

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Program Appeals, Mediation, and Litigation 1-APP (Revision 2)	Amendment 9
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Approved by: Administrator



Amendment Transmittal

A Reason for Amendment

Paragraph 28 has been amended to provide additional information and guidance about suspensions, debarments, disqualifications, and exclusions, including:

- USDA causes for debarring a person as identified at 2 CFR 417.800
- policy for notifying ALS about any person who has been indicted or convicted of an offense as identified at 2 CFR 417.800(a) – (d).

Page Control Chart		
TC	Text	Exhibit
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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
- 2 CFR Part 180
- 2 CFR Part 417--*
- 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.

The following 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.

--28 Suspensions, Debarments, Disqualifications, and Exclusions (Nonprocurement)*A USDA Causes for Debarment**

[2 CFR § 417.800] A Federal agency may debar a person for –

(a) Conviction of or civil judgment for –

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice, or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your (a person's) present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as –

(1) A willful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) Any of the following causes:

(1) A nonprocurement debarment by an Federal agency taken before March 1, 1989, or a procurement debarment by any Federal agency taken pursuant to 48 CFR part 9, subpart 9.4, before August 25, 1995;

(2) Knowingly doing business with an ineligible person, except as permitted under § 180.135;

(3) Failure to pay a single substantial debt, or a number of outstanding debts (including disallowed costs and overpayments, but not including sums owed the Federal Government under the Internal Revenue Code) owed to any Federal agency or instrumentality, provided the debt is uncontested by the debtor or, if contested, provided that the debtor's legal and administrative remedies have been exhausted;

(4) Violation of a material provision of a voluntary exclusion agreement entered into under § 180.640 or any settlement of a debarment or suspension action; or

(5) Violation of the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701); or

(d) Any other cause of so serious or compelling a nature that it affects your (a person's) present responsibility.--*

***--28 Suspensions, Debarments, Disqualifications, and Exclusions (Nonprocurement)
(Continued)**

B FSA Policy About Receipt of Notices

Employees and offices receiving any notification or communication, from any source, about any person indicted or convicted of the causes listed in subparagraph A, suspension, debarment, exclusion, or disqualification from anyone other than ALS shall **immediately--*** forward such notification or communication to ALS through the State Office.

C ALS Communications

***--ALS:**

- reviews **all** notices and communications mentioned in subparagraph B
- based on 2 CFR Parts 180 and 417, issues notifications about the specific implications of a suspension, debarment, exclusion, or disqualification notice
- notifies appropriate National and State Offices.--*

D Questions

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

Send questions about whether an ALS notice impacts participation in benefits under a particular program through the State Office to * * * ALS.

29 EAJA Applications, Notices, or Claims

A FSA Policy About Receiving Requests

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

B “No Comment”

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

30 (Reserved)

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

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

Confidential Mediation

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

Constructive Knowledge

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

Conviction

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

De Novo Review

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

Debarment

*--[2 CFR Part 925] **Debarment** means an action taken by a debarring official under--* subpart H of this part to exclude a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR Chapter 1). A person so excluded is debarred.

Discovery

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

Definitions of Terms Used in This Handbook (Continued)

Disqualified

*--[2 CFR 180.935] **Disqualified** means that a person is prohibited from participating in--* specified Federal procurement or nonprocurement transactions as required under a statute, Executive order (other than Executive Orders 12549 and 12689) or other authority. Examples of disqualifications include persons prohibited under— (a) The Davis-Bacon Act (40 U.S.C. 276(a)); (b) The equal employment opportunity acts and Executive orders; or (c) The Clean Air Act (42 U.S.C. 7606), Clean Water Act (33 U.S.C. 1368) and Executive Order 11738 (3 CFR, 1973 Comp., p. 799).

Excluded or Exclusion

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

Federal Rules of Evidence

Federal rules of evidence are rules governing proceedings in the courts of the United States and before United States bankruptcy judges and United States magistrate judges.

Handbooks, Notices, and Other Directives

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

Hearing

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

Hearsay

Hearsay, generally, is:

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

Definitions of Terms Used in This Handbook (Continued)

Reconsideration

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

Record Review

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

Relevant Evidence

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

Res Judicata

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

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

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

Subpoena

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

Suspension

***--[2 CFR 180.1015] Suspension is an action taken by a suspending official under--*
subpart G of this part that immediately prohibits a person from participating in covered transactions and transactions covered under the Federal Acquisition Regulation (48 CFR chapter 1) for a temporary period, pending completion of an agency investigation and any judicial or administrative proceedings that may ensue. A person so excluded is suspended.**

Telephone Hearing

A telephone hearing is a hearing that is:

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

Verbatim Transcript

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