UNITED STATES DEPARTMENT OF AGRICULTURE
Farm Service Agency
Washington, DC 20250

Notice APP-49

For: FSA Employees

Appeals of NRCS Determinations to FSA

Approved by: Administrator

Teresa C. Lasseter

1 Overview

A Background

The Appeals and Litigation Staff (ALS) is revising 1-APP. While work on 1-APP progresses, FSA needs to reiterate current policy about handling and processing appeals of NRCS determinations.

Pub. L. 103-354 226(d)(1) provides, in part, that until an adverse decision is appealed to NAD, FSA has jurisdiction over appeals of adverse decisions made under the Food Security Act of 1985, Title XII (Title XII), including adverse decisions involving technical determinations.

FSA and NRCS at the National level have discussed Title XII determinations and mutually agree that handling appeals of Title XII determinations to FSA and NAD requires a partnership effort. FSA and NRCS at the National level strongly emphasize the necessity and benefit of cooperation and coordination between FSA and NRCS at both the State and county levels.

B Purpose

This notice:

- clarifies and reiterates FSA's policy about processing and handling NRCS Title XII determinations and appeals
- provides guidelines for FSA's review of NRCS Title XII determinations
- discusses FSA's consideration of appeals of NRCS Title XII determinations.

C Contact

Direct questions about this notice to ALS at 202-690-3297.

Disposal Date	Distribution
April 1, 2008	All FSA employees; State Offices relay to County Offices

2 Procedure for FSA's Review of NRCS Determinations

A NRCS Determination Appeals

[7 CFR 780.11] (a) Notwithstanding any other provision of this part, a determination of NRCS issued to a participant pursuant to Title XII of the Food Security Act of 1985, as amended, including a wetland determination, may be appealed to the county committee in accordance with the procedures in this part.

(b) If the county committee hears the appeal and believes that the challenge to the NRCS determination is not frivolous, the county committee shall refer the case with its findings on other issues to the NRCS State Conservationist to review the determination, or may make such a referral in advance of resolving other issues.

(c) A decision of the county committee not to refer the case with its findings to the NRCS State Conservationist may be appealed to the State committee.

(d) The county or State committee decision must incorporate, and be based upon, the results of the NRCS State Conservationist's review and subsequent determination.

Under each of the procedures in 7 CFR 780.11, the final administrative decision of FSA on the appealed NRCS Title XII determination must incorporate and be based on the State Conservationist's determination following review.

B Summary of NRCS Procedure for Appeals of Title XII Determinations

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

- CRP
- EQIP
- Grassland Reserve Program
- HELC and WC, including wetland technical determinations made by NRCS officials even when **not** related to a request for USDA program benefits
- WRP.

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

2 Procedure for FSA's Review of NRCS Determinations (Continued)

C Preliminary Title XII Determinations

There are 2 types of Title XII determinations, as follow:

- program determinations
- technical determinations.

Any Title XII technical determination that is adverse to a participant will first be issued initially by NRCS as a preliminary determination.

Notes: If there is any question about whether an NRCS decision is a program or technical determination, FSA **must** consult with NRCS.

If NRCS determines that the initial determination is **not** adverse to the participant, the initial determination may be issued as a final decision and may be relied upon by FSA.

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

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

- mediation.

Once a Title XII determination is final, the landowner or program participant may appeal NRCS:

- final technical determinations to FSA or NAD
- program decisions to the NRCS State Conservationist, FSA, or NAD.

D Appeal to COC

If the landowner or program participant appeals to COC:

- coordinate with NRCS officials to ensure that the NRCS District Conservationist or other NRCS official has an opportunity to participate in the appeal hearing and submit a copy of the NRCS administrative record to COC

- afford the local conservation district an opportunity to participate in the hearing

2 Procedure for FSA's Review of NRCS Determinations (Continued)

D Appeal to COC (Continued)

- after coordinating with NRCS, send an acknowledgement letter, with a copy to NRCS (see Exhibit 1 for an example of a letter that **must** be provided to participants with copy to NRCS), upon receipt of a request for appeal.

Reminder: Exhibit 1 contains **required** language about the participant's right to a hearing. Offices shall use Exhibit 1 as a guideline in preparing acknowledgements that satisfy the requirements of due process.

E Mediation

If the landowner or program participant requests mediation following a COC decision about an NRCS Title XII determination, mediation will be made available so long as it is has **not** already been used, through either of the following:

- a State's Certified Agricultural Mediation Program, if such a program has been certified in the State

- by contacting SED's in States without a Certified Agricultural Mediation Program.

Note: FSA will **always** be notified of participant requests for mediation following a decision on a Title XII determination or program decision. FSA **must** notify NRCS, and both an FSA and NRCS representative:

- will be available to participate in the mediation process
- **must** sign any resulting mediation agreement.

F Participation of FSA's Representative in Mediation

During the mediation, FSA's and NRCS's representatives will explain to the participant the potential ramifications of NRCS's determination, such as:

- eligibility for FSA- and NRCS-administered programs
- types of relief that may be granted.

Any agreement reached during, or as a result of, the mediation process shall conform to the statutory and regulatory provisions and generally applicable interpretations governing the program.

Note: If a determination has been mediated **before** the final NRCS determination, mediation of the technical determination will **not** be offered again.

2 Procedure for FSA's Review of NRCS Determinations (Continued)

G Final NRCS Title XII Determination

An adverse preliminary determination will become final in **any** of the following events:

- 30 calendar days after receipt by the landowner or program participant of the notice of a preliminary determination, unless a field visit or mediation is requested
- after the earlier of 30 calendar days after a field visit to the site or receipt by the landowner or program participant of a final determination from the designated conservationist
- 30 calendar days after the beginning of a mediation session, if a mutual agreement has not been reached by the parties (7 CFR 614.8(a)(2)).

H Notice of Final Determination

The final determination **must**:

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

I FSA's County Office Action

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

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

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

2 Procedure for FSA's Review of NRCS Determinations (Continued)

J Participant Appeal Options

Participants may appeal a final determination to either FSA or NAD.

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

3 FSA's Consideration of Appeals of NRCS Determinations

A COC/STC Consideration of NRCS Appeals

IF COC and/or STC determine that a participant's appeal of the NRCS determination has...	**THEN COC and/or STC shall...**
merit or is **not** frivolous	refer the case, through SED, to State Conservationist to review the technical determination before issuing a decision. The referral **must** include, in writing, the reasons COC or STC determined the case had merit or was not frivolous. **Note:** If other FSA issues have been made a part of the appeal and depend on NRCS's determination, COC or STC shall **not** make a decision about FSA issues until State Conservationist's determination is received.
no merit or is frivolous	issue the decision and provide appropriate appeal rights according to Notice APP-46, subparagraph 2 B. Document reasons why COC or STC considered the appeal to have no merit or is frivolous.

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

B Action Following State Conservationist Review

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

3 FSA's Consideration of Appeals of NRCS Determinations (Continued)

C Appeal Rights Following State Conservationist Review

If State Conservationist upholds the final NRCS Title XII determination and the appeal raises no other issues reviewable within FSA, the participant shall be given notice of the right to appeal the decision only to NAD.

The following is **mandatory** language to be included in the adverse decision letter:

"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 NAD address.)"

If the participant subsequently requests a NAD appeal, FSA is responsible for submitting the Agency Record to NAD. However, since this is an appeal of an NRCS final decision, an official from NRCS **must** continue to be involved in the appeal process to furnish information for FSA about the determination and/or decision under appeal to NAD. This may include information about the determination and/or decision, field visits, handbook guidance, and other documentation relevant in the matter to ensure that the record, as well as hearing exhibits and testimony submitted to NAD, is complete and contains all documentation and authorities relevant to the Title XII program decision and/or technical determination appealed to NAD.

Note: FSA **must** contact NRCS and provide the NRCS State Office appeals contact (see Exhibit 2) a copy of the request for NAD appeal and all information provided by NAD about the appeal proceedings, including the request for agency record, the prehearing teleconference, and all hearing and post-hearing notifications.

NRCS staff **must** attend, be available as witnesses, and assist FSA's representative in any appeal to NAD involving FSA's ratification of an NRCS final Title XII program decision and/or technical determination. FSA and NRCS may agree to have an NRCS employee function as FSA's representative on a case by case basis. In that case, FSA's representative **must** maintain a presence in the appeal proceedings and both agencies **must** attend the NAD hearing and participate in any further requests resulting from NAD's appeal decision.

D NRCS Appeal Contacts

Exhibit 2 provides a list of current NRCS appeal contacts. FSA offices shall consult with NRCS State Offices, if a contact is unavailable.

Example Letter of Acknowledgement of Request for Reconsideration or Appeal

This is an example of the letter of acknowledgement of request for reconsideration or appeal of an NRCS technical determination.

Dear *(insert participant's name)*:

This letter acknowledges your appeal of the *(specify date and decision maker)* determination regarding *(insert issue under review – e.g. your eligibility under an Environmental Quality Incentives Program application)*.

(Identify reviewing authority) will review your appeal on *(insert date and time)*. The hearing will be held in *(insert name and address of office)*. You, your authorized representative, or both, are invited to attend this hearing and submit any additional information in support of your appeal.

The hearing is informal and a verbatim transcript is not ordinarily made. However, if you want a transcript to be made at your expense, please notify me at least 7 days prior to the hearing and I will make the necessary arrangements. Regulations at 7 CFR 780.13 prohibit appellants and their representatives from making any electronic recording of hearings with FSA. FSA will not reimburse you for any costs you may incur in connection with your appeal.

If you chose not to attend the hearing, you may submit, before the scheduled hearing date, information and evidence you wish to be considered. *(Insert name of reviewing authority)* will consider your appeal and make a decision based upon the information submitted by you, in addition to the documents and evidence contained in the administrative record.

The *(insert name of reviewing authority)* will provide the determination in writing to your or your representative as soon as possible after the scheduled hearing. If you have any questions regarding this matter, you may contact *(insert name and telephone number of contact)*.

Sincerely,

(Insert name)
(Insert title)

cc: *(Insert appropriate NRCS Contact)*

NRCS State Appeal Contacts

FSA **must** provide the applicable NRCS State Office a copy of the request for NAD appeal and all information provided by NAD about the appeal proceedings.

State	Last Name	First Name	Position	Office Address	Business Phone	FAX	E-mail Address
AL	Hughes	William	SRC	PO Box 311 Auburn AL 36830	334-887-4520	334-887-4551	bill.hughes@al.usda.gov
AK	Hedt	Thomas	ASTC-P	800 W Evergreen Ave Ste 100 Palmer AK 99645	907-761-7700	907-761-7790	thomas.hedt@ak.usda.gov
AZ	Stein	Kevin	Farm Bill Specialist-Resource Conservationist/ National Appeals Cadre Member	230 N 1st Ave Ste 509 Phoenix AZ 85003-1733	602-280-8800 Cell: 602-680-0947	602-280-8809	kevin.stein@az.usda.gov
AR	Mobley	Dennis	Soil Conservationist	Federal Bldg Rm 3416 700 W Capitol Ave Little Rock AR 72201	501-301-3164	501-301-3189	dennis.mobley@ar.usda.gov
CA	Forkey	Alan	ASTC-P	430 G St #4164 Davis CA 95616-4164	530-792-5653	530-792-5790	alan.forkey@ca.usda.gov
CO	Carney	Tim	ASTC-P	655 Parfet St Rm E200c Lakewood CO 80215-5517	720-544-2805	720-544-2962	tim.carney@co.usda.gov
CT	Dybdahl	Jan	SRC	344 Merrow Rd, Ste A Tolland CT 06084-3917	860-871-4018	860-871-4054	jan.dybdahl@ct.usda.gov
DE	Petrichenko	Paul	ASTC-P	1221 College Park Dr Ste 100 Dover DE 19904	302-678-4180	302-678-0843	paul.petrichenko@de.usda.gov
FL	Stewart	Teresa	EQIP Manager/National Appeals Cadre Member	2614 NW 43rd St Gainesville FL 32606-6611	352 338-9510	352-338-9574	teresa.stewart@fl.usda.gov
GA	Lamm	David	ASTC-P	355 Hancock Ave Mail Stop 200 Athens GA 30601	706-546-2083	706-546-2120	david.lamm@ga.usda.gov

NRCS State Appeal Contacts (Continued)

State	Last Name	First Name	Position	Office Address	Business Phone	FAX	E-mail Address
HI/ Pac Basin	Kimberlin	Dennis	Resource Conservationist	Pacific Islands Area State Office PO Box 50004 Honolulu HI 96850-0050	808-541-2600 ext 106	808-541-1335	dennis.kimberlin@hi.usda.gov
ID	Bartholomew	Bob	ASTC-P	9173 W Barnes Dr Ste C Boise ID 83709-1574	208-378-5703	208-378-5735	bob.bartholomew@id.usda.gov
IL	Dozier	Ivan	ASTC-P	2118 W Park Ct Champaign IL 61821	217-353-6602	217-353-6676	ivan.dozier@il.usda.gov
IN	Thompson	Harold	ASTC-P	6013 Lakeside Blvd Indianapolis IN 46278	317-290-3200 ext 320	317-290-3225	harold.thompson@in.usda.gov
IA	Carrington	Donald	Resource Conservationist/ National Appeals Cadre Member	210 Walnut St Rm 693 Des Moines IA 50309-2180	515-323-2615	515-284-4394	donald.carrington@ia.usda.gov
KS	Ungerer	Jon	Resource Conservationist	760 S Broadway Blvd Salina KS 67401-4604	785-296-3600	785-823-4540	jon.ungerer@ks.usda.gov
KY	Wheby	Deena	ASTC-P	771 Corporate Dr Ste 210 Lexington KY 40503	859-224-7403	859-224-7399	deena.wheby@ky.usda.gov
LA	Marcantel	Ronald	ASTC-O	3737 Government St Alexandria LA 71302	318-473-7802	318-473-7626	ron.marcantel@la.usda.gov
ME	Yamartino	Bill	ASTC-P	967 Illinois Ave Ste 3 Bangor ME 04401	207-990-9553	207-990-9599	bill.yamartino@me.usda.gov
MD	Rose	Mark	ASTC-P	John Hanson Business Center 339 Busch's Frontage Rd Ste 301 Annapolis MD 21409-5543	443-482-2910	410-757-0687	mark.rose@md.usda.gov
MA	Johnson	Deb	ASTC-P	451 West St Amherst MA 01002	413 253 4366	413-253-4375	deb.johnson@ma.usda.gov
MI	Rinkenberger	Gary	Resource Conservationist/ National Appeals Cadre Member	3001 Coolidge Rd Ste 250 East Lansing MI 48823	517-324-5266	517-324-5171	gary.rinkenberger@mi.usda.gov

NRCS State Appeal Contacts (Continued)

State	Last Name	First Name	Position	Office Address	Business Phone	FAX	E-mail Address
MN	English	Ann	ASTC-O	375 Jackson St Ste 600 St Paul MN 55101-1854	651 602 7858	651-602-7914	ann.english@mn.usda.gov
MS	Finley	Clarence	Resource Conservationist	Federal Bldg Ste 1321 100 West Capitol St Jackson MS 39269	601-965-4139 ext 254	601-965-5178	clarence.finley@ms.usda.gov
MI	Lee	Clayton	Soil Scientist/ National Appeals Cadre Member	Parkade Center Ste 250 Columbia MO 65203-0913	573-876-0907	573-876-9439	clayton.lee@mo.usda.gov
MT	Suffridge	Erik	EQIP/CIG Program Manager/National Appeals Cadre Member	10 East Babcock St Rm 443 Bozeman MT 59715-4704	406-587-6849	406-587-6761	erik.suffridge@mt.usda.gov
NE	Gonsior	Jim	State Quality Assurance Team Member	120 W 16th Ste A Schuyler NE 68661	402-352-5200	402-437-5327	jim.gonsior@ne.usda.gov
NV	Dahl	Rod	EQIP Program Manager	1365 Corporate Blvd Reno NV 89502-7102	775-857-8500 ext 146	775-784-7468	rod.dahl@nv.usda.gov
NH	Walker	Jody	ASTC-P	Federal Building 2 Madbury Rd Durham NH 03824-2043	603-868-7581	603-868-5301	jody.walker@nh.usda.gov
NJ	Reid	Janice	ASTC-P	220 Davidson Ave Somerset NJ 08873	732-537-6042	732-537-6095	janice.reid@nj.usda.gov
NM	Neubeiser	Michael	Resource Conservationist	6200 Jefferson St NE Albuquerque NM 87109	505-761-4419	505-761-4463	michael.neubeiser@nm.usda.gov
NY	Kron	Sarah	Area Resource Conservationist/ National Appeals Cadre Member	Times Square Professional Park 652 Route 299 Ste 202 Highland NY 12528-2926	845-883-7162	845-883-7184	sarah.kron@ny.usda.gov
NC	Fowler	Dick	ASTC-P	4405 Bland Rd Ste 205 Raleigh NC 27609	919-873-2104	919-873-2156	dick.fowler@nc.usda.gov

NRCS State Appeal Contacts (Continued)

State	Last Name	First Name	Position	Office Address	Business Phone	FAX	E-mail Address
ND	Schwagler	Todd	SRC	220 East Rosser Ave PO Box 1458 Bismarck ND 58502-1458	701-530-2084	701-530-2110	todd.schwagler@nd.usda.gov
OH	Perrin	Tom	ASTC-P	200 North High St Rm 522 Columbus OH 43215	614-255-2474	614-255-2548	tom.perrin@oh.usda.gov
OK	vacant	vacant	ASTC-P	100 USDA Ste 206 Stillwater OK 74074-2655	405-742-1236	405-742-1126	
OR	Dishman	Dave	SCE	1201 NE Lloyd Blvd Ste 900 Portland OR 97232	503-414-3252	503-414-3103	dave.dishman@or.usda.gov
PA	Soto	Noel	Farm Bill Specialist/Resource Conservationist	One Credit Union Place Ste 340 Harrisburg PA 17110-2993	717-237-2233	717-237-2238	noel.soto@pa.usda.gov
PR	Arroyo	Fernando	Program Specialist	Santa Maria Shopping Center Ste 203 471 Ferrocaril St Ponce PR 00731	787-841-3136 ext 101	787-841-3217	fernando.arroyo@pr.usda.gov
RI	Bachand	Joseph	Program Manager	60 Quaker Lane Ste 46 Warwick RI 02886-0111	401-822-8818	401-828-0433	joseph.bachand@ri.usda.gov
SC	Ellis	Craig	ASTC-P	1835 Assembly St Rm 950 Columbia SC 29201	803-253-3930	803-253-3670	craig.ellis@sc.usda.gov
SD	Vickers	Shaun	SRC	Federal Bldg Rm 203 200 4th St SW Huron SD 57350-2475	605-352-1234	605-352-1288	shaun.vickers@sd.usda.gov
TN	Zeman	Mike	Biologist	US Courthouse Rm 675 801 Broadway Nashville TN 37203	615-277-2571	615-277-2578	mike.zeman@tn.usda.gov
TX	Sharer	Doug	EQIP/WHIP Program Manager/National Appeals Cadre Member	101 S Main St Temple TX 76501-7602	254 742-9825	254-742-9819	doug.sharer@tx.usda.gov

NRCS State Appeal Contacts (Continued)

State	Last Name	First Name	Position	Office Address	Business Phone	FAX	E-mail Address
UT	Hamilton	Barry	ASTC-FO/National Appeals Cadre Member	Price Service Center 540 W Price River Dr Price UT 84501-2813	435-637-0041	435-637-3146	barry.hamilton@ut.usda.gov
VT	Drew	Vicky	ASTC-P	356 Mountain View Dr Ste 105 Colchester VT 05446	802-951-6796 ext 242	802-951-6327	vicky.drew@vt.usda.gov
VA	Harris	Barry	Resource Conservationist Programs	Culpepper Bldg Ste 209 1606 Santa Rosa Rd Richmond VA 23229-5014	804-287-1658	804-287-1737	barry.harris@va.usda.gov
WA	Bromiley	Sharon	Area Program Liaison	316 W Boone Ave Ste 450 Spokane WA 99201-2348	509-343-2265	509-929-2909	sharon.bromiley@wa.usda.gov
WV	ODonnell	Bill	ASTC-O	75 High St Rm 301 Morgantown WV 26505	304-284-7543	304-284-4839	bill.odonnell@wv.usda.gov
WI	Weihrouch	Robert	Biologist	8030 Excelsior Dr. Ste 200 Madison WI 53717	608 662-4422 ext 267	608-662-4430	robert.weihrouch@wi.usda.gov
WY	Mar	Jay	ASTC-P	Federal Bldg. Rm 3124 100 East B St Casper WY 82601-1911	307-233-6757	307-233-6753	jay.mar@wy.usda.gov