

UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

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

Amendment 12

Approved by: Administrator



Amendment Transmittal

A Reasons for Amendment

Exhibit 2 has been amended to update CFR citations for certain definitions.

Note: 7 CFR Part 3017 is no longer applicable to USDA and 2 CFR Part 925 does not exist.

Page Control Chart		
TC	Text	Exhibit
		2, pages 3, 4

Definitions of Terms Used in This Handbook (Continued)

Civil Judgment

***--2 CFR 180.915] 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

***--[2 CFR 180.920] 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 180.925] 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.