

2013 Explanatory Notes
National Appeals Division
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NATIONAL APPEALS DIVISION

Purpose Statement

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.

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 that reach a proper conclusion.

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, 2011, there were 87 permanent full-time employees, comprised of 22 in Alexandria, VA and 65 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
(Dollars in thousands)

Item	<u>2010 Actual</u>		<u>2011 Actual</u>		<u>2012 Estimate</u>		<u>2013 Estimate</u>	
	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years
Salaries and Expenses:								
Discretionary Appropriations.....	\$15,254	91	\$14,254	92	\$12,841	90	\$14,225	102
Rescission.....	-	-	-29	-	-	-	-	-
Transfer Out.....	-457	-	-	-	-	-	-	-
Total Available.....	14,797	91	14,225	92	12,841	90	14,225	102
Lapsing Balances.....	-397	-	-253	-	-	-	-	-
Obligations.....	14,400	91	13,972	92	12,841	90	14,225	102

Permanent Positions by Grade and Staff Year Summary

Item	<u>2010 Actual</u>			<u>2011 Actual</u>			<u>2012 Estimate</u>			<u>2013 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	4	3	7
GS-14.....	2	6	8	2	6	8	2	6	8	2	6	8
GS-13.....	13	49	62	13	53	66	12	43	55	13	52	65
GS-12.....	3	-	3	3	-	3	2	-	2	2	-	2
GS-11.....	-	3	3	-	3	3	-	3	3	-	3	3
GS-10.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-9.....	2	3	5	2	3	5	2	3	5	2	3	5
GS-8.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-6.....	1	6	7	1	6	7	1	6	7	1	7	8
GS-5.....	-	1	1	-	1	1	-	1	1	-	1	1
Total Perm.												
Positions.....	28	71	99	28	75	103	25	65	90	27	75	102
Unfilled, EOY.....	4	6	10	6	10	16	-	-	-	-	-	-
Total, Perm.												
Full-Time												
Empl, EOY.....	24	65	89	22	65	87	25	65	90	27	75	102
Staff Year Est.....	24	67	91	24	68	92	25	65	90	27	75	102

NATIONAL APPEALS DIVISION

The estimates include appropriation language for this item as follows (new language underscored; deleted matter in brackets):

Salaries and Expenses:

For necessary expenses of the National Appeals Division, [\$12,841,000] \$14,225,000.

Lead-off Tabular Statement

Appropriations Act, 2012.....	\$12,841,000
Budget Estimate, 2013.....	<u>14,225,000</u>
Change from 2012 Appropriation.....	<u>+ 1,384,000</u>

Summary of Increases and Decreases
(Dollars in thousands)

	<u>2010</u> <u>Actual</u>	<u>2011</u> <u>Change</u>	<u>2012</u> <u>Change</u>	<u>2013</u> <u>change</u>	<u>2013</u> <u>Estimate</u>
Discretionary Appropriations:					
National Appeals Division.....	\$15,254	-\$1,029	-\$1,384	+\$1,384	\$14,225

Project Statement
(On basis of appropriations)
(Dollars in thousands)

Program	<u>2010 Actual</u>		<u>2011 Actual</u>		<u>2012 Estimate</u>		<u>Change</u>		<u>2013 Estimate</u>		
	Staff		Staff		Staff		Staff		Staff		
	Amount	Years	Amount	Years	Amount	Years	Amount	Years	Amount	Years	
Discretionary Appropriations:											
National Appeals Division.....	\$14,797	91	\$14,225	92	\$12,841	90	+\$1,384	(1)	+12	\$14,225	102
Total Adjusted Approp.....	14,797	91	14,225	92	12,841	90	+1,384		+12	14,225	102
Rescission and Transfers (Net).....	457	-	29	-	-	-	-		-	-	-
Total Appropriation.....	15,254	91	14,254	92	12,841	90	+1,384		+12	14,225	102
Transfers Out:											
WCF.....	-457	-	-	-	-	-	-		-	-	-
Rescission.....	-	-	-29	-	-	-	-		-	-	-
Total Available.....	14,797	91	14,225	92	12,841	90	+1,384		+12	14,225	102
Lapsing Balances.....	-397	-	-253	-	-	-	-		-	-	-
Total Obligations.....	14,400	91	13,972	92	12,841	90	+1,384		+12	14,225	102

NATIONAL APPEALS DIVISION

Project Statement
(On basis of obligations)
(Dollars in thousands)

Program	2010 Actual		2011 Actual		2012 Estimate		Change		2013 Estimate	
	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years
Discretionary Obligations:										
National Appeals Division.....	\$14,400	91	\$13,972	92	\$12,841	90	+\$1,384 (1)	+12	\$14,225	102
Total Obligations.....	14,400	91	13,972	92	12,841	90	+1,384	+12	14,225	102
Lapsing Balances.....										
Total Available.....	14,797	91	14,225	92	12,841	90	+1,384	+12	14,225	102
Transfers Out:										
WCF.....	457	-	-	-	-	-	-	-	-	-
Rescission.....	-	-	29	-	-	-	-	-	-	-
Total Appropriation.....	15,254	91	14,254	92	12,841	90	+1,384	+12	14,225	102

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 \$1,384,000 for the National Appeals Division (\$12,841,000 and 90 staff years available in 2012) consisting of:

- a) An increase of \$38,000 to fund increased pay costs.

The proposed funding level is needed to cover pay cost increases to ensure that NAD can carry out its statutory responsibilities in a timely manner.

- b) An increase of \$1,346,000 to fund 12 additional FTEs.

This increase is needed for mission critical positions to ensure that NAD can carry out its full range of responsibilities and agency goals. In preparation for an austere funding level in 2012, NAD permitted staffing levels to reduce to historic lows. Thus, NAD has many critical vacancies across the organization for Appeals Officers, Hearing Officers, and other legal administrative staff. These positions are needed to meet statutory deadlines, workload requirements, and demands for deciding complex cases in a timely manner throughout the United States. Aside from NAD's statutory requirements, a quick resolution of cases is needed by Appellants as part of their risk management, by agencies for making future programs decisions, and by both to reduce litigation expenses; and, ultimately, timely and high quality decisions reduce litigation risk for USDA.

Additional FTE's will reduce the NAD inventory of cases and provide timely assistance to farmers that minimize delays and wait times for resolution of their cases. The additional FTE's will also permit NAD to implement its succession planning that confronts the challenges of a workforce that is 44 percent retirement eligible.

NATIONAL APPEALS DIVISION

Geographic Breakdown of Obligations and Staff Years
(Dollars in thousands)

State/Territory	<u>2010 Actual</u>		<u>2011 Actual</u>		<u>2012 Estimate</u>		<u>2013 Estimate</u>	
	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years
Alabama	\$112	1	\$116	1	\$116	1	\$192	2
Arkansas	101	1	108	1	-	-	81	1
California	134	1	251	2	251	2	251	2
Colorado	1,332	9	1,211	9	1,017	9	1,177	9
Connecticut	142	1	144	1	146	1	146	1
Florida	216	2	220	2	224	2	298	3
Georgia	272	2	284	2	284	2	284	2
Idaho	115	1	118	1	122	1	122	1
Illinois	129	1	-	-	129	1	129	1
Indiana	1,126	8	1,182	7	950	8	1,072	8
Iowa	264	2	118	1	122	1	264	2
Kansas	-	-	-	-	-	-	81	1
Kentucky	260	2	260	2	-	-	-	-
Louisiana	129	1	133	1	133	1	138	1
Maryland	-	-	111	1	114	1	119	1
Michigan	260	2	132	1	132	1	260	2
Minnesota	280	2	280	2	115	1	280	2
Mississippi	132	1	138	1	140	1	142	1
Missouri	-	-	132	1	140	1	142	1
Montana	132	1	136	1	136	1	136	1
Nebraska	105	1	108	1	110	1	115	1
New York	-	-	-	-	-	-	81	1
North Carolina	216	2	342	3	359	3	359	3
North Dakota	210	2	215	2	220	2	291	3
Ohio	-	-	-	-	86	1	88	1
Oklahoma	260	2	263	2	263	2	263	2
Oregon	-	-	121	1	124	1	128	1
Pennsylvania	260	2	265	2	265	2	265	2
South Carolina	132	1	134	1	134	1	134	1
Tennessee	1,413	11	1,413	11	1,131	11	1,160	11
Texas	372	3	372	3	244	2	372	3
Vermont	129	1	132	1	132	1	132	1
Virginia	5,641	24	5,122	25	5,086	25	5,101	27
Washington	132	1	136	1	136	1	136	1
West Virginia	161	1	161	1	161	1	161	1
Wisconsin	233	2	114	1	119	1	125	1
Obligations	14,400	91	13,972	92	12,841	90	14,225	102
Lapsing Balances	397	-	253	-	-	-	-	-
Total, Available	14,797	91	14,225	92	12,841	90	14,225	102

NATIONAL APPEALS DIVISION

Classification By Objects
(Dollars in thousands)

	<u>2010</u> <u>Actual</u>	<u>2011</u> <u>Actual</u>	<u>2012</u> <u>Estimate</u>	<u>2013</u> <u>Estimate</u>
Personnel Compensation:				
Alexandria, VA.....	\$2,362	\$2,190	\$2,049	\$2,351
Field.....	6,826	6,327	5,919	6,786
11.0 Total personnel compensation.....	9,188	8,517	7,968	9,137
12.0 Personal benefits.....	2,115	2,162	2,054	2,337
13.0 Benefits for former personnel.....	-	-	-	-
Total, personnel comp. and benefits.....	11,303	10,679	10,022	11,474
Other Objects:				
21.0 Travel and transportation of persons.....	394	279	270	216
22.0 Transportation of things.....	55	54	45	45
23.1 Rental payments to GSA.....	71	76	77	77
23.3 Communications, utilities, and misc. charges....	171	294	294	235
24.0 Printing and reproduction.....	7	10	6	5
25.0 Other contractual services.....	-	136	33	33
25.1 Advisory and assistance services.....	1,691	1,062	907	977
25.2 Other services from non-Federal sources.....	152	806	806	806
25.3 Other purchases of goods and services from Federal sources.....	282	324	259	259
26.0 Supplies and materials.....	129	169	80	64
31.0 Equipment.....	141	83	42	34
33.0 Investments and loans.....	4	-	-	-
Total, Other Objects.....	3,097	3,293	2,819	2,751
99.9 Total, new obligations.....	14,400	13,972	12,841	14,225
Position Data:				
Average Salary (dollars), SES Position.....	\$162,000	\$162,000	\$162,000	\$162,000
Average Salary (dollars), GS Position.....	\$94,969	\$92,001	\$92,001	\$92,001
Average Grade, GS Position.....	13.3	13.2	13.2	13.2

NATIONAL APPEALS DIVISION

STATUS OF PROGRAM

NAD is responsible for listening to farmers and other rural program participants concerning their disputes with certain agencies within USDA and reaching the right decision for the right reason through fair and impartial administrative hearings and appeals.

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 his determination is administratively final.

Pre-Hearing Conferences. NAD conducts pre-hearing conferences to identify or narrow the issues in the appeal and to help 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 prepared for the hearing.

Hearings and Reviews. NAD Hearing Officers conduct impartial administrative hearings and issue determinations in expeditious manners that reflect 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. By statute, NAD hears appeals involving program decisions made in domestic farm programs and rural development. The Secretary of Agriculture may also assign NAD additional jurisdiction to hear administrative appeals arising from adverse decisions issued by other parts of USDA.

Selected Examples of Recent Progress:

In 2011, NAD—

- Processed 2,525 cases filed with NAD.
- Issued 286 determinations when appellants challenged the agency view that a decision was not appealable. Outcome was favorable to appellants in 94 percent of cases.
- Conducted 1,176 in-person or telephonic hearings, and recorded reviews.
- Issued 2,304 determinations, of which 1,942 were issued by Hearing Officers and 362 were issued by the NAD Director. Outcome was favorable to appellants in 38 percent of cases.
- Increased transparency and affirmed the fairness of the USDA appeals process by publishing more than 1,800 determinations in 2011, and approximately 13,000, 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; almost 800 of those determinations since May 2008.
- Continue to increase access to 9,700 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 hearing and review decisions; NAD writing standards have been validated by the Educational Testing Service, and described in a peer-reviewed article that shows the use of holistic evaluation of writing increases the quality of NAD decisions (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1229562).
- Conducted a benchmarked employee engagement survey of NAD employees to capitalize on strengths and identify areas that require organizational improvement.
- Installed new case tracking system that captures increased data about cases and performance measurement, implements increased electronic delivery services to customers, and increases transparency of NAD decision-making to the public.
- Negotiated and implemented a new Collective Bargaining Agreement (CBA) with the American Federation of State County and Municipal Employees (AFSCME), Council 26, Local 3020. This is the first NAD CBA in nine years.
- Continued its outreach campaign (*Face to Face Fairness*) to demonstrate to producers the fairness of the USDA appeals system by conducting 7 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.

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

USDA Strategic Goal	Agency Strategic Goal	Agency Objectives	Programs that Contribute	Key Outcomes
NAD supports all USDA strategic goals.	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.

Long-term Performance Measure: Percentage of hearings held and determinations issued within applicable timeframes.

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

Long-term Performance Measure: Determinations found to be within 1.0 standard deviation of excellence according to group evaluations.

Selected Accomplishments Expected at the 2013 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

NATIONAL APPEALS DIVISION

Strategic Goal Funding Matrix
(Dollars in thousands)

Program Items	2010 Actual	2011 Actual	2012 Estimate	Change	2013 Estimate
Agency Strategic Goal: Issue timely and well-written determinations that correctly interpret applicable regulations.					
National Appeals Division.....	\$14,400	\$13,972	\$12,841	+\$1,384	\$14,225
Staff Years.....	91	92	90	+12	102

Summary of Budget and Performance
Key Performance Outcomes and Measures

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

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

Key Performance Measure:

- Percentage of hearings held and determinations issued within applicable timeframes.

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

Key Performance Measure:

- Determinations found to be within 1.0 standard deviation of excellence according to group evaluations.

Key Performance Targets

<u>Performance Measure</u>	<u>2007 Actual</u>	<u>2008 Actual</u>	<u>2009 Actual</u>	<u>2010 Actual</u>	<u>2011 Actual</u>	<u>2012 Target</u>	<u>2013 Target</u>
Percentage of hearings held and determinations issued within applicable timeframes.	85%	85%	85%	85%	85%	85%	85%
Dollars (in Thousands)	\$6,945	\$7,138	\$7,009	\$7,200	\$6,986	\$6,420	\$7,112
Determinations found to be within 1.0 standard deviation of excellence according to group evaluations.	100%	100%	100%	100%	100%	100%	100%
Dollars (in Thousands)	\$6,945	\$7,138	\$7,010	\$7,200	\$6,986	\$6,421	\$7,113

NATIONAL APPEALS DIVISION

Full Cost by Agency Strategic Goal
(Dollars in thousands)**Agency Strategic Goal: Issue timely and well-written determinations that correctly interpret applicable regulations.**

Program Item	2010 Actual	2011 Actual	2012 Estimate	2013 Estimate
Administrative costs (direct).....	\$11,303	\$10,679	\$10,022	\$11,474
Indirect costs.....	3,097	3,293	2,819	2,751
Total Costs.....	14,400	13,972	12,841	14,225
FTEs.....	91	92	90	102
Performance Measure:				
Percent of hearings held and determinations issued within applicable timeframes.				
Measure.....	85%	85%	85%	85%
Cost per Measure (unit cost).....	7,200	6,986	6,420	7,112
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).....	7,200	6,986	6,421	7,113