

(c) The official county committee decision on an appeal will be the decision letter that is issued following disposition of the appeal.

(d) Deliberations shall be in confidence except to the extent that a county committee may request the assistance of county committee or FSA employees during deliberations.

§ 780.9 Mediation.

(a) Any request for mediation must be submitted after issuance of an adverse decision but before any hearing in an appeal of the adverse decision to NAD.

(b) An adverse decision and any particular issues of fact material to an adverse decision may be mediated only once:

(1) If resolution of an adverse decision is not achieved in mediation, a participant may exercise any remaining appeal rights under this part or appeal to NAD in accordance with part 11 of this title and NAD procedures.

(2) If an adverse decision is modified as a result of mediation, a participant may exercise any remaining appeal rights as to the modified decision under this part or appeal to NAD, unless such appeal rights have been waived pursuant to agreement in the mediation.

(c) Any agreement reached during, or as a result of, the mediation process shall conform to the statutory and regulatory provisions governing the program and FSA's generally applicable interpretation of those statutes and regulatory provisions.

(d) FSA will participate in mediation in good faith and to do so will take steps that include the following:

(1) Designating a representative in the mediation;

(2) Instructing the representative that any agreement reached during, or as a result of, the mediation process must conform to the statutes, regulations, and FSA's generally applicable interpretations of statutes and regulations governing the program;

(3) Assisting as necessary in making pertinent records available for review and discussion during the mediation; and

(4) Directing the representative to forward any written agreement pro-

posed in mediation to the appropriate FSA official for approval.

(e) Mediations will be treated in a confidential manner consistent with the purposes of the mediation.

(f) For requests for mediation in a Certified State, if the factual issues implicated in an adverse decision have not previously been mediated, notice to a participant of an adverse decision will include notice of the opportunity for mediation, including a mailing address and facsimile number, if available, that the participant may use to submit a written request for mediation.

(1) If the participant desires mediation, the participant must request mediation in writing by contacting the certified mediation program or such other contact as may be designated by FSA in an adverse decision letter. The request for mediation must include a copy of the adverse decision to be mediated.

(2) Participants in mediation may be required to pay fees established by the mediation program.

(3) A listing of certified State mediation programs and means for contact may be found on the FSA Web site at <http://www.usda.gov/fsa/disputemediation.htm>.

(g) For requests for mediation in a Non-certified State, if the factual issues implicated in an adverse decision have not previously been mediated, notice to a participant of an adverse decision will, as appropriate, include notice of the opportunity for mediation, including the mailing address of the State Executive Director and a facsimile number, if available, that the participant may use to submit a written request for mediation.

(1) It is the duty of the participant to contact the State Executive Director in writing to request mediation. The request for mediation must include a copy of the adverse decision to be mediated.

(2) If resources are available for mediation, the State Executive Director will select a qualified mediator and provide written notice to the participant that mediation is available and the fees that the participant will incur for mediation.

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(3) If the participant accepts such mediation, FSA may give notice of the mediation to interested parties and third parties whose interests are known to FSA.

(h) Mediation will be considered to be at an end on that date set out in writing by the mediator or mediation program, as applicable, or when the participant receives written notice from the State Executive Director that the State Executive Director believes the mediation is at an impasse, whichever is earlier.

(i) To provide for mediator impartiality:

(1) No person shall be designated as mediator in an adverse program dispute who has previously served as an advocate or representative for any party in the mediation.

(2) As a condition of retention to mediate in an adverse program dispute under this part, the mediator shall agree not to serve thereafter as an advocate or representative for a participant or party in any other proceeding arising from or related to the mediated dispute, including, without limitation, representation of a mediation participant before an administrative appeals entity of USDA, or any other Federal Government department.

[70 FR 43266, July 27, 2005, as amended at 71 FR 30573, May 30, 2006]

§ 780.10 State committee appeals.

(a) A request for appeal to the State committee from a decision of a county committee must be submitted by a participant or by a participant's authorized representative in writing and addressed to the State Executive Director.

(b) A participant's right to appeal a decision to a State committee is waived if a participant has appealed the adverse decision to NAD before requesting an appeal to the State Committee.

(c) If a participant requests mediation or requests an appeal to NAD before a request for an appeal to the State Committee has been acted upon, the appeal to the State Committee will be deemed withdrawn. The deemed withdrawal of a participant's appeal to the State Committee will not preclude a subsequent request for a State Com-

mittee hearing on appealable matters not resolved in mediation.

(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) The official record of a State committee decision on an appeal will be the decision letter that is issued following disposition of the appeal.

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

[70 FR 43266, July 27, 2005, as amended at 71 FR 30573, May 30, 2006]

§ 780.11 Appeals of NRCS determinations.

(a) Notwithstanding any other provision of this part, a determination of NRCS issued to a participant pursuant to Title XII of the Food Security Act of 1985, as amended, including a wetland determination, may be appealed to the county committee in accordance with the procedures in this part.

(b) If the county committee hears the appeal and believes that the challenge to the NRCS determination is not frivolous, the county committee shall refer the case with its findings on other issues to the NRCS State Conservationist to review the determination, or may make such a referral in advance of resolving other issues.

(c) A decision of the county committee not to refer the case with its findings to the NRCS State Conservationist may be appealed to the State Committee.

(d) The county or State committee decision must incorporate, and be based upon, the results of the NRCS State Conservationist's review and subsequent determination.

§ 780.12 Appeals of penalties assessed under the Agricultural Foreign Investment Disclosure Act of 1978.

(a) Requests for appeals of penalties assessed under the Agricultural Foreign Investment Disclosure Act of 1978 must be addressed to: Administrator,