ECP application under the prescribed enrollment period. You subsequently furnished evidence of your expenses for completion of practices. Cost-share assistance under ECP may be authorized for all reasonable costs and within maximum limitations.

Our review shows that your claim for expenses exceeds practice specifications for cost-share calculations. In addition, documentation you submitted showed that you were reimbursed by a third party for the expenses. Accordingly, we must disapprove your application for ECP cost-share assistance in accordance with 7 CFR §701.23 which precludes payment when claims exceed practice specifications and when participants have been reimbursed by third parties.

If you believe we have not properly reviewed your application, you may appeal this determination to the county committee by filing a written request no later than 30 days after you receive this notice in accordance with the FSA appeal procedures found at 7 CFR Part 780. If you appeal to the county committee, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you appeal this determination to the county committee, you may later appeal any adverse determination of the county committee to the FSA State committee or the National Appeals Division. To appeal, write to the county committee at the following address and explain why you believe this determination is erroneous.

Somewhere County FSA Committee
55 Main St
Somewhereville OH 12346-6543

If you do not timely file an appeal of this determination, this shall be the final administrative determination with respect to this matter in accordance with regulations at 7 CFR Part 780.

Sincerely,

Sharina Farmer
County Executive Director

Example Initial Determination Letters (Continued)

Example 3 (FLM Determination)

Dear *(insert participant's name)*:

This responds to your request for *(insert applicable program benefit – e.g. “a direct operating loan in the amount of \$60,000”)*.

(Insert and fully explain adverse decision as discussed in paragraph 14)

If you believe that this decision is erroneous, you have the following options.

Reconsideration

You may request that I reconsider this determination by filing a written request no later than 30 calendar days after you receive this notice in accordance with FSA appeal procedures found at 7 CFR Part 780. If you request reconsideration, you have the right to an informal hearing which you or your representative may attend either personally or by telephone. If you choose to seek reconsideration, you may later appeal the determination to the National Appeals Division. To request reconsideration, write to me at the following address and explain why you believe this determination is erroneous.

(Insert applicable address.)

--Mediation--

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 time frame 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 or Mediation Program address, as applicable.)

* * *

Example Determination Letter for a COC Appeal Hearing (Continued)

Mr. John Farm and Mr. Bill Land
Page 3

DETERMINATION

In view of the facts of this case and Farmland's position, the denial of 2003 NAP coverage for sweet corn was factually correct and according to rules governing the program. The record does not contain any evidence supporting a conclusion that Farmland's inability to submit a timely application for 2003 NAP coverage was the result of erroneous information or advice of an authorized FSA representative. Accordingly, the county committee denies Farmland's appeal and has declined to consider equitable relief provisions under 7 CFR 718.303.

If you believe that the county committee's decision is erroneous, you have the following options:

Appeal to State Committee

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 which 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 NAD. To appeal, write to the State Committee at the following address and explain why you believe this determination is wrong. (Insert STC address.)

--Mediation--

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 time frame 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 or Mediation Program address, as applicable.)*

* * *

Appeal to the Department of Agriculture National Appeal Division (NAD)

You may appeal this determination to NAD by filing a written request no later than 30 calendar days after you receive this notice in accordance with the NAD Appeal procedures found at 7 CFR Part 11. If you appeal to NAD, you have the right to a hearing which you or your representative may attend. Once a hearing with NAD begins, you waive any rights you might have to reconsideration, appeal to FSA, and mediation. To appeal, you must write to NAD at the following address, explain why you believe this determination is erroneous, and provide a copy to FSA. You must personally sign your written appeal to NAD and include a copy of this letter. *(Insert applicable NAD address.)*

If you do not timely exercise one of the preceding options, this shall be the final administrative determination with respect to this matter in accordance with the regulations at 7 CFR Part 780 and 7 CFR Part 11.

Sincerely,

(Insert name)
County Executive Director

