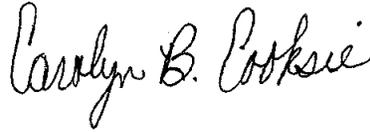


UNITED STATES DEPARTMENT OF AGRICULTURE

Farm Service Agency
Washington, DC 20250

Program Appeals, Mediation, and Litigation 1-APP (Revision 2)	Amendment 7
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Approved by: Acting Administrator



Amendment Transmittal

A Reason for Amendment

This amendment:

- provides instructions for handling appeals or reconsideration requests when there is an acting STC or COC
- updates ALS contact information.

B Major Changes

Subparagraph 14 G has been added to provide mandatory language when the decision-maker is an acting STC or COC.

Paragraph 34 had been added to provide policy for appeals of adverse decisions rendered by an acting STC or COC.

Subparagraph 17 C has been added to provide mandatory language for acknowledgment letters when the decision-maker is an acting STC or COC.

Exhibit 14 has been added to provide a format for an acknowledgment letter attachment for an appellant to record his or her hearing option when there is an acting STC or COC.

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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	202-690-3297
Shelley Davis	Management Analyst	202-690-8034
H. Talmage Day	Legal Analyst	202-720-0358
G. Sean O'Neill	Management Analyst	*--202-690-3297--*
Carol Wagner	Legal Analyst	202-720-4966
Robin Wieland	Paralegal Specialist	202-690-2814

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.”

*--G Mandatory Language When Decision-Maker is an Acting STC or COC

For decisions rendered by an acting STC or COC, add the following language immediately following the appeal rights portion of the determination letter:

“The provisions of regulations at 7 CFR §780.3 and §7.38 authorize me to make this decision as the acting (*State/county*) committee. I have attached to this determination a copy of that designation.”

Include as an attachment to the adverse decision letter a copy of the written designation.--*

--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.

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

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

<p>IF...</p>	<p>THEN the FSA reviewing authority with whom the late-filed request was submitted shall do either of the following:</p>
<p>FSA receives both of *--the following within 1 to 14 calendar days after the deadline in subparagraph B and 7 CFR 780.15:--*</p>	<p>accept the late-filed request for appealability, reconsideration, mediation, or appeal, as applicable.</p> <p>Note: Proceed according to paragraph 17 the same as if the late-filed request had been timely filed.</p>
<ul style="list-style-type: none"> • a written request for appealability, reconsideration, mediation, or appeal, as applicable • a timely filed written explanation for such late-filing 	<p>decline to accept the late-filed request for appealability, reconsideration, mediation, or appeal, as applicable.</p> <p>The participant shall be notified that FSA’s decision not to further process the late-filed request for appealability, reconsideration, mediation, or appeal is administratively final and not subject to further review or appeal.</p> <p>Note: The participant cannot challenge or seek appealability from NAD on this FSA determination.</p> <p>See Exhibit 12 for an example letter.</p>

*--**Reminder:** Handle requests received more than 14 calendar days late according to paragraph 25.--*

17 Acknowledging Requests and Preparing for Informal Hearings, Meetings, and Appeals

A Acknowledgement Letter

Handle requests for appealability, reconsideration, or mediation according to the following table.

IF the participant is seeking...	THEN...
an appealability review by the SED	a separate acknowledgement is not required. The SED shall issue an appealability decision according to subparagraph 15 C.
reconsideration or appeal	<p>issue an acknowledgement letter (Exhibit 13) informing the appellant:</p> <ul style="list-style-type: none"> • of the right to an informal hearing or meeting with the reviewing authority • that a copy of FSA’s administrative record will be sent to the appellant’s address of record in advance of the hearing • of the scheduled date, time, and location of the hearing or meeting <p>Note: Allow at least 10 calendar days notice, unless waived by the appellant.</p> <ul style="list-style-type: none"> • that the hearing may be a personal hearing or may be by telephone, if sufficient telephone equipment is available • that if the appellant or representative cannot, or chooses not to, attend the hearing or meeting, the appellant may submit written comments before the scheduled review • that the Government does not reimburse appellants for expenses incurred with an informal hearing or meeting • that the appellant has the right to request a verbatim transcript of the hearing at appellant’s expense through FSA’s contract service, if such request is received by FSA at least 7 calendar days before the hearing. <p>*--Note: If there is an acting STC or COC, and FSA will offer the appellant the option to wait for an appointed permanent STC or elected permanent COC, include the mandatory language in subparagraph C.--*</p>

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 determinations.</p>

*--C Mandatory Language for Acknowledgment Letter When Decision-Maker is an Acting STC or COC

For decisions rendered by an acting STC or COC, include the following language in the acknowledgement letter:

“FSA has appointed (*insert name*) as acting (*State/county*) committee. You may proceed with your (*reconsideration request/appeal*) and the acting (*State/county*) committee will render a determination. However, FSA has decided to offer you the option to wait until a (**State/county**) committee is (*appointed/elected*).

You may be assured that, if you decide not to wait, any determination the acting (*State/county*) committee issues will have the same force and effect as if an (*appointed/elected*) (*State/county*) committee had rendered it. Please use the attached document to record your choice and return it to FSA at the address indicated on it by (*insert date*). If you do not respond by (*insert date that acting STC or COC determines is reasonable to receive a response*), we will deem you to have chosen to proceed with your (*reconsideration request/appeal*) with the acting (*insert name*) (*State/county*) committee and will schedule a hearing.”--*

33 STC Appeals (Continued)

D Federal Rules of Evidence

[7 CFR 780.10(d)] The Federal Rules of Evidence do not apply in appeals to a State committee. Notwithstanding, a State committee may confine presentations of evidence to material facts and exclude evidence or questions as irrelevant, unduly repetitious, or otherwise inappropriate.

E Deliberations

[7 CFR 780.10(f)] Deliberations shall be in confidence except to the extent that a State committee may request the assistance of FSA employees during deliberations.

Participants shall **not** be present during and verbatim transcripts shall **not** be made of deliberations.

F Appeal Decision

[7 CFR 780.10(e)] The official record of a State committee decision will be the decision letter that is issued following disposition of the appeal.

Follow subparagraph 13 C for adverse STC appeal decisions.

--34 Appeals of Adverse Decisions Rendered by Acting STC or COC*A Authority**

[7 CFR 7.38] Nothing in this part shall preclude the Secretary, the Administrator, or the Deputy Administrator from administering any or all programs or exercising other functions delegated to the community committee, county committee, State committee, or any employee of such committees. In exercising this authority, the Secretary, the Administrator, or the Deputy Administrator may designate for such period of time as deemed necessary a person or persons of their choice to be in charge [with] full authority to carry on the programs or other functions without regard to the normal duties of such committees or employees.

[7 CFR 780.3(b)] Nothing contained in this part shall preclude the Secretary, or the Administrator of FSA, Executive Vice President of CCC, the Chief of NRCS, if applicable, or a designee from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any decision made by a subordinate employee of FSA or its county and State committees, or CCC.

B STC and COC Determinations

FSA may occasionally appoint an acting STC or, in rare instances, an acting COC. Acting STC's and COC's have the full authority of appointed STC's and elected COC's. Program determinations issued by acting STC's and COC's have the same force and effect as determinations that permanent STC's and COC's render.

Generally, when a program participant requests reconsideration or appeals, if the deciding official is an acting STC, FSA provides the appellant an option to wait for appointment of a permanent STC to proceed with the reconsideration request or appeal. FSA may provide the same option when there is an acting COC that would be the decision-maker.

If the decision-maker for a reconsideration or appeal is an acting STC or COC, the decision-maker **must** add the mandatory language in subparagraph 14 G to the determination letter. The determination letter must include, as an attachment, a copy of the written designation of the acting STC or COC.

If FSA decides to offer an appellant the option to wait for an appointed STC or elected COC, the acknowledgement letter in Exhibit 13 or 26, as applicable, must notify the appellant. The acknowledgement must include, as an attachment, a document for the appellant to return to FSA for recording the choice (modify Exhibit 14 for local use).--*

35-40 Reserved

117 Appellant Requests for NAD Director Review of Hearing Officer Determinations**A Responding to Appellant-Filed Requests for NAD Director Review**

[7 CFR 11.9(c)] Other parties to an appeal may submit written responses to a request for NAD Director review within 5 business days from the date of receipt of a copy of the request for review.

FSA has 5 workdays from first receiving a copy of an appellant request for NAD Director review in which to file its response.

Notes: In some instances, it may be appropriate for FSA to submit a timely response to an appellant-filed request for NAD Director review even though FSA may later or subsequently submit its own NAD Director review request. For example, a response to an appellant-filed request for NAD Director review may help keep NAD focused clearly on what is at issue or why FSA's overall position should be upheld or affirmed.

FSA sometimes may receive a copy of an appellant-filed request for NAD Director review before FSA has received an official copy of the NAD hearing officer determination. In such cases, FSA shall indicate in its response that FSA has not yet received a copy of the hearing officer determination.

117 Appellant Requests for NAD Director Review of Hearing Officer Determinations (Continued)**B SED Action**

Because of the limited time in which FSA has to submit responses to appellant-filed requests for NAD Director review, SED's are responsible and authorized to do all of the following:

- prepare and sign FSA responses to appellant-filed requests for NAD Director review
- send FSA responses directly by FAX to the applicable NAD Regional Office
- *--copy ALS appellant, appellant representatives, and all appeal parties involved (that is,--* as shown on the hearing officer determination).

Note: If the hearing officer determination reversed FSA or found FSA error, coordinate the response with ALS to ensure that submissions do **not** conflict with an FSA request for NAD Director review.

In general, FSA shall attempt to submit a timely response to **any** appellant-filed request for NAD Director review, even if the appellant-filed request contains no new information or information showing substantial error on the part of the hearing officer. In these instances, FSA should point that out, as part of its response and reaffirm, why FSA believes its adverse decision that was upheld by the hearing officer is correct.

See Exhibit 51 for an example of a response to an appellant-filed request for NAD Director review.

Example Acknowledgment Letter Attachment for Appellant to Record Option for Hearing When There is an Acting STC or COC

Generally, when a program participant requests reconsideration or appeals, if the deciding official is an acting STC, FSA provides the appellant an option to wait for an appointed permanent STC to proceed with the reconsideration request or appeal. FSA may provide the appellant an option to wait for an elected permanent COC when there is an acting COC that would be the decision-maker.

(Insert name) (State/county) Committee
(Insert address)

With respect to my request for **(reconsideration/appeal)** to the **(insert name) (State/county)** FSA Committee *(please check one)*:

- I intend to wait for **(appointment/election)** of the **(insert name) (State/county)** committee to continue my **(reconsideration request/appeal)**. I acknowledge that, by choosing this option, I am requesting an extension to deadlines for hearings or issuing determinations that may otherwise apply.
- I intend to continue my **(reconsideration request/appeal)** with the acting **(State/county)** committee. I recognize that regulations authorize FSA to appoint an acting **(State/county)** committee and that any determination the acting **(insert name) (State/county)** committee renders will have the same force and effect as if an **(appointed/elected)** committee had issued the decision.

Appellant Signature

Date

