

NATIONAL APPEALS DIVISION

FACE TO FACE FAIRNESS



Practice Before the National Appeals Division

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*Mid-South Agricultural
and Environmental Law
Conference*

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NAD'S MISSION and ENABLING STATUTE

The mission of the National Appeals Division is to conduct impartial administrative appeals hearings and reviews of adverse decisions made by designated agencies of the Department of Agriculture.

The Secretary shall establish and maintain an independent National Appeals Division within the Department. 7 U.S.C. § 6992(a).



NAD'S IMPORTANCE

- By statute, you must exhaust your administrative remedies before pursuing an action against the Secretary of Agriculture, the USDA, or any agency, office, officer or employee of the USDA. *7 U.S.C. § 6912(e) (2014)*
- Jurisprudential requirement vs. jurisdictional requirement—*Dawson Farms LLC v. Farm Service Agency*, 504 F.3d 592, 602-606 (5th Cir. 2007)



NAD'S JURISDICTION

Jurisdiction to hear appeals of decisions that are adverse to a participant issued by FSA, FCIC/RMA, NRCS, and RD

- Participant
- Adverse Decision
- Appealability
- *Union Pacific R.R. Co. v. Brotherhood of Locomotive Eng's & Trainmen Gen'l Comm. of Adjustment, Cent. Region, 130 S.Ct. 584 (2009)*



EXCLUSIONS TO NAD'S JURISDICTION

- **FOIA & Civil Rights Claims**
- **Certain Limitations for Crop Insurance**
 - **AIP decisions**
 - **Claim denials**
 - **GFP**



NAD EXTRAS

- **Administrative Procedures Act of 5 U.S.C. § 500 *et seq.*, applies to NAD appeals. *Lane v. U.S. Dept. of Agriculture*, 120 F.3d 106, 110 (8th Cir. 1997); *Aageson Grain & Cattle v. U.S. Dept. of Agriculture*, 500 F.3d 1038, 1043 (8th Cir. 2007) **No Federal Rules of Evidence****
 - **Appellant has the burden of proof. 7 U.S.C. § 6997(c)(4); 7 C.F.R. § 11.8(e) The standard is the preponderance of evidence standard as prescribed in the APA. *Steadman v. SEC*, 450 U.S. 91, 102, 101 S.Ct. 999 (1981).**
 - **EAJA applies, 5 U.S.C. § 504**
- **NAD decisions must be based on case record, laws, and regulations applicable to matter at issue. 7 U.S.C. § 6998(c).**



NAD's EQUITABLE RELIEF AUTHORITY

- The NAD Director shall have the authority to grant equitable relief ... in the same manner and to the same extent as such authority is provided to the Secretary under section 7996 of this title and other laws. *7 U.S.C. § 6998(d); 7 C.F.R. § 11.9(e).*

- Relief is limited to participants that are determined to be not in compliance with the requirements of a covered program, and therefore ineligible for a payment or other benefit under the covered program, if the participant-
 - (1) acting in good faith, relied on the action or advice of an authorized Agency representative to the detriment of the participant; or

 - (2) failed to comply fully with the requirements of the covered program, but made a good faith effort to comply with the requirements.



FILING AN APPEAL

- In writing, within 30 days after the participant receives notice of the adverse decision, personally signed by the participant.
- Mail or fax to appropriate NAD Regional Office or e-file appeal request
- In a “failure to act” case, a participant must file an appeal no later than 30 days after the date a participant knew or reasonably should have known the Agency had not acted within the time frames specified by agency program regulations.



AFTER APPEAL IS FILED

- Appellants have a right to a hearing in state of residence within 45 days of NAD receiving the request for a hearing
- Regional Office assignment, Notice of Pre-Hearing Conference
- At the Hearing, the Administrative Judge will put the parties under oath, review evidence already provided, give appellant and the agency representative each an opportunity to present testimony, additional evidence, and ask questions, including presenting testimony from witnesses.

Keep in mind that the Administrative Judge shall not be bound by previous findings of fact by the agency in making a determination. 7 U.S.C. § 6997(c)(2).



NAD DETERMINATIONS

- **Administrative Judge will typically issue decision within 30 days of record closing. 7 U.S.C. § 6997(d).**
- **If the determination is not appealed to the Director, the notice provided by the Administrative Judge shall be considered to be a notice of an administratively final determination. 7 U.S.C. § 6997(d).**
- **Either side may appeal the Administrative Judge decision to NAD's Director. Agency has 15 days and appellant has 30 days to request Director Review.**
- **The NAD Director can uphold, reverse, or modify Administrative Judge decision. And/or grant or deny equitable relief. If the record is insufficient, Director can remand the matter for additional proceedings.**



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Para español



The National Appeals Division reports directly to the Secretary of Agriculture and is independent of other parts of USDA. Its sole mission is to provide fair and timely hearings and appeals to USDA program participants.

Any person who receives an adverse program decision from USDA's Farm Service Agency, Risk Management Agency, Natural Resources Conservation Service, or the three USDA Rural Development agencies may file an appeal with NAD.

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National Appeals Division

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