

third party of its right to participate, and if such party declines to participate, the Division determination will be binding as to that third party as if it had participated. For purposes of this part, a third party includes any party for which a determination of the Division could lead to an agency action on implementation that would be adverse to the party thus giving such party a right to a Division appeal.

(b) *Interested parties.* With respect to a participant who is a borrower under a guaranteed loan or an insured under a crop insurance program, the respective guaranteed lender or reinsurance company having an interest in a participant's appeal under this part may participate in the appeal as an interested party, but such participation does not confer the status of an appellant upon the guaranteed lender or reinsurance company such that it may request Director review of a final determination of the Division.

Subpart B—Organization And Functions

AUTHORITY: 5 U.S.C. 301 and 552; 7 CFR part 2.

SOURCE: 63 FR 44773, Aug. 21, 1998, unless otherwise noted.

§ 11.20 General statement.

This subpart provides guidance for the general public as to the organization and functions of NAD.

§ 11.21 Organization.

NAD was established on October 13, 1994. Delegation of authority to the Director, NAD, appears at § 2.34 of this title. The organization is comprised of three regional offices: Eastern Regional Office, Indianapolis, Indiana; Southern Regional Office, Memphis, Tennessee; and Western Regional Office, Lakewood, Colorado; and the headquarters staff located in Alexandria, Virginia. NAD is headed by a Director. NAD is assigned responsibility for certain administrative appeals as set forth in subpart A of this part.

§ 11.22 Functions.

(a) *Director.* Provides executive direction for NAD. The Director is respon-

sible for developing and implementing nationwide plans, policies, and procedures for the timely and orderly hearing and disposition of appeals filed by individuals or entities in accordance with subpart A of this part. The Director will respond to all FOIA requests concerning appeal decisions and case records maintained by NAD.

(b) *Deputy Director for Hearings and Administration.* Responsible for all administrative functions of NAD, including budget, correspondence, personnel, travel, equipment, and regulation review and development.

(c) *Deputy Director for Planning, Training, and Quality Control.* Responsible for NAD strategic planning, including the organization's compliance with the Government Performance and Results Act, Pub. L. 103-62, employee training, and the establishment and maintenance of a quality assurance program.

(d) *Assistant Directors for Regions.* Responsible for oversight of the adjudication process for cases filed in the NAD regional offices. Assistant Directors ensure statutory and administrative time frames are met, and oversee the administrative functions, training, and supervision of the support staff located in the regional offices and the large dispersed staff of professional hearing officers located throughout the regions. The three regional offices serve as the custodian for all NAD determinations and case records.

Subpart C—Availability of Information to the Public

AUTHORITY: 5 U.S.C. 301 and 552; 7 CFR 1.1-1.16.

SOURCE: 63 FR 44774, Aug. 21, 1998, unless otherwise noted.

§ 11.30 General statement.

This subpart implements the regulations of the Secretary of Agriculture at 7 CFR 1.1 through 1.16 concerning FOIA (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of the records of NAD to the public.

§ 11.31

§ 11.31 Public inspection and copying.

Section 1.5 of this title requires that certain materials be made available by each USDA agency for public inspection and copying in accordance with 5 U.S.C. 522(a)(2). Members of the public wishing to gain access to these NAD records should write to the appropriate address shown in Appendix A of this subpart.

§ 11.32 Initial requests for records.

(a) Requests for NAD records should be in writing and addressed to the NAD official having custody of the records desired as indicated in § 11.22(d). Addresses are found in Appendix A of this subpart. In his or her petition, the requester may ask for a fee waiver if there is likely to be a charge for the requested information. The criteria for waiver of fees are found in section 6 of appendix A, subpart A of part 1 of this title. All requests for records shall be deemed to have been made pursuant to FOIA, regardless of whether FOIA is specifically mentioned. To facilitate processing of a request, the phrase "FOIA REQUEST" should be placed in capital letters on the front of the envelope.

(b) A request must reasonably describe records to enable NAD personnel to locate them with reasonable effort. Where possible, a requester should supply specific information, such as dates, titles, appellant name or appeal number, that may help identify the records. If the request relates to a matter in pending litigation, the court and its location should be identified.

(c) If NAD determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend the requester an opportunity to clarify the request or to confer promptly with knowledgeable NAD personnel to attempt to identify the records he or she is seeking. The "date of receipt" in such instances, for purposes of § 1.12(a) of this title, shall be the date of receipt of the amended or clarified request.

(d) Nothing in this subpart shall be interpreted to preclude NAD from honoring an oral request for information, but if the requester is dissatisfied with the response, the NAD official involved shall advise the requester to submit a

7 CFR Subtitle A (1-1-05 Edition)

written request in accordance with paragraph (a) of this section. The "date of receipt" of such a request for purposes of § 1.12(a) of this title shall be the date of receipt of the written request. For recordkeeping purposes, the NAD official responding to an oral request for information may ask the requester to also submit his or her request in writing.

(e) If a request for records or a fee waiver under this subpart is denied, the person making the request shall have the right to appeal the denial. Requesters also may appeal NAD decisions regarding a requester's status for purposes of fee levels under section 5 of Appendix A, subpart A of part 1 of this title. All appeals must be in writing and addressed to the official designated in § 11.33. To facilitate processing of an appeal, the phrase "FOIA APPEAL" should be placed in capital letters on the front of the envelope.

(f) NAD shall develop and maintain a record of all written and oral FOIA requests and FOIA appeals received by NAD, which shall include, in addition to any other information, the name of the requester, brief summary of the information requested, an indication of whether the request or appeal was denied or partially denied, the FOIA exemption(s) cited as the basis for any denials, and the amount of fees associated with the request or appeal.

§ 11.33 Appeals.

Any person whose initial FOIA request is denied in whole or in part may appeal that denial to the Director, National Appeals Division, U.S. Department of Agriculture, 3101 Park Center Drive, Suite 1113, Alexandria, Virginia 22302. The Director will make the final determination on the appeal.

APPENDIX A TO SUBPART C OF PART 11— LIST OF ADDRESSES

This list provides the titles and mailing addresses of officials who have custody of NAD records. This list also identifies the normal working hours, Monday through Friday, excluding holidays, during which public inspection and copying of certain kinds of records is permitted.

Director, National Appeals Division, U.S. Department of Agriculture, 3101 Park Center Drive, Suite 1113, Alexandria, Virginia 22302, Hours: 8 a.m.-5 p.m.

Regional Assistant Director, Eastern Region, National Appeals Division, U.S. Department of Agriculture, 3500 DePauw Boulevard, Suite 2052, Indianapolis, Indiana 46268, Hours: 8 a.m.-5 p.m.

Regional Assistant Director, Southern Region, National Appeals Division, U.S. Department of Agriculture, 7777 Walnut Grove Road, LLB-1, Memphis, Tennessee 38120, Hours: 8 a.m.-5 p.m.

Regional Assistant Director, Western Region, National Appeals Division, U.S. Department of Agriculture, 755 Parfet Street, Suite 494, Lakewood, Colorado 80215-5506, Hours: 8 a.m.-5 p.m.

PART 12—HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

Subpart A—General Provisions

Sec.

- 12.1 General.
- 12.2 Definitions.
- 12.3 Applicability.
- 12.4 Determination of ineligibility.
- 12.5 Exemption.
- 12.6 Administration.
- 12.7 Certification of compliance.
- 12.8 Affiliated persons.
- 12.9 Landlords and tenants.
- 12.10 Scheme or device.
- 12.11 Action based upon advice or action of USDA.
- 12.12 Appeals.

Subpart B—Highly Erodible Land Conservation

- 12.20 NRCS responsibilities regarding highly erodible land.
- 12.21 Identification of highly erodible lands criteria.
- 12.22 Highly erodible field determination criteria.
- 12.23 Conservation plans and conservation systems.

Subpart C—Wetland Conservation

- 12.30 NRCS responsibilities regarding wetlands.
- 12.31 On-site wetland identification criteria.
- 12.32 Converted wetland identification criteria.
- 12.33 Use of wetland and converted wetland.
- 12.34 Paperwork Reduction Act assigned number.

AUTHORITY: 16 U.S.C. 3801 *et seq.*

SOURCE: 61 FR 47025, Sept. 6, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 12.1 General.

(a) *Scope.* This part sets forth the terms and conditions under which a person who produces an agricultural commodity on highly erodible land or designates such land for conservation use, plants an agricultural commodity on a converted wetland, or converts a wetland shall be determined to be ineligible for certain benefits provided by the United States Department of Agriculture (USDA) and agencies and instrumentalities of USDA.

(b) *Purpose.* The purpose of the provisions of this part are to remove certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby—

- (1) Reduce soil loss due to wind and water erosion;
- (2) Protect the Nation's long-term capability to produce food and fiber;
- (3) Reduce sedimentation and improve water quality; and
- (4) Assist in preserving the functions and values of the Nation's wetlands.

§ 12.2 Definitions.

(a) *General.* The following definitions shall be applicable for the purposes of this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil, including tilling by one-trip planters, or sugarcane.

CCC means the Commodity Credit Corporation, a wholly-owned government corporation within USDA organized under the provisions of 15 U.S.C. 714 *et seq.*

Conservation District (CD) means a subdivision of a State or local government organized pursuant to the applicable law to develop and implement soil and water conservation activities or programs.

Conservation plan means the document that—

- (1) Applies to highly erodible cropland;
- (2) Describes the conservation system applicable to the highly erodible cropland and describes the decisions of the person with respect to location, land use, tillage systems, and conservation treatment measures and schedules; and