

2014 Explanatory Notes
National Appeals Division

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NATIONAL APPEALS DIVISION

Purpose Statement

The National Appeals Division (NAD) was established by the Secretary of Agriculture on October 20, 1994, by Secretary's Memorandum 1010-1, pursuant to the Federal Crop Insurance and Reform and Department of Agriculture Reorganization Act of 1994, Public Law No. 103-354. The Act consolidated the appellate functions and staff of several USDA agencies to provide for independent hearings and reviews of adverse agency decisions.

The mission of NAD is to conduct fair and impartial administrative appeal hearings and reviews of adverse decisions issued by certain agencies within the USDA and to issue determinations in an expeditious manner that reflect a thorough consideration of factual information and reach a proper conclusion. By statute, NAD hears appeals involving program decisions of the Farm Service Agency, Risk Management Agency, Natural Resources Conservation Service, Rural Business-Cooperative Service, Rural Housing Service, and the Rural Utilities Service. The Secretary of Agriculture may also assign to NAD additional jurisdiction to hear administrative appeals arising from decisions of other parts of USDA.

NAD Headquarters is located in Alexandria, Virginia. NAD administers its appeals system through three regional offices located in Memphis, Tennessee; Indianapolis, Indiana; and Lakewood, Colorado. The Hearing Officers are located in 57 field locations throughout the United States and operate out of leased office space or home offices. As of September 30, 2012, there were 92 permanent full-time employees, comprised of 25 in Alexandria, VA and 67 in the field.

NAD did not have any Office of Inspector General or Government Accountability Office evaluation reports during the past year.

NATIONAL APPEALS DIVISION

Available Funds and Staff Years (SY)
(Dollars in thousands)

Item	<u>2011 Actual</u>		<u>2012 Actual</u>		<u>2013 Estimate</u>		<u>2014 Estimate</u>	
	Amount	SY	Amount	SY	Amount	SY	Amount	SY
Salaries and Expenses:								
Discretionary Appropriations.....	\$14,254	92	\$12,841	86	\$12,920	92	\$12,940	92
Rescission.....	-29	-	-	-	-	-	-	-
Total Available.....	14,225	92	12,841	86	12,920	92	12,940	92
Lapsing Balances.....	-253	-	-65	-	-	-	-	-
Total Obligations, OC.....	13,972	92	12,776	86	12,920	92	12,940	92

Permanent Positions by Grade and Staff Year Summary

Item	<u>2011 Actual</u>			<u>2012 Actual</u>			<u>2013 Estimate</u>			<u>2014 Estimate</u>		
	V.A.	Field	Total	V.A.	Field	Total	V.A.	Field	Total	V.A.	Field	Total
SES.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-15.....	4	3	7	4	3	7	3	3	6	3	3	6
GS-14.....	2	6	8	2	6	8	2	6	8	2	6	8
GS-13.....	13	53	66	13	46	59	13	41	54	13	41	54
GS-12.....	3	-	3	2	-	2	2	-	2	2	-	2
GS-11.....	-	3	3	-	3	3	-	6	6	-	6	6
GS-10.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-9.....	2	3	5	2	2	4	2	2	4	2	2	4
GS-8.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-7.....	-	-	-	-	1	1	-	1	1	-	1	1
GS-6.....	1	6	7	1	6	7	1	6	7	1	6	7
GS-5.....	-	1	1	-	1	1	-	1	1	-	1	1
Total Perm.												
Positions.....	28	75	103	27	68	95	26	66	92	26	66	92
Unfilled, EOY.....	6	10	16	2	1	3	-	-	-	-	-	-
Total, Perm. Full-Time												
Employment EOY.....	22	65	87	25	67	92	26	66	92	26	66	92
Staff Year Est.....	24	68	92	25	61	86	25	67	92	25	67	92

NATIONAL APPEALS DIVISION

The estimates include appropriation language for this item as follows:

Salaries and Expenses:

For necessary expenses of the National Appeals Division, \$12,940,000.

Lead-Off Tabular Statement

2013 Estimates.....	\$12,920,000
Budget Estimate, 2014.....	<u>12,940,000</u>
Change in Appropriation	<u>+20,000</u>

Summary of Increases and Decreases

(Dollars in thousands)

	<u>2011 Actual</u>	<u>2012 Change</u>	<u>2013 Change</u>	<u>2014 Change</u>	<u>2014 Estimate</u>
Discretionary Appropriations:					
National Appeals Division.....	\$14,225	-\$1,384	+\$79	+\$20	\$12,940

Project Statement

Appropriations Detail and Staff Years (SY)

(Dollars in thousands)

Program	<u>2011 Actual</u>		<u>2012 Actual</u>		<u>2013 Estimate</u>		<u>Inc. or Dec.</u>		<u>2014 Estimate</u>	
	Amount	SY	Amount	SY	Amount	SY	Amount	SY	Amount	SY
Discretionary Appropriations:										
National Appeals Division.....	\$14,225	92	\$12,841	86	\$12,920	92	+\$20 (1)	-	\$12,940	92
Rescissions and Transfers (Net).....	29	-	-	-	-	-	-	-	-	-
Total Appropriation.....	14,254	92	12,841	86	12,920	92	+20	-	12,940	92
Rescission.....	-29	-	-	-	-	-	-	-	-	-
Total Available.....	14,225	92	12,841	86	12,920	92	+20	-	12,940	92
Lapsing Balances.....	-253	-	-65	-	-	-	-	-	-	-
Total Obligations.....	13,972	92	12,776	86	12,920	92	+20	-	12,940	92

NATIONAL APPEALS DIVISION

Project Statement

Obligations Detail and Staff Years (SY)
(Dollars in thousands)

Program	2011 Actual		2012 Actual		2013 Estimate		Inc. or Dec.		2014 Estimate	
	Amount	SY	Amount	SY	Amount	SY	Amount	SY	Amount	SY
Discretionary Obligations:										
National Appeals Division.....	\$13,972	92	\$12,776	86	\$12,920	92	+\$20 (1)	-	\$12,940	92
Total Obligations.....	13,972	92	12,776	86	12,920	92	+20	-	12,940	92
Lapsing Balances.....	253	-	65	-	-	-	-	-	-	-
Total Available.....	14,225	92	12,841	86	12,920	92	+20	-	12,940	92
Rescission.....	29	-	-	-	-	-	-	-	-	-
Total Appropriation.....	14,254	92	12,841	86	12,920	92	+20	-	12,940	92

Justification of Increases and Decreases

The base funds will continue to support the mission of NAD to conduct fair and impartial administrative appeal hearings and reviews of adverse decisions, issued by certain agencies within the USDA, and to issue determinations in an expeditious manner that reflect a thorough consideration of factual information that reach a proper conclusion.

(1) An increase of \$20,000 for NAD (\$12,920,000 and 92 staff years available in 2013).

a) An increase of \$99,000 for pay costs which includes \$25,000 for annualization of the fiscal year 2013 pay raise and \$74,000 for the anticipated fiscal year 2014 pay raise.

The proposed funding level is needed to cover pay and benefit cost increases for existing staff. This will ensure that NAD can carry out its statutory responsibilities in a timely manner. Appellants, USDA agencies, and Congress would all be adversely affected if NAD cannot execute its mission within statutory time requirements. Responsive, fair, and quality decision-making is a corner stone of NAD's strategic planning.

b) A decrease of \$79,000 for the FY 2013 Operating Cost.

NAD will reduce operating spending in the areas of travel and communications charges. The office will also reduce contractual spending where possible.

NATIONAL APPEALS DIVISION

Geographic Breakdown of Obligations and Staff Years (SY)

(Dollars in thousands)

State/Territory	2011 Actual		2012 Actual		2013 Estimate		2014 Estimate	
	Amount	SY	Amount	SY	Amount	SY	Amount	SY
Alabama.....	\$116	1	\$116	1	\$116	1	\$117	1
Arkansas.....	108	1	111	1	111	1	112	1
California.....	251	2	251	2	251	2	253	2
Colorado.....	1,211	9	943	8	943	8	950	8
Connecticut.....	144	1	146	1	146	1	147	1
Florida.....	220	2	284	2	284	2	286	2
Georgia.....	284	2	126	1	126	1	127	1
Idaho.....	118	1	122	1	122	1	123	1
Indiana.....	1,182	7	903	7	903	9	910	9
Iowa.....	118	1	122	1	122	1	123	1
Kentucky.....	260	2	-	-	-	-	-	-
Louisiana.....	133	1	133	1	133	1	134	1
Maryland.....	111	1	114	1	114	1	115	1
Michigan.....	132	1	264	2	264	2	266	2
Minnesota.....	280	2	115	1	115	1	116	1
Mississippi.....	138	1	140	1	140	1	141	1
Missouri.....	132	1	140	1	140	1	141	1
Montana.....	136	1	136	1	136	1	137	1
Nebraska.....	108	1	110	1	110	1	111	1
New York.....	-	-	110	1	110	1	111	1
North Carolina.....	342	3	359	3	359	3	362	3
North Dakota.....	215	2	220	2	220	2	222	2
Ohio.....	-	-	86	1	86	1	87	1
Oklahoma.....	263	2	263	2	263	2	265	2
Oregon.....	121	1	124	1	124	1	125	1
Pennsylvania.....	265	2	265	2	265	2	267	2
South Carolina.....	134	1	134	1	134	1	135	1
Tennessee.....	1,413	11	1,130	8	1,274	11	1,284	11
Texas.....	372	3	322	3	322	3	324	3
Vermont.....	132	1	132	1	132	1	133	1
Virginia.....	5,122	25	5,100	25	5,100	26	5,060	26
Washington.....	136	1	136	1	136	1	137	1
West Virginia.....	161	1	-	-	-	-	-	-
Wisconsin.....	114	1	119	1	119	1	120	1
Obligations.....	13,972	92	12,776	86	12,920	92	12,940	92
Lapsing Balances.....	253	-	65	-	-	-	-	-
Total, Available.....	14,225	92	12,841	86	12,920	92	12,940	92

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Classification by Objects

(Dollars in thousands)

	2011	2012	2013	2014
	<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>Estimate</u>
Personnel Compensation:				
Alexandria, VA.....	\$2,190	\$2,391	\$2,406	\$2,437
Field.....	6,327	5,835	6,108	6,211
11 Total personnel compensation.....	8,517	8,226	8,514	8,648
12 Personal benefits.....	2,162	2,211	2,291	2,324
Total, personnel comp. and benefits.....	10,679	10,437	10,805	10,972
Other Objects:				
21.0 Travel and transportation of persons.....	279	210	170	100
22.0 Transportation of things.....	54	38	20	20
23.2 Rental payments to others.....	76	78	79	79
23.3 Communications, utilities, and misc. charges.....	294	302	250	200
24.0 Printing and reproduction.....	10	18	10	10
25.0 Other contractual services.....	136	141	120	100
25.1 Advisory and assistance services.....	1,062	1,019	1,025	1,000
25.2 Other services from non-Federal sources.....	806	307	311	311
25.3 Other purchases of goods and services				
from Federal sources.....	324	103	80	98
26.0 Supplies and materials.....	169	48	40	40
31.0 Equipment.....	83	75	10	10
Total, Other Objects.....	3,293	2,339	2,115	1,968
99.9 Total, new obligations.....	13,972	12,776	12,920	12,940
Position Data:				
Average Salary (dollars), SES Position.....	\$165,300	\$165,300	\$165,300	\$165,300
Average Salary (dollars), GS Position.....	\$94,969	\$94,969	\$92,001	\$94,969
Average Grade, GS Position.....	13.3	13.3	13.2	13.3

NATIONAL APPEALS DIVISION

STATUS OF PROGRAM

The sole mission of the National Appeals Division (NAD) is to conduct fair and impartial administrative appeal hearings and reviews of adverse decisions issued by the Farm Service Agency, Risk Management Agency, Natural Resources Conservation Service, Rural Business-Cooperative Service, Rural Housing Service, and the Rural Utilities Service, to issue determinations in an expeditious manner that reflect a thorough consideration of factual information, and to reach a proper conclusion. The Secretary of Agriculture may also assign to NAD jurisdiction to hear administrative appeals arising from decisions of other parts of USDA. In carrying out its statutory authority, NAD hears from farmers and other rural program participants about their disputes with USDA agencies and makes decisions through a fair and impartial administrative hearings and appeals process.

Current Activities:

Appealability Determinations. When an agency notifies a participant that it does not believe an administrative decision is appealable, that participant may request that the NAD Director review that determination. The Director reviews hundreds of these decisions annually, and the determination is administratively final.

Pre-Hearing Conferences. NAD conducts pre-hearing conferences to identify and/or narrow the issues in the appeal and helps parties understand the evidence they need to bring to the hearing. Pre-hearing conferences increase the efficiency and fairness of the appeal process by ensuring all parties are properly prepared for the hearing.

Hearings and Reviews. NAD Hearing Officers conduct impartial administrative hearings and issue determinations in an expeditious manner that reflects a thorough consideration of factual information to reach a proper conclusion. On petition, the NAD Director reviews those determinations. In addition, the Hearing Officers and the NAD Director make decisions about attorney fees under the Equal Access to Justice Act.

Selected Examples of Recent Progress:

In 2012, NAD—

- Processed 2,197 cases filed with NAD.
- Issued 120 determinations when appellants challenged the agency view that a decision was not appealable. Outcome was favorable to appellants in 78 percent of the cases.
- Conducted 1,003 in-person or telephonic hearings, and reviews of the record.
- Issued 2,265 determinations, of which 1,760 were issued by Hearing Officers and 505 were issued by the NAD Director. Outcome was favorable to appellants in 36 percent of the cases.
- Increased transparency and affirmed the fairness of the USDA appeals process by publishing more than 1,500 determinations in FY 2012; approximately 14,500 have been published on the NAD Web site (http://www.nad.usda.gov/public_search.html) since the program began. Appealability decisions are now posted on the Web as well; almost 900 of those determinations have been made since May 2008.
- Continue to increase access to 10,300 digital recordings of pre-hearings and hearings for employee access and management review. When parties request audio recordings, NAD now provides CDs or MP3 audio files.
- Through group employee evaluation sessions, conducted quality assessments of over 500 hearings and review decisions; NAD writing standards have been validated by the Educational Testing Service, and are described in a peer-reviewed article that shows that the use of holistic evaluation of writing increases the quality of NAD decisions (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1229562).
- Increased the cost-effectiveness and capability of the case tracking system which captures increasing amounts of data about cases and performance measurements, implements increased electronic delivery services to customers, and increases transparency of NAD decision-making to the public. Installed a beta test module for “Efile” on the case tracking system that will permit participants to file appeals online in FY 2013.
- Continued its outreach campaign (*Face to Face Fairness*) to demonstrate to producers the fairness of the USDA appeals system by conducting 12 outreach activities (e.g., attended farm shows, conventions, and conferences; conducted agency training; and met with rural colleges and organizations).

NATIONAL APPEALS DIVISION

Summary of Budget and Performance
Statement of Agency Goals and Objectives

Section 272 of the Federal Crop Insurance Reform and Department of Agricultural Reorganization Act of 1994, Pub. Law No. 103-254, requires the Secretary of Agriculture to establish and maintain the National Appeals Division (NAD). The Act consolidated the appellate functions and staff of several USDA agencies to provide for independent hearings and reviews of adverse agency decisions. NAD hears appeals involving program decisions of the Farm Service Agency, Risk Management Agency, Natural Resources Conservation Service, Rural Business-Cooperative Service, Rural Housing Service, and the Rural Utilities Service. The Secretary of Agriculture may also assign to NAD additional jurisdiction to hear administrative appeals arising from decisions of other parts of USDA.

USDA Strategic Goal: NAD has one strategic goal and two agency objectives that contribute to the strategic goals of the Department.

Agency Strategic Goal	Agency Objectives	Programs that Contribute	Key Outcomes
Issue timely and well-written determinations that correctly interpret applicable regulations.	<p>Conduct hearings and issue quality determinations within applicable statutorily- mandated timeframes.</p> <p>Issue appeal hearing and review determinations that reviewers have assigned evaluation scores that fall within a standard deviation of 1.0 based on a six-point scale identifying excellence and matters that detract from excellence. This provides an objective evaluation tool for identifying what makes a determination excellent and helps writers achieve excellence in their work.</p>	<p>Hearings Appeals Reviews</p> <p>Planning, Training, and Quality Control</p>	<p>1: NAD conducts timely hearings and delivers timely determinations</p> <p>2: Correct, fair, and readable determinations; reaching the right decision for the right reason</p>

Key Outcome 1: NAD conducts timely hearings and delivers timely determinations.

Key Performance Measures and Targets:

Measure	2008 Actual	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Target	2014 Target
Percentage of hearings held and determinations issued within applicable timeframes.	85%	85%	85%	85%	85%	85%	85%
Cost (thousands)	\$7,138	\$7,009	\$7,200	\$6,986	\$6,388	\$6,460	\$6,469

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Key Outcome 2: Correct, fair, and readable determinations; reaching the right decision for the right reasons.

Key Performance Measures and Targets:

Performance Measure	2008 Actual	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Target	2014 Target
Determinations found to be within 1.0 standard deviation of excellence according to group evaluations.	100%	100%	100%	100%	100%	100%	100%
Cost (thousands)	\$7,138	\$7,010	\$7,200	\$6,986	\$6,388	\$6,460	\$6,471

Selected Accomplishments Expected at the 2014 Proposed Resource Level:

- Our expected accomplishments for Appeal Hearings are - 2,600
- Our expected accomplishments for Determinations are:
 - Director Review Determinations - 400
 - Appeal Determinations - 2,500
 - Appealability, Timeliness, and Jurisdictional Determinations – 300

Strategic Goal Funding Matrix

(Dollars in thousands)

<u>Program/ Program Items</u>	<u>2011 Actual</u>	<u>2012 Actual</u>	<u>2013 Estimate</u>	<u>Change</u>	<u>2014 Estimate</u>
Agency Strategic Goal: Issue timely and well-written determinations that correctly interpret applicable regulations.					
National Appeals Division.....	\$14,225	\$12,841	\$12,920	+\$20	\$12,940
Staff Years.....	92	86	92	-	92

NATIONAL APPEALS DIVISION

Full Cost by Department Strategic Goal
(Dollars in thousands)

Agency Strategic Goal: Issue timely and well-written determinations that correctly interpret applicable regulations.

Program/ Program Items	2011 Actual	2012 Actual	2013 Estimate	2014 Estimate
<u>National Appeals Division</u>				
Administrative costs (direct).....	\$10,679	\$10,437	\$10,805	\$10,972
Indirect costs.....	3,293	2,339	2,115	1,968
Total Costs.....	13,972	12,776	12,920	12,940
FTEs.....	92	86	92	92
Performance Measure:				
Percentage of hearings held and determinations issued within applicable timeframe.				
Measure.....	85%	85%	85%	85%
Cost per measure (unit cost).....	6,986	6,388	6,460	6,469
Performance Measure:				
Determinations found to be within 1.0 standard deviation of excellence according to group evaluations.				
Measure.....	100%	100%	100%	100%
Cost per measure (unit cost).....	6,986	6,388	6,460	6,471