

Farm Service Agency, USDA

§ 780.2

AUTHORITY: 5 U.S.C. 301 and 574; 7 U.S.C. 6995; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

SOURCE: 70 FR 43266, July 27, 2005, unless otherwise noted.

§ 780.1 General.

This part sets forth rules applicable to appealability reviews, reconsiderations, appeals and alternative dispute resolution procedures comprising in aggregate the informal appeals process of FSA. FSA will apply these rules to facilitate and expedite participants' submissions and FSA reviews of documentary and other evidence material to resolution of disputes arising under agency program regulations.

§ 780.2 Definitions.

For purposes of this part:

1994 Act means the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354).

Adverse decision means a program decision by an employee, officer, or committee of FSA that is adverse to the participant. The term includes any denial of program participation, benefits, written agreements, eligibility, etc., that results in a participant receiving less funds than the participant believes should have been paid or not receiving a program benefit to which the participant believes the participant was entitled.

Agency means FSA and its county and State committees and their personnel, CCC, NRCS, and any other agency or office of the Department which the Secretary may designate, or any successor agency.

Agency record means all documents and materials maintained by FSA that are related to the adverse decision under review that are compiled and reviewed by the decision-maker or that are compiled in the record provided to the next level reviewing authority.

Appeal means a written request by a participant asking the next level reviewing authority within FSA to review a decision. However, depending on the context, the term may also refer to a request for review by NAD.

Appealability review means review of a decision-maker's determination that a decision is not appealable under this part. That decision is, however, subject

to review according to § 780.5 or 7 CFR part 11 to determine whether the decision involves a factual dispute that is appealable or is, instead, an attempt to challenge generally applicable program policies, provisions, regulations, or statutes that were not appealable.

Appellant means any participant who appeals or requests reconsideration or mediation of an adverse decision in accordance with this part or 7 CFR part 11.

Authorized representative means a person who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in a reconsideration, mediation, or appeal.

CCC means the Commodity Credit Corporation, a wholly owned Government corporation within USDA.

Certified State means, in connection with mediation, a State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 785.

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 or 7 CFR part 785.

County committee means an FSA county or area committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

Determination of NRCS means a decision by NRCS made pursuant to Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*), as amended.

FSA means the Farm Service Agency, an agency within USDA.

Final decision means a program decision rendered by an employee or officer of FSA pursuant to delegated authority, or by the county or State committee upon written request of a participant. A decision that is otherwise final shall remain final unless the decision is timely appealed to the State committee or NAD. A decision of FSA made by personnel subordinate to the county committee is considered "final" for the purpose of appeal to NAD only after that decision has been

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appealed to the county committee under the provisions of this part.

Hearing means an informal proceeding on an appeal to afford a participant opportunity to present testimony, documentary evidence, or both to show why an adverse decision is in error and why the adverse decision should be reversed or modified.

Implement means the taking of action by FSA, NRCS, or CCC that is necessary to effectuate fully and promptly a final decision.

Mediation means a technique for resolution of disputes in which a mediator assists disputing parties in voluntarily reaching mutually agreeable settlement of issues within the laws, regulations, and the agency's generally applicable program policies and procedures, but in which the mediator has no authoritative decision making power.

Mediator means a neutral individual who functions specifically to aid the parties in a dispute during a mediation process.

NAD means the USDA National Appeals Division established pursuant to the 1994 Act.

NAD rules means the NAD rules of procedure published at 7 CFR part 11, implementing title II, subtitle H of the 1994 Act.

Non-certified State means a State that is not approved to participate in the certified mediation program under 7 CFR part 785, or any successor regulation.

NRCS means the Natural Resources Conservation Service of USDA.

Participant means any individual or entity who has applied for, or whose right to participate in or receive, a payment, loan, loan guarantee, or other benefit in accordance with any program of FSA to which the regulations in this part apply is affected by a decision of FSA. The term includes anyone meeting this definition regardless of whether, in the particular proceeding, the participant is an appellant or a third party respondent. The term does not include individuals or entities whose claim(s) arise under the programs excluded in the definition of "participant" published at 7 CFR 11.1.

Qualified mediator means a mediator who meets the training requirements established by State law in the State

in which mediation services will be provided or, where a State has no law prescribing mediator qualifications, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by USDA, by an accredited college or university, or by one of the following organizations: State Bar of a qualifying State, a State mediation association, a State approved mediation program, or a society of dispute resolution professionals.

Reconsideration means a subsequent consideration of a program decision by the same level of decision-maker or reviewing authority.

Reviewing authority means a person or committee assigned the responsibility of making a decision on reconsideration or an appeal filed by a participant in accordance with this part.

State committee means an FSA State committee established in accordance with Section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) including, where appropriate, the Director of the Caribbean Area FSA office for Puerto Rico and the Virgin Islands.

State Conservationist means the NRCS official in charge of NRCS operations within a State, as set forth in part 600 of this title.

State Executive Director means the executive director of an FSA State office with administrative responsibility for a FSA State office as established under the Reorganization Act.

USDA means the U.S. Department of Agriculture.

Verbatim transcript means an official, written record of proceedings in an appeal hearing or reconsideration of an adverse decision appealable under this part.

§ 780.3 Reservations of authority.

(a) Representatives of FSA and CCC may correct all errors in data entered on program contracts, loan agreements, and other program documents and the results of the computations or calculations made pursuant to the contract or agreement. FSA and CCC will