

## § 774.19

### § 774.19 Processing applications.

Applications will be processed until such time that funds are exhausted, or all claims have been paid and the bankruptcy involving AgriBiotech has been discharged. When all loan funds have been exhausted or the bankruptcy is discharged, no further applications will be accepted and any pending applications will be considered withdrawn.

### § 774.20 Funding applications.

Loan requests will be funded based on the date the Agency approves an application. Loan approval is subject to the availability of funds.

### § 774.21 [Reserved]

### § 774.22 Loan closing.

(a) *Conditions.* The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to closing.

(b) *Loan instruments and legal documents.* The applicant will execute all loan instruments and legal documents required by the Agency to evidence the debt, perfect the required security interest in the bankruptcy claim, and protect the Government's interest, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees for recording any legal instruments determined to be necessary and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

### § 774.23 Loan servicing.

Loans will be serviced as a Non-program loan in accordance with 7 CFR part 766. If the loan is not repaid as agreed and default occurs, servicing will proceed in accordance with 7 CFR part 766, subpart H.

[72 FR 64121, Nov. 15, 2007]

### § 774.24 Exception.

The Agency may grant an exception to any of the requirements of this section, if the proposed change is in the

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best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

## PART 780—APPEAL REGULATIONS

### Sec.

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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 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.

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*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

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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 furnish appropriate notice of such corrections when corrections are deemed necessary.

(b) Nothing contained in this part shall preclude the Secretary, or the Administrator of FSA, Executive Vice President of CCC, the Chief of NRCS, if applicable, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any decision made by a subordinate employee of FSA or its county and State committees, or CCC.

#### § 780.4 Applicability.

(a)(1) Except as provided in other regulations, this part applies to decisions made under programs and by agencies, as set forth herein:

(i) Decisions in programs administered by FSA to make, guarantee or service farm loans set forth in chapters VII and XVIII of this title relating to farm loan programs;

(ii) Decisions in those domestic programs administered by FSA on behalf of CCC through State and county committees, or itself, which are generally set forth in chapters VII and XIV of this title, or in part VII relating to conservation or commodities;