

2020 USDA EXPLANATORY NOTES – OFFICE OF HEARINGS AND APPEALS

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AGENCY-WIDE**PURPOSE STATEMENT**

The Office of Hearings and Appeals (OHA) consolidates the three previously separate entities of the National Appeals Division (NAD), the Office of the Administrative Law Judges (OALJ), and the Office of the Judicial Officer (OJO). Previously, OALJ and OJO were offices under Departmental Administration, and NAD was an independent agency that reports to the USDA Secretary.

The mission of OHA is to plan, coordinate, and provide administrative support for NAD, OALJ, and OJO. OHA promotes fairness, transparency, and consistency in NAD, OALJ, and OJO proceedings through the planning, coordination, and administration of office-wide activities and initiatives. OHA adjudicates first- and second-level hearings and appeals at USDA.

OHA Headquarters is located in Alexandria, Virginia. NAD, a division within OHA administers its appeals system through three regional offices located in Memphis, Tennessee; Indianapolis, Indiana; and Lakewood, Colorado. The Administrative Judges are located in 57 field locations throughout the United States and operate out of leased office space or home offices. As of September 30, 2018, there were 74 permanent full-time employees, comprising 21 in Virginia and 53 in the field.

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

AVAILABLE FUNDS AND STAFF YEARS*Table OHA-1. Available Funds and Staff Years (thousands of dollars, staff years (SY))*

Item	2017		2018		2019		2020	
	Actual	SY	Actual	SY	Estimate	SY	Budget	SY
Salaries and Expenses:								
Discretionary Appropriations.....	\$13,399	78	\$15,222	77	\$15,222	77	\$13,474	69
Lapsing Balances	-62	-	-591	-	-	-	-	-
Subtotal Obligations, OHA	13,337	78	14,631	77	15,222	77	13,474	69
Ob. Under Other USDA Appr:								
OJO and OALJ Reimbursable.....	552	-	4	-	-	-	-	-
Total, OHA	13,889	78	14,635	77	15,222	77	13,474	69

PERMANENT POSITIONS BY GRADE AND STAFF YEARS*Table OHA-2. Permanent Positions by Grade and Staff Years*

Item	2017			2018			2019			2020		
	V.A.	Field	Total									
AD	1	-	1	1	-	1	1	-	1	1	-	1
AL	-	3	3	-	3	3	-	3	3	-	3	3
SL	-	1	1	1	-	1	1	-	1	1	-	1
GS-15	2	5	7	4	3	7	3	3	6	3	3	6
GS-14	4	28	32	7	36	43	6	31	37	6	26	32
GS-13	9	11	20	9	4	13	8	3	12	9	3	12
GS-12	1	1	2	1	1	2	1	1	2	1	1	2
GS-11	-	5	5	-	6	6	-	4	4	-	4	4
GS-10	1	-	1	-	-	-	-	-	-	-	-	-
GS-9	3	3	6	2	4	6	2	4	5	1	3	4
GS-8	4	5	9	1	6	7	1	4	5	1	3	4
GS-7	-	1	1	-	1	1	-	1	1	-	-	-
GS-6	-	1	1	-	-	-	-	-	-	-	-	-
GS-5	-	1	1	-	-	-	-	-	-	-	-	-
Total Permanent	25	65	90	26	64	90	23	54	77	23	46	69
Unfilled, EOY	4	4	8	5	11	16	-	-	-	-	-	-
Total Perm. FT EOY ...	21	61	82	21	53	74	23	54	77	23	46	69
Staff Year Est	21	57	78	23	54	77	23	54	77	23	46	69

SHARED FUNDING PROJECTS*Table OHA-3. Shared Funding Projects (dollars in thousands)*

Item	2017 Actual	2018 Actual	2019 Estimate	2020 Budget
Working Capital Fund:				
Administration:				
Material Management Service	\$7	\$6	\$5	\$6
Mail and Reproduction Services	23	22	70	68
Integrated Procurement Systems.....	7	18	11	11
Procurement Operations Services	15	17	17	16
Human Resources Enterprise Management Systems	1	1	1	1
Subtotal.....	53	63	103	102
Communications:				
Creative Media & Broadcast Center	1	1	64	63
Finance and Management:				
National Finance Center	214	453	315	326
Financial Management Systems.....	52	54	55	55
Financial Management Support Services	30	-	-	-
Subtotal.....	296	507	370	381
Information Technology:				
Client Technology Services	320	347	526	534
Digital Infrastructure Services Center.....	6	14	5	5
Enterprise Network Services.....	32	16	39	39
Subtotal	358	376	570	578
Correspondence Management.....	3	2	9	9
Total, Working Capital Fund.....	711	951	1,117	1,133
Department-Wide Shared Cost Programs:				
1890's USDA Initiatives	4	-	-	-
Agency Partnership Outreach	-	7	7	7
Continuity of Operations Planning	2	-	-	-
Emergency Operations Center	2	-	-	-
Hispanic-Serving Institutions National Program	2	-	-	-
Human Resources Self-Service Dashboard.....	1	1	1	1
Human Resources Transformation.....	2	1	-	-
Identity and Access Management	6	-	-	-
Medical Services.....	1	-	1	1
Office of Customer Experience.....	-	2	3	3
People's Garden	1	-	-	-
Personnel and Document Security	-	1	4	4
Personnel Security Branch.....	1	-	-	-
Security Detail	3	4	4	4
Security Operations.....	-	10	9	9
TARGET Center.....	1	1	1	1
USDA 1994 Program.....	1	-	-	-
USDA Enterprise Data Analytics Services	-	-	-	5
Virtual University	2	1	-	-
Total, Department-Wide Reimbursable Programs	29	28	29	34
E-Gov:				
Enterprise Human Resources Integration.....	2	2	2	2
Geospatial Line of Business.....	13	13	13	13
Total, E-Gov	15	15	15	15
Agency Total	754	993	1,161	1,183

ACCOUNT 1: SALARIES AND EXPENSES**LEAD-OFF TABULAR STATEMENT***Table OHA-4. Lead-Off Tabular Statement*

Item	Amount
2019 Annualized Continuing Resolution.....	\$15,222,000
Change in Appropriation.....	-1,748,000
Budget Estimate, 2020	<u>13,474,000</u>

APPROPRIATIONS LANGUAGE

The appropriations language follows (new language underscored; deleted matter enclosed in brackets):

Office of Hearings and Appeals

For necessary expenses of the Office of Hearings and Appeals, \$13,474,000.

PROJECT STATEMENT*Table OHA-5. Project Statement (thousands of dollars, staff years (SY))*

Item	2017 Actual	SY	2018 Actual	SY	2019 Estimate	SY	Inc. or Dec.	Chg Key	SY	2020 Budget	SY
Discretionary Appropriations:											
Office of Hearings and Appeals.....	\$13,399	78	\$15,222	77	\$15,222	77	-\$1,748	(1)	-8	\$13,474	69
Lapsing Balances.....	-62	-	-591	-	-	-	-	-	-	-	-
Total Obligations.....	<u>13,337</u>	<u>78</u>	<u>14,631</u>	<u>77</u>	<u>15,222</u>	<u>77</u>	<u>-1,748</u>	<u>-8</u>	<u>-8</u>	<u>13,474</u>	<u>69</u>

The mission of OHA is to plan, coordinate, and provide administrative support for NAD, OALJ, and OJO. OHA promotes fairness, transparency, and consistency in NAD, OALJ, and OJO proceedings through the planning, coordination, and administration of office-wide activities and initiatives. OHA adjudicates first- and second-level hearings and appeals at USDA.

The base funds will continue to support the mission of OHA to promote fairness, transparency, and consistency in NAD, OALJ, and OJO proceedings through the planning, coordination, and administration of office-wide activities and initiatives.

(1) A decrease of \$1,748,000 and a decrease of 8 staff years (\$15,222,000 and 77 staff years available in 2019).

The funding change is requested for the following items:

A) A decrease of \$1,170,000 and 8 staff years.

To absorb the reductions reflected in this estimate, OHA will maintain its commitment to streamline administrative business processes, consolidate affected functions, and work with service agencies to ensure that service level agreements are cost-effective. Despite these efforts, however, OHA must absorb the reductions with commensurate reductions in staffing. Over 85 percent of the OHA budget is salaries and benefits, and business costs will be reduced to meet the FY 2020 funding level.

A decrease of \$578,000 from non-personnel costs.

The reduction will be achieved by reducing costs in the areas of travel, communications, equipment, other services and supplies. In addition, OHA will maintain its commitment to streamline administrative business processes, consolidate affected functions, and work with service agencies to ensure that service level agreements are cost-effective.

GEOGRAPHIC BREAKDOWN OF OBLIGATIONS AND STAFF YEARS*Table OHA-6. Geographic Breakdown of Obligations and Staff Years (thousands of dollars, staff years (SY))*

State/Territory/Country	2017		2018		2019		2020	
	Actual	SY	Actual	SY	Estimate	SY	Budget	SY
Alabama	\$112	1	\$114	1	\$114	1	\$114	1
Arkansas.....	119	1	121	1	121	1	121	1
California	248	2	250	2	250	2	250	2
Colorado.....	1,216	8	1,220	7	1,320	7	1,188	7
District of Columbia.....	552	8	555	8	793	8	793	7
Florida.....	130	1	132	1	132	1	132	1
Georgia.....	284	2	286	2	286	2	-	-
Idaho	-	-	144	1	144	1	144	1
Indiana	1,216	7	1,265	7	1,324	8	1,216	6
Louisiana.....	141	1	145	1	145	1	145	1
Maryland.....	134	1	138	1	138	1	138	1
Minnesota.....	228	1	230	1	130	1	130	1
Mississippi	123	1	125	1	125	1	123	1
Missouri	247	2	250	2	247	2	147	1
Nebraska	130	1	132	1	132	1	132	1
New York.....	130	1	132	1	132	1	132	1
North Carolina.....	262	2	265	2	265	2	265	2
North Dakota.....	236	2	240	1	120	1	240	2
Ohio	126	1	129	1	129	1	129	1
Oklahoma.....	141	1	-	-	-	-	-	-
Oregon	149	1	153	1	153	1	149	1
Tennessee.....	1,129	8	1,133	7	1,250	8	1,121	6
Texas.....	261	2	264	2	264	2	264	2
Virginia	5,752	21	6,930	23	7,230	21	6,123	20
Washington	141	1	144	1	144	1	144	1
Wisconsin.....	130	1	134	1	134	1	134	1
Obligations.....	13,337	78	14,631	77	15,222	77	13,474	69
Lapsing Balances	62	-	591	-	-	-	-	-
Total, Available	13,399	78	15,222	77	15,222	77	13,474	69

CLASSIFICATION BY OBJECTS*Table OHA-7 Classification by Objects (thousands of dollars)*

Item No.	Item	2017 Actual	2018 Actual	2019 Estimate	2020 Budget
	Personnel Compensation:				
	Alexandria, VA.....	\$2,298	\$2,431	\$2,603	\$2,424
	Personnel Compensation, Field	5,461	6,134	6,247	5,812
11	Total personnel compensation	7,759	8,565	8,850	8,236
12	Personal benefits.....	2,353	2,539	2,760	2,500
13.0	Benefits for former personnel.....	1	1	-	-
	Total, personnel comp. and benefits	10,113	11,105	11,610	10,736
	Other Objects:				
21.0	Travel and transportation of persons.....	271	197	200	190
22.0	Transportation of things.....	30	28	29	20
23.1	Rental payments to GSA	505	528	588	536
23.3	Communications, utilities, and misc. charges.....	413	425	425	425
24.0	Printing and reproduction	15	96	30	25
25.1	Advisory and assistance services.....	1,088	1,405	1,590	1,087
25.2	Other services from non-Federal sources.....	96	93	100	95
25.3	Other goods and services from Federal sources.....	586	450	450	300
26.0	Supplies and materials	104	199	100	50
31.0	Equipment	116	105	100	10
	Total, Other Objects	3,224	3,526	3,612	2,738
99.9	Total, new obligations	13,337	14,631	15,222	13,474
	DHS Building Security Payments (included in 25.3).....	\$38	\$39	\$39	\$39
	Position Data:				
	Average Salary (dollars), AD, AL, SL Position	\$165,300	\$178,275	\$181,662	\$185,114
	Average Salary (dollars), GS Position.....	\$104,272	\$110,352	\$114,057	\$118,395
	Average Grade, GS Position.....	13.4	13.6	13.7	13.8

STATUS OF PROGRAMS

The Office of Hearings and Appeals (OHA) was established in 2016 to consolidate three previously separate entities: The National Appeals Division (NAD), the Office of the Administrative Law Judges (OALJ), and the Office of the Judicial Officer (OJO). Previously, OALJ and OJO were offices under Departmental Administration, and NAD was an independent office that reported to the Secretary of Agriculture. The reorganization consolidated administrative support for the three USDA entities that adjudicate first and second-level hearings and appeals at USDA. After consolidation, NAD, OALJ, and OJO continues to conduct proceedings under their respective legal authorities.

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National Appeals Division

Current Activities

NAD conducts fair and impartial administrative appeal hearings and reviews of adverse decisions by certain agencies within USDA, and issues determinations in an expeditious manner that reflect a thorough consideration of actual information that reach a proper conclusion. Adjudicative activities include:

Appealability Determinations: The Director reviews hundreds of agency decisions when an agency notifies a participant that it does not believe an administrative decision is appealable.

Pre-Hearing Conferences: NAD conducts pre-hearing conferences to identify and/or narrow the issues in the appeal and help parties understand the evidence they need to present at the hearing.

Hearings: In the first-level appeals process, NAD Administrative Judges conduct impartial administrative hearings and issue determinations, which included decisions about attorney fees under the Equal Access to Justice Act that reflect a thorough consideration of factual and legal information.

Reviews: On petition, in a second-level appeal, the NAD Director reviews the Administrative Judge Appeal Determinations, renders second-level decisions about attorney fees under the Equal Access to Justice Act, and may grant equitable relief to the same extent as such authority is provided to the Secretary.

Selected Examples of Recent Progress

In FY 2018, NAD:

- Processed 1,674 cases;
- Issued 56 determinations when appellants challenged the agency view that a decision was not appealable. Outcome was favorable to appellants in 89 percent of the cases;
- Conducted 728 in-person or telephonic hearings, and reviews of the record;
- Issued 1,822 determinations, of which 1,267 were issued by Administrative Judges and 395 were issued by the NAD Director. Outcome was favorable to appellants in 43 percent of the cases. In 83 Review Determinations, appellants were granted equitable relief;
- Increased transparency of the USDA appeals process by publishing more than 1,199 determinations on the NAD website in FY 2018; over 21,200 have been published on the NAD web site (http://www.nad.usda.gov/public_search.html) since the program began; and
- Accepted a total of 820 eFile requests, which have been processed since NAD introduced the option to electronically file requests in February 2013.

The Office of Administrative Law Judges

Current Activities

OALJ conducts rulemaking and adjudicatory hearings throughout the country in proceedings that are subject to the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.* under approximately 50 statutes administered by USDA agencies. Adjudicative activities include:

Initial Decisions: Judges issue initial decisions and orders in adjudicatory proceedings, which become final decisions of the Secretary unless appealed to the Secretary's Judicial Officer by a party.

Consent Decisions: Judges approve consent decisions that the parties enter into, which resolve disputes by settlement.

Debarments and Suspensions: Judges decide appeals of debarments and suspensions as required by regulations implementing a government-wide system for non-procurement debarments and suspensions (7 C.F.R. § 3017.100-.515 (1993)).

Publication of Agricultural Decisions: OALJ publishes *Agriculture Decisions*, the official compilation of quasi-judicial and judicial decisions issued concerning regulatory laws administered by the Department.

Selected Examples of Recent Progress

In FY 2018, OALJ:

- Opened 81 new cases;
- Disposed of 129 cases arising under USDA programs in the Animal and Plant Health Inspection Service, [Grain Inspection, Packers and Stockyards Administration](#), the Food Crop Insurance Corporation, the Food Safety and Inspection Service, the [Grain Inspection, Packers and Stockyards Administration \(now a part of the Agricultural Marketing Service\)](#), and the [Agricultural Marketing Service \(AMS\)](#);
- Conducted Rulemaking Hearings for AMS involving milk; and
- Published the full Volume 6 of *Agriculture Decisions* on the OALJ website (<http://www.oaljdecisions.dm.usda.gov/agriculture-decisions-publication>) and updated the OALJ website with OALJ's decisions through September 2018 (<http://www.oaljdecisions.dm.usda.gov/current>).

The Office of the Judicial Officer

Current Activities

The Judicial Officer is delegated authority to act as the final deciding officer for the United States Department of Agriculture in adjudicatory proceedings listed in 7 C.F.R. § 2.35. Adjudicatory activities include:

Reparation Decisions: The Judicial Officer issues reparation decisions under the Packers and Stockyards Act (P&S Act) and the Perishable Agricultural Commodities Act (PACA).

Review of ALJ Decisions: On petition for review, the Judicial Officer reviews initial adjudicatory decisions issued by USDA's Administrative Law Judges. This second-level review may include Administrative Law Judge decisions about attorney fees under the Equal Access to Justice Act.

Review of Commissioner Decisions: On petition for review, the Judicial Officer, with advice from the Plant Variety Protection Board, reviews decisions issued by the Commissioner of the Plant Variety Protection Office.

Selected Examples of Recent Progress

For FY 2018, OJO:

- Disposed of 338 PACA cases;
- Updated OJO's website to include FY 2018 published decisions;
- Decided and disposed of 21 OALJ cases that were appealed to the Judicial Officer; and
- Certified prior Rulemaking hearings for dairy in California.