



# **THE NATIONAL APPEALS DIVISION CORRESPONDENCE MANUAL**

**October 2007**

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## **Introduction**

This Correspondence Manual provides National Appeals Division staff documents and materials to use in processing appeal cases. All of the materials and documents contained in this manual need not be used in processing each appeal case or carried out to the letter in all instances. However, since considerable effort has been made to match the Correspondence Manual to the NAD regulations and NAD Guide, material deviation from the documents and materials should not occur without prior consultation with the appropriate Regional Office.

## **SECTION 1 – GENERAL GUIDANCE**

*(Used by all NAD Staff)*

## GUIDANCE FOR NOTICES AND OTHER CORRESPONDENCE

Throughout the sections of this manual, the appellant is shown as “JOHN DOE” and the male pronoun, “he” is used in all documents. The agency is shown as “ABC AGENCY.” When addresses are needed, they will be shown as:

John Doe  
1234 Main Street  
Anywhere, USA Zip

ABC Agency  
4321 Main Street  
Everywhere, USA Zip

Make the appropriate changes needed for actual cases, including changing the male pronoun “he.”

**Guidance for Notices:** Most case-related correspondence uses the Notice format.

### General Guidance for Notices

- Times New Roman font, 12 pitch
- One-inch margins
- A single line separates the caption from the title of the Notice
- No underlining except under the titles of notices
- To emphasize certain things such as a due date, teleconference time, or telephone number and pass code, use **bold** or offset information to make it stand out – do not underline
- Use 1<sup>st</sup> person as appropriate
- The Department/NAD header is in **bold** and the title of the Notice or document is in **bold**
- All appeal determinations and other dispositive Notices that provide notice of review rights to the Director (such as Notice of Dismissal After Failure to Appear) must use the redaction template provided by the Regional Office because they will be redacted and uploaded to the web

### Specific Guidance for Headers and Footers for Notices

- Appellant’s name and case number are left-justified in the top left corner in the header (case number below name), on all but the first page
- Page numbers are centered at the bottom in the footer, on all but the first page

### Specific Guidance for Captions at the top of Notices (see example shown after these guidance points)

- Case No. belongs on the same line as “and” and should be at least five spaces to the right of the parentheses -- multiple case numbers are listed in sequence, with the phrase “Case Nos.” used only once
- Appellant and agency names are in all caps -- the words “appellant” and “agency” are not used in the caption under the appellant and agency names

- Third parties are listed below the agency name in all caps -- the phrase “third party” is shown on the line below the name of the party
- Interested parties are not shown in the caption
- Centerline in caption is made of right parentheses
- Brackets are not used in the caption

Example of Caption used for Notices

**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION**

In the matter of	)	
	)	
JOHN DOE	)	
	)	
and	)	Case No. 0000000000
	)	
ABC AGENCY	)	
	)	
MARY SMITH	)	
THIRD PARTY	)	

---

**TITLE OF NOTICE**

**Guidance for Other Correspondence:** There may be times when letter format correspondence is required and Notices are not used. In such cases, use the guidance shown below.

- Issue on approved NAD letterhead
- Use 12 pitch Times New Roman font and one-inch margins
- Use the 1<sup>st</sup> person as appropriate
- If the letter is more than one page, Appellant's name and case number are left-justified in the top left corner in the header (case number below name), on all but the first page, and page numbers are centered at the bottom in the footer, on all but the first page

**DISTRIBUTION LIST FOR DETERMINATIONS AND CASE-RELATED  
CORRESPONDENCE**

**Distribution for all correspondence except Appeal Determinations:**

- cc: Appellant name and address  
Appellant representative name and address, if any  
Third party or interested party name and address, if any  
Agency decision maker or representative name and address  
Agency appeals coordinator name and address (except for CSC cases)  
Regional Office  
Case record

**NOTE:** Distribution list may be modified in certain cases; such special direction should be followed in preference to this general rule.

**Distribution for Appeal Determinations:**

**Farm Service Agency (FSA)**

- Appellant name and address
- Appellant representative name and address, if any
- Third party/interested party name and address, if any
- Administrator  
c/o Appeals & Litigation Group  
Farm Service Agency  
1400 Independence Avenue, SW  
Room 6722-S  
Washington, DC 20250-0570

**Note:** The Hearing Officer is to send the Administrator's copy to the Regional Office for distribution

**NOTE: No other FSA official is to be provided a copy of the appeal determination.**

**Natural Resources Conservation Service (NRCS)**

- Appellant name and address
- Appellant representative name and address, if any
- Third party/interested party name and address, if any
- Chief  
Natural Resources Conservation Service  
1400 Independence Avenue, SW, Room 5105-S  
Washington, DC 20250
- Appeals Coordinator

- Decision maker
- Agency representative (if appropriate)

**Risk Management Agency (RMA)**

- Appellant name and address
- Appellant representative name and address, if any
- Third party/interested party name and address, if any
- Administrator  
Risk Management Agency  
c/o Appeals, Litigations & Legal Liaison Staff  
South Building, Agstop 0806  
1400 Independence Avenue, SW, Room 4619  
Washington, DC 20250
- Decision maker
- Agency representative (if appropriate)

**Rural Housing Service (RHS) (Other than CSC)**

- Appellant name and address
- Appellant representative name and address, if any
- Third party/interested party name and address, if any
- Administrator  
Rural Housing Service  
1400 Independence Avenue, SW, Room 5014-S  
Washington, DC 20250
- Appeals Coordinator
- Decision maker
- Agency representative (if appropriate)

**Rural Business Cooperative Service (RBS)**

- Appellant name and address
- Appellant representative name and address, if any
- Third party/interested party name and address, if any
- Administrator  
Rural Business Cooperative Service  
1400 Independence Avenue, SW, Room 5801-S  
Washington, DC 20250
- Appeals Coordinator
- Decision maker
- Agency representative (if appropriate)

**Rural Utilities Service (RUS)**

- Appellant name and address
- Appellant representative name and address, if any
- Third party/interested party name and address, if any
- Administrator  
Rural Utilities Service  
1400 Independence Avenue, SW, Room 5135-S  
Washington, DC 20250
- Appeals Coordinator
- Decision maker
- Agency representative (if appropriate)

**Centralized Servicing Center (CSC)**

- Appellant name and address
- Appellant Representative name and address, if any
- Third party/interested party name and address, if any
- Administrator  
Rural Housing Service  
1400 Independence Avenue, SW, Room 5014-S  
Washington, DC 20250
- USDA, Rural Housing Service  
Centralized Servicing Center  
Appeal Unit  
PO Box 66818  
St. Louis, MO 63166-6818

## STANDARD WRITING AND MAILING FORMATS

**Style Guide** - The National Appeals Division

**Style Manual** - United States Government Printing Office  
<http://purl.access.gpo.gov/GPO/LPS9006>

**The Gregg Reference Manual** - by William A. Sabin

**National Five-Digit ZIP Code and Post Office Directory**

To find a zip code:

<http://www.usps.com/zip4/>

To find a post office:

[http://www.switchboard.com/usps.1355/dir/6\\_0/index.htm?mem=1355](http://www.switchboard.com/usps.1355/dir/6_0/index.htm?mem=1355)

**Note:** There is an underline between the 6 and 0 in the above web site

**Stamps.com**

<http://www.stamps.com>

**FedEx**

<http://fedex.com/us/>

## **NONDISCRIMINATION AND ALLEGATION OF MISCONDUCT STATEMENTS**

Use the following statements, if needed, in correspondence with appellants.

### **USDA Nondiscrimination Statement**

The Appellant charges discrimination in the denial of **(adverse decision)**. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD). Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). USDA is an equal opportunity provider and employer.

### **Allegation of Misconduct, Waste, Fraud, or Abuse**

At the hearing, Appellant alleged **(complaint)**. To file a complaint, call the Office of Inspector General (OIG) Hotline at 1-800-424-9121 or 1-202-690-1622 or 1-202-690-1202 (TDD). A complaint can also be filed with the United States Department of Agriculture, Office of Inspector General, PO Box 23399, Washington, DC 20026-3399. The complaint should provide: the basis for the complaint; the date of alleged event; and, the names and addresses of witnesses, if any. This information is needed to ensure the complaint is processed in accordance with applicable laws and regulations.

## **SECTION 2 – APPEALABILITY**

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Agency Decision Maker  
ABC Agency  
4321 Main Street  
Everywhere, USA Zip

Re: Case No. 00000000000

Dear John Doe and Agency Decision Maker:

On **(date)**, the National Appeals Division (NAD) received John Doe's (Participant) request for review of an ABC Agency (Agency) decision concerning appealability. The Agency notified the Participant that the **(date)**, decision to **(adverse decision)** was not appealable.

NAD will consider information the Agency submits. NAD will also consider the information the Participant has already submitted and any additional information he or the Agency may wish to submit. Such information may include:

1. A written statement explaining why the Agency's decision is/is not appealable to NAD.
2. Copies of supporting documents, policies, procedures and regulations.

The Agency and the Participant have 10 calendar days from the date of this notice to provide the requested information. If information is not received within 10 days of the date of this notice, a determination may be made without such information. A copy of any submission you make to NAD must be sent to the other party.

Please include a copy of this notice with your response and send to:

**(name)**  
**(address)**  
**(facsimile)**

If there are any questions, contact **(name and telephone number)**.

Sincerely,

**(name)**  
**(title)**

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I am responding to your **(date)**, request that the National Appeals Division (NAD) review the **(date)**, decision by the **(agency)** concerning appealability.

Your request does not satisfy the requirement of Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.6 that such requests must be made no later than 30 days after receipt of the agency's adverse decision. NAD received your request more than 30 days after you received the agency's adverse decision.

Therefore, I deny your request.

This is a final administrative decision.

Sincerely,

**(name)**  
**(title)**

*(Used by Headquarters)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

This letter responds to your **(date)**, request that the National Appeals Division (NAD) determine whether you may appeal the **(date)**, decision of the ABC Agency (Agency).

The Agency determined that **(adverse decision)**. You assert that **(participant position)**.

Title 7 of the Code of Federal Regulations (7 C.F.R.) § **(citation)** provides **(regulatory requirements)**.

*(Briefly relate regulations to facts.)*

**If decision is nonappealable:**

Therefore, in accordance with 7 C.F.R. § 11.6, I have made the following **final** determination:

**The Agency decision is not appealable because it is a matter of general applicability.**

Sincerely,

**(name)**

**(title)**

**If decision is appealable:**

Therefore, in accordance with 7 C.F.R. § 11.6, I have made the following **final** determination:

**The Agency decision is appealable because it is specific to your circumstances.**

Since I have determined that the adverse decision issued to you is appealable, the next step is for the NAD regional office for your area to assign your appeal to a hearing officer. You should expect to hear from the regional office within 10 days of receiving this letter. You have a right to a NAD hearing within 45 days after the NAD regional office receives its copy of this ruling.

You may find further information on NAD's appeal procedures at <<http://www.nad.usda.gov/>>. If you have any questions about the procedures, you may telephone 1-877-4USDA-NAD (1-877-487-32623).

Sincerely,

**(name)**

**(title)**

*(Used by Headquarters and Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I am responding to your request received on **(date)**, for reconsideration of the appealability determination issued in the above-referenced case on **(date)**. In accordance with Title 7 of the Code of Federal Regulations § 11.6(a)(2), Director appealability determinations are not appealable. Therefore, I deny your request.

The determination is administratively final.

Sincerely,

**(name)**

**(title)**

*(Used by Headquarters and Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I am responding to your letter of **(date)**, concerning the appealability determination issued in the above-referenced case on **(date)**.

The appealability review process is limited to determining whether an adverse decision, determined by an agency to be nonappealable, may, in fact, be appealed to the National Appeals Division (NAD). The standard for appealability is whether the decision is adverse to the individual and thus appealable, or a matter of general applicability and thus not subject to appeal.

Appealability determinations consider only whether a case may be appealed to NAD. They do not address substantive arguments or evidence. A Hearing Officer may consider such arguments and evidence if the adverse decision is found to be appealable.

Since NAD determined this case to be nonappealable, we encourage you to address your concerns to the **(agency)**. NAD has no further authority over the matter. The determination is administratively final.

Sincerely,

**(name)**

**(title)**

**SECTION 3 – OTHER JURISDICTION,  
DISMISSAL, AND SUSPENSION**



*(Used by Hearing Officer)*

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION

In the matter of )  
 )  
JOHN DOE )  
 )  
and )  
 )  
ABC AGENCY )

Case No. 00000000000

---

**NOTICE OF AGENCY’S FAILURE TO APPEAR**

John Doe (Appellant) requested an appeal of the ABC Agency (Agency) adverse decision issued on **(date)** in the above-referenced case. A hearing was scheduled for **(date)**. I opened the record and Appellant was present and ready to proceed. I make the following determinations:

1. An Agency Representative did not appear for the hearing and I have not received a request to reschedule.
2. **(I ended the hearing following a [elapsed time] recess to allow an Agency representative an opportunity to appear). OR (I proceeded with the hearing and took evidence from Appellant).** I have left the hearing record open.
3. If the Agency wants to participate in a hearing, it must show good cause for the failure to appear. I must receive the reason for failure to appear at the following address within 10 days from the date of this notice.

**(address)**  
**(facsimile)**

4. If the Agency does not show good cause for the absence, I will continue processing the appeal according to 7 C.F.R. §11.8(c)(6)(i).

Dated and mailed this **(day)** of **(month year)**.

**(name)**  
**(title)**







This determination is administratively final.

Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**



*(Used by Hearing Officer)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I have returned your appeal case to the National Appeals Division **(Region)** Regional Office for further review and consideration because **(add reason)**. That office will notify you of the status of your appeal.

Sincerely,

**(name)**

**(title)**

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

The National Appeals Division (NAD) recognizes that you have filed for bankruptcy protection. The automatic stay in a bankruptcy action prevents NAD from taking any action that could affect matters or assets before the bankruptcy court. Accordingly, I am dismissing your appeal without prejudice, with leave to re-file.

You may re-file the case if the adverse decision under appeal is still at issue either when you are discharged from bankruptcy, or when you receive an order from the bankruptcy court allowing an appeal to proceed. You must re-file your request for appeal within 30 days of the date of discharge or the date of the court order allowing the appeal to proceed.

Sincerely,

**(name)**

**(title)**

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I am responding to your request for an appeal with the National Appeals Division (NAD).

Title 7 of the Code of Federal Regulations (7 C.F.R.) Part 11 governs NAD appeals. Section 11.6(b) requires that a request for appeal include a copy of the adverse decision, if available, and a brief statement explaining why you believe the agency's decision, or failure to act, is wrong. Your request did not identify a specific adverse decision by a USDA agency or an agency failure to act. Therefore, NAD has no authority to conduct a hearing.

Sincerely,

**(name)**

**(title)**

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I am responding to your request for an appeal with the National Appeals Division (NAD).

Title 7 of the Code of Federal Regulations (7 C.F.R.) Part 11 governs appeals before NAD, and sets forth the agencies and subject matter within NAD's jurisdiction. NAD has no jurisdiction over the adverse decision referenced in your appeal request because **(relate regulatory requirement(s) to decision)**. I am therefore denying your request for an appeal.

Sincerely,

**(name)**

**(title)**

*(Used by Regional Office only/Hearing Officers may use similar language in Jurisdictional Determination)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I am responding to your request for an appeal received by the National Appeals Division (NAD) on **(date)**. After reviewing your request, I have decided that it is premature.

I have determined you have not asked the Farm Service Agency (FSA) **(name)** County Committee (COC) to review the decision you seek to appeal. Title 7 of the Code of Federal Regulations § 11.5(a) requires a participant to seek the FSA county committee's informal review of a decision issued by a county committee employee before NAD will accept an appeal of the adverse decision. Since you have not asked the COC to review the County Executive Director's **(date)** decision, I am denying your appeal request.

I am sending your request to the FSA Office in **(city and state)** for the COC consideration. If FSA's decision remains adverse to you, FSA will provide you notice of your appeal rights to NAD.

If you have any questions, please contact me at **(toll-free number)**.

Sincerely,

**(name)**

**(title)**

*(Used by Hearing Officer)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

ABC Agency  
4321 Main Street  
Everywhere, USA Zip

Re: Case No. 00000000000

Dear Mr. Doe and **(Agency Decision Maker)**:

I am responding to John Doe's request for an appeal with the National Appeals Division (NAD).

The appeal request raises issues about NAD's jurisdiction to hear the appeal because **(reason(s))**.

Each party to the appeal has 15 days to provide a written response regarding NAD's jurisdiction. I will not consider your response if it is received more than 15 days from the date of this letter. If I determine that NAD has jurisdiction, I will continue processing the appeal. If I determine that NAD lacks jurisdiction, I will issue a jurisdictional determination with notice of appropriate review rights.

Send your submissions to:

**(hearing officer)**  
**(address)**  
**(facsimile)**

Please reference the case number in your response.

Sincerely,

**(name)**  
**(title)**

*(Used by Hearing Officer)*

**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION**

In the matter of	)	
	)	
JOHN DOE	)	
	)	
and	)	Case No. 00000000000
	)	
ABC AGENCY	)	

---

**JURISDICTIONAL DETERMINATION**

John Doe (Appellant) requested an appeal with the National Appeals Division (NAD) dated **(date)**. Appellant challenges an ABC Agency (Agency) action that **(agency action)**.

*Use one of the following paragraphs as appropriate:*

I conducted a pre-hearing teleconference to gather information to determine if NAD has jurisdiction to conduct an appeal. To reach my determination, I considered Appellant’s appeal request, the Agency record, and the pre-hearing teleconference discussion **(list items considered)**.

**Or:**

To reach my determination, I considered Appellant’s appeal request and **(list items considered)**.

To determine if NAD has jurisdiction to continue with this appeal, I had to resolve the following issue(s):

1. Does NAD have jurisdiction to conduct an appeal when **(insert question)**?
2. Did Appellant file a timely request with NAD **(if appropriate)**?

Appellant argues **(argument)**.

NAD **(has OR does not have)** jurisdiction to conduct a hearing on this issue. **(Insert regulations and logic.)**

*If appropriate*, discuss other issues.

Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**

Attachments:

Notice of Right to Request Director Review and/or Copy of Audio Record  
Request for Director Review

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I am responding to your request for an appeal with the National Appeals Division (NAD) regarding the ABC Agency (Agency) adverse decision concerning **(describe decision)**.

The Agency issued the adverse decision on **(date)**. *Use one of the following sentences as applicable:* 1) You received the adverse decision on **(date)** as verified by return receipt; *or* 2) Assuming up to seven days for delivery, you received the adverse decision by **(date)**.

Regulations at Title 7 of the Code of Federal Regulations § 11.6(b)(1) require that a participant request an appeal no later than 30 days after receipt of an agency notice of an adverse decision.

In this case, the deadline for filing an appeal was **(date)**. Your request was postmarked on **(date)**, after the deadline. Therefore, I am denying your request because it is untimely .

This is a final determination.

Sincerely,

**(name)**

**(title)**

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I am responding to your request for an appeal with the National Appeals Division (NAD).

The ABC Agency issued the adverse decision on **(date)**. *Use one of the following sentences as applicable:* 1) You received the adverse decision on **(date)** as verified by return receipt; *or* 2) Assuming up to seven days for delivery, you received the adverse decision by **(date)**. You had 30 days from the date of receipt of the adverse decision to request an appeal or mediation. You requested mediation on **(date)**.

NAD regulations at Title 7 of the Code of Federal Regulations § 11.5(c)(1) provide that, if mediation is requested before the deadline for requesting an appeal, the participant will have the balance of the days remaining in the 30-day period to request an appeal once mediation has concluded.

The parties concluded mediation on **(date)**. Therefore, the deadline for filing an appeal was **(date)**. Your request was postmarked on **(date)**, which was after the deadline. You did not provide any information or documentation to support a conclusion that you submitted your request timely. Therefore, I am denying your request.

This is a final determination.

Sincerely,

**(name)**

**(title)**

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I am responding to your request for reconsideration of a determination by the National Appeals Division (NAD) concerning a late-filed request for appeal.

NAD regulations at Title 7 of the Code of Federal Regulations § 11.6(b) require a participant to request an appeal no later than 30 days after receipt of the notice of the adverse decision. In this case, the deadline for filing an appeal was **(date)**. Your request was postmarked on **(date)**, which was after the deadline. You did not provide additional information or documentation to support a conclusion that you submitted your request timely. Therefore, I will not accept your untimely appeal.

This is a final determination.

Sincerely,

**(name)**

**(title)**

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

I am responding to your request for an appeal with the National Appeals Division (NAD).

You requested mediation at the same time you requested an appeal. NAD regulations at Title 7 of the Code of Federal Regulations § 11.5(c)(2) provide that, if an appellant requests mediation after filing an appeal, he is deemed to have waived the right to a hearing within 45 days. Such appellant shall have the right to a hearing within 45 days of the conclusion of mediation.

Your appeal will be suspended until the completion of mediation. Please notify this office promptly when you finish with mediation.

Sincerely,

**(name)**

**(title)**

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

The National Appeals Division (NAD) accepted the above-referenced appeal on **(date)**.

On **(date)**, you requested that NAD suspend the appeal because **(basis for suspension)**.

Based on Title 7 of the Code of Federal Regulations § 11.5, I am suspending your appeal until *as appropriate*: **1) mediation is concluded; 2) any litigation is resolved; or 3) other**.

You are responsible for contacting NAD when you conclude mediation **(or refer to other basis for suspension, as appropriate)**. Please contact NAD promptly upon conclusion of mediation, **(or refer to other basis for suspension, as appropriate)** and advise NAD if you wish to continue with your appeal.

Sincerely,

**(name)**

**(title)**

*(Used by Regional Office)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

On **(date)**, the National Appeals Division (NAD) suspended the above-referenced case because **(basis of suspension)**.

On **(date)**, **(you OR the applicable agency)** informed NAD that **(state the action that occurred and date it occurred, e.g., the parties concluded mediation on date)**.

As you requested, I am reinstating your appeal. The Hearing Officer will notify the parties of the appeal procedures.

Sincerely,

**(name)**

**(title)**

## **SECTION 4 – APPEAL**



3. A list of any witnesses Appellant(s) intends to have testify at the hearing with a brief summary of their testimony.
4. If applicable, a completed Authorization/Declaration for a representative. (See Representatives for Appellants section of the **NAD INFORMATION SHEET**.)
5. The names of any individuals or entities that may be third parties to the appeal. (See Third Party section of the **NAD INFORMATION SHEET**.)
6. A copy of the bankruptcy petition, if an Appellant has filed for bankruptcy.
7. Information about any pending mediation or litigation involving the Agency.

***Instructions to Agency***

By (**date – 12 days from the date of this notice**), Agency send the following to the Hearing Officer and Appellant (and other appellants or third parties, if applicable):

1. The Agency record, which is all materials maintained by the Agency related to the adverse decision on appeal that the Agency prepared or reviewed during its decision making process.
2. A copy of the adverse decision(s) under appeal.
3. An explanation of the Agency’s position.
4. The applicable regulations(s) from Title 7 of the Code of Federal Regulations or Federal Register, and any Agency handbook or manual provisions used to interpret those regulations.
5. A copy of any document not in the Agency record the Agency plans to introduce at the hearing.
6. A list of witnesses the Agency intends to have testify at the hearing with a brief summary of their testimony.
7. The names of any individuals or entities that may be third parties to the appeal. (See Third Party section of the **NAD INFORMATION SHEET**.)

**(Note: Only include “Instructions to Potential Third Party(ies)” if there are any identified when Notice issued.)**

***Instructions to Potential Third Party(ies)***

By (**date – 17 days from the date of this notice**), Third Party send the following to the Hearing Officer, Appellant and Agency:

1. A short explanation of Third Party’s position as to why the adverse decision is correct or incorrect.
2. Copies of all information and documents Third Party plans to introduce at the hearing. (See Submissions and Evidence and Labeling of Submissions sections of the **NAD INFORMATION SHEET**.)
3. A list of any witnesses Third Party intends to have testify at the hearing with a brief summary of their testimony.
4. If applicable, a completed Authorization/Declaration for a representative. (See Representatives for Appellants section of the **NAD INFORMATION SHEET**.)

5. A copy of the bankruptcy petition, if the Third Party has filed for bankruptcy.
6. Information about any pending mediation or litigation involving the Agency.

When NAD posts an Appeal Determination on the NAD website, it can notify the Appellant of such posting by e-mail. The Appellant should complete the attached form, “Appellant E-Mail Address” and return it to the assigned Hearing Officer by **(17 days from the date of this notice)**.

If the Appellant or Agency has any questions about this notice or its attachments, they should contact Hearing Officer **(name)**.

Dated and mailed this **(day)** of **(month year)**.

**(name)**  
**(title)**

Attachments:

NAD Information Sheet

Authorization for Representation and Release of Information and Declaration of Entry of Appearance form *(to appellant)*

Request for appeal and all supporting documents *(to agency)*



### ***Instructions to Appellant(s)***

By **(date – 17 days from the date of this notice)**, Appellant send the following to the Hearing Officer and Agency:

1. A short explanation of why the adverse decision is wrong.
2. Copies of all information and documents Appellant plans to introduce at the hearing. (See Submissions and Evidence and Labeling of Submissions sections of the **NAD INFORMATION SHEET**.)
3. A list of any witnesses Appellant intends to have testify at the hearing with a brief summary of their testimony.
4. If applicable, a completed Authorization/Declaration for a representative. (See Representatives for Appellants section of the **NAD INFORMATION SHEET**.)
5. The names of any individuals or entities that may be third parties to the appeal. (See Third Party section of the **NAD INFORMATION SHEET**.)
6. A copy of the bankruptcy petition, if an Appellant has filed for bankruptcy.
7. Information about any pending mediation or litigation involving the Agency.

### ***Instructions to Agency***

By **(date – 12 days from the date of this notice)**, Agency send the following to the Hearing Officer and Appellant (and other appellants or third parties, if applicable):

1. The Agency record, which is all materials maintained by the Agency related to the adverse decision on appeal that the Agency prepared or reviewed during its decision making process.
2. A copy of the adverse decision(s) under appeal.
3. An explanation of the Agency's position.
4. The applicable regulations(s) from Title 7 of the Code of Federal Regulations or Federal Register, and any Agency handbook or manual provisions used to interpret those regulations.
5. A copy of any document not in the Agency record the Agency plans to introduce at the hearing.
6. A list of witnesses the Agency intends to have testify at the hearing with a brief summary of their testimony.
7. The names of any individuals or entities that may be third parties to the appeal. (See Third Party section of the **NAD INFORMATION SHEET**.)

**(Note: Only include “Instructions to Potential Third Party[ies]” if there are any identified when Notice issued.)**

### ***Instructions to Potential Third Party(ies)***

By **(date – 17 days from the date of this notice)**, Third Party send the following to the Hearing Officer, Appellant and Agency:

1. A short explanation of Third Party's position as to why the adverse decision is correct or incorrect.
2. Copies of all information and documents Third Party plans to introduce at the hearing. (See Submissions and Evidence and Labeling of Submissions sections of the **NAD INFORMATION SHEET**.)
3. A list of any witnesses Third Party intends to have testify at the hearing with a brief summary of their testimony.
4. If applicable, a completed Authorization/Declaration for a representative. (See Representatives for Appellants section of the **NAD INFORMATION SHEET**.)
5. A copy of the bankruptcy petition, if the Third Party has filed for bankruptcy.
6. Information about any pending mediation or litigation involving the Agency.

When NAD posts an Appeal Determination on the NAD website, it can notify the Appellant of such posting by e-mail. The Appellant should complete the attached form, "Appellant E-Mail Address" and return it to the assigned Hearing Officer by **(17 days from the date of this notice)**.

If the Appellant or Agency has any questions about this notice or its attachments, they should contact Hearing Officer **(name)**.

Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**

Attachments:

NAD Information Sheet

Authorization for Representation and Release of Information and Declaration of Entry of Appearance form *(to appellant)*

Request for appeal and all supporting documents *(to agency)*

*(Used by Regional Office and Hearing Officer)*

**NAD INFORMATION SHEET**  
**Please save for future reference.**

Third Parties

Third parties are individuals or entities for which an NAD determination could lead to an agency action on implementation that may adversely affect the party. NAD will notify any potential third party of its right to participate in the appeal as an appellant.

Submissions and Evidence

The appeal parties may file information in support of their positions. The Hearing Officer places the copy of submissions in the case record and does not return them. The party sending information to the Hearing Officer must provide an identical copy to all other parties (agency, appellants, and third parties). The Hearing Officer will accept submissions, but some limitations apply.

There is no limit on the number of documents or evidence the parties may present. However, the Hearing Officer may exclude irrelevant, immaterial, or unduly repetitious evidence. Appellants and third parties may use documents the agency sends as part of its agency record. Therefore, they should not send identical copies of information contained in the agency record.

The Hearing Officer will accept photographic or written evidence on single-sided, 8-1/2 x 11-inch paper. The presenting party may reduce large maps, plat maps, aerial surveys, etc. to 8-1/2 x 11-inch pages. They may also mount smaller photographs on 8-1/2 x 11-inch paper. The Hearing Officer will accept audio, DVD and VHS recordings, but viewing equipment may not be available at the hearing.

The Hearing Officer will not accept the following items into the case record. However, if parties wish to use these items for visual affect, etc., they must submit the information in a format discussed in the preceding paragraph for acceptance into the case record as evidence.

- Maps and similar materials in tubes.
- Photographic slides (transparencies) and photographs in electronic (digital) format.

The Hearing Officer cannot accept the following:

- Video recordings in non-DVD and non-VHS formats.
- Plant material, soil samples, and similar articles that are perishable, bulky or not conducive to long-term storage. Parties may represent such materials in photographs, written expert opinions, or similar documentary evidence.

The Hearing Officer must decide the appeal based on the record they develop. Therefore, the Hearing Officer will consider only submissions that meet these criteria and become part of the case record. If the appeal parties have questions about what they may submit as evidence, they should contact the Hearing Officer.

### Labeling of Submissions

*Appellant and Third Party Exhibits.* Appellants must label their exhibits alphabetically in the lower right corner as: Appellant Exhibit A, page 1 of \_\_\_\_, Appellant Exhibit B, page 1 of \_\_\_\_, etc. The appellant must number each page. If there is more than one appellant, or third party, each may submit separate exhibits. However, each of them must label exhibits with their last name as part of label. For example, if the third party's name is Smith and there are two pages to Exhibit A, they would label the exhibit – Smith Exhibit A, page 1 of 2, and Smith Exhibit A, page 2 of 2.

*Agency Record.* The agency must number its agency record in the lower right corner. The agency must number each page of the agency record, including any cover memo. An agency record should have only one sequence of numbers; separate documents or sections should not begin with new numbering sequences.

*Agency Exhibits.* If the agency presents other documents at the hearing, the Hearing Officer may accept the documents as agency exhibits. Agency exhibits should not duplicate documents in the agency record. The agency must label each of its exhibits and each page of its exhibits numerically in the lower right corner as: Agency Exhibit 1, page 1 of \_\_\_\_, Agency Exhibit 2, page 1 of \_\_\_\_, etc.

### Access to Information

The agency will provide the appellant with reasonable access to all agency files related to the adverse decision under appeal before the hearing (and copies of documents, if requested) according to agency procedures. If the appellant wishes to view agency files, they must complete the review before the hearing. The Hearing Officer will not delay the hearing to allow the appellant to view agency files.

### Prohibited Ex Parte Communication

At no time between the appellant filing an appeal and NAD issuing a final determination may the appeal parties communicate with NAD about the substance or merit of an appeal without all parties having notice and the opportunity to participate.

## Options for Processing the Appeal

The appellant may select one of three options for processing the appeal:

1. An in-person hearing,
2. A telephone hearing, or
3. A record review instead of a hearing. The Hearing Officer will review the record including all information sent by the parties and will issue a decision.

## Representatives for Appellants

Appellants, at their own expense, may select an attorney or other person to represent them in the appeal. Representatives must file a declaration stating the appellant has authorized them as their representative. The representative must attach the appellant's written authorization.

## Pre-Hearing Teleconference

The Hearing Officer may schedule a pre-hearing teleconference. During a pre-hearing conference the Hearing Officer will:

- Ask about any bankruptcy or mediation that might be pending,
- Identify any potential third parties,
- Identify the adverse decision under appeal,
- Narrow and refine the issue(s) in dispute,
- Ask the agency to explain the regulatory basis for the adverse decision,
- Ask the appellant to explain the reason(s) for the appeal,
- Discuss information and document exchange,
- Explain the hearing process,
- Address procedural matters,
- Explain the options for processing the appeal and ask the appellant to select one, and
- Schedule a hearing, if the appellant requests one.

If others, including appellant representatives, will take part in the pre-hearing conference, the appellant must notify them of the date and time of the pre-hearing conference and provide their names to the Hearing Officer. Anyone with rotary telephones should contact the Hearing Officer immediately.

## Accommodations for Persons with Disabilities

On request, NAD will provide reasonable accommodations for the physical or mental disabilities of appellants, witnesses, or representatives. Accommodations include accessible hearing sites, large-print versions of NAD notices and determinations, sign language interpreters or appropriate telephone service for the hearing impaired, access by service animals, schedule adjustments necessary to accommodate disability-related concerns, space for companions who provide disability-related services, and similar accommodations that are reasonably necessary to provide full access and participation in NAD proceedings.

### Language Interpreter

On request, NAD will provide reasonable accommodations for a language interpreter. Cancellation of such services requires a 2-day notice to NAD.

### Copy of Pre-Hearing and Hearing Recording

NAD will provide the appeal parties a free copy of the pre-hearing and hearing recording. A party wishing to receive a copy of the recording must send a written request to the NAD **(Region)** Regional Office, **(address)**. Please include your NAD case number on your request.

More information is available about the NAD hearing process on the NAD website at [www.nad.usda.gov](http://www.nad.usda.gov).



During the pre-hearing, I will:

- ask about any bankruptcy or mediation that might be pending,
- identify any potential third parties,
- narrow the issues in dispute,
- ask the Agency to explain the regulatory basis for the adverse decision,
- ask Appellant to explain the basis for appeal,
- discuss information and document exchange,
- explain the hearing process,
- address procedural matters,
- explain the options for processing the appeal and ask Appellant to select one (in-person hearing, telephone hearing or record review), and
- schedule a hearing, if Appellant requests one.

## HEARING

I will hold an in-person hearing on:

DATE: **(include day of the week)**  
TIME: **(include time zone)**  
ADDRESS:  
TELEPHONE NUMBER **(if available)**:

I will conduct the hearing in accordance with Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.8. I will record the hearing. A copy of the recording will be available free of charge to all parties upon written request.

**NOTE:** The hearing date and time are subject to change. Instead of the scheduled in-person hearing, Appellant may request a hearing by telephone, or may request that a decision be based on a review of the record without a hearing (record review). The Appellant will inform me if Appellant prefers a telephone hearing or a record review. If Appellant selects a telephone hearing, the parties will follow the calling instructions for the pre-hearing conference (above) at the designated hearing time.

## GENERAL INFORMATION

Please review the NAD Information Sheet provided with the Notice of Appeal for important information. You may direct all procedural questions to me.

The parties must be available and ready to proceed with the scheduled pre-hearing conference and hearing. If the parties are not available at the scheduled time, I may conclude the proceeding or go forward without the absent party.

Representatives and witnesses may participate in the pre-hearing and hearing. If a party plans to call a witness, the party is responsible for ensuring the presence of the witness and for notifying me at **(telephone number)** of the witness's attendance.

Appellant(s)' representative(s) must file an Authorization/Declaration stating that the person has been authorized, in writing, to represent Appellant and must attach the written authorization.

I may postpone the hearing for exceptional reasons beyond the control of the requesting party. The requesting party must contact me in advance if a postponement is needed.

Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**

*(Used by Hearing Officer)*

**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION**

In the matter of	)	
	)	
JOHN DOE	)	
	)	
and	)	Case No. 00000000000
	)	
ABC AGENCY	)	

---

**NOTICE OF PRE-HEARING CONFERENCE**

I have scheduled a pre-hearing conference in the above-referenced case in accordance with the provisions of Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.8.

I will hold the telephone pre-hearing conference on:

DATE: **(include day of the week)**  
TIME: **(include time zone)**

- At the scheduled time, the Appellant, Agency representative and (other participants, if applicable) are to call this toll free number: **(number)**. **Everyone who wants to participate must phone in; you will not be called.** When prompted, enter the passcode **(number)** followed by the # key. You will be connected to the conference call or placed on hold until I connect to the call. If you have problems connecting, or are kept on hold more than a few moments beyond the scheduled time, please contact me at **(telephone number)** or the National Appeals Division Regional Office at **(telephone number)**. Persons with rotary telephones should notify me in advance so I can make alternate calling arrangements.

During the pre-hearing, I will:

- ask about any bankruptcy or mediation that might be pending,
- identify any potential third parties,
- narrow the issues in dispute,
- ask the Agency to explain the regulatory basis for the adverse decision,
- ask Appellant to explain the basis for appeal,
- discuss information and document exchange,
- explain the hearing process,

- address procedural matters,
- explain the options for processing the appeal and ask Appellant to select one (in-person hearing, telephone hearing or record review), and
- schedule a hearing, if Appellant requests one.

The parties must be available and ready to proceed with the scheduled pre-hearing conference. If Appellant(s) is not available at the scheduled time, I may conclude the pre-hearing conference. If the Agency representative is not available, I may proceed with the conference.

I may postpone the pre-hearing conference for exceptional reasons beyond the control of the requesting party. The requesting party must contact me in advance if a postponement is necessary.

Please review the NAD Information Sheet provided with the Notice of Appeal. Procedural questions and submissions should be directed to me at:

**(address)**  
**(telephone)**  
**(facsimile)**

Please include the case number in all correspondence.

NAD supports the Americans with Disabilities Act. Anyone who needs accommodations because of a disability should notify me immediately.

Anyone who needs an interpreter should notify me immediately.

Dated and mailed this **(day)** of **(month year)**.

**(name)**  
**(title)**

*(Used by Hearing Officer and Regional Office)*  
(NOTICE TO THIRD PARTY)

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 00000000000

Dear Mr. Doe:

The National Appeals Division (NAD) has received a request for appeal concerning an ABC Agency (Agency) decision to **(adverse decision)**. You have been identified as a possible third party to this appeal pursuant to Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.15(a). This section defines a third party as a party, other than the appellant or the agency, whose rights will be adjudicated during the NAD proceeding. **(The Hearing Officer OR I)** will conduct the NAD appeal hearing in this case. You will receive notice of the hearing date when it is set. The final determination in the appeal will be binding on you even if you do not participate.

By **(date)**, you are to send the following to the Hearing Officer, Appellant and Agency:

1. A short explanation of your position as to why the adverse decision is correct or incorrect.
2. Copies of all information and documents you plan to introduce at the hearing. Please refer to the Submissions of Evidence and Labeling of Submissions sections of the **NAD INFORMATION SHEET** that is enclosed with this letter.
3. A list of any witnesses you intend to have testify at the hearing with a brief summary of their testimony.
4. If applicable, a completed Authorization/Declaration for a representative. Please refer to the Representatives for Appellants section of the **NAD INFORMATION SHEET**.
5. A copy of the bankruptcy petition, if you have filed for bankruptcy.
6. Information about any pending mediation or litigation involving the Agency.

Enclosed are copies of notices that have been issued in this appeal. Please contact **(the Hearing Officer OR me)** if you plan to participate.

If there are any questions, contact **(name and telephone number)**.

Sincerely,

**(name)**  
**(title)**

Enclosures:

All NAD notices concerning the appeal  
NAD Information Sheet

*(Used by Regional Office or Hearing Officer)*

(NOTICE TO INTERESTED PARTY)

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 000000000000

Dear Mr. Doe:

The National Appeals Division (NAD) has received a request for appeal concerning a decision by the **(agency name)** to **(adverse decision)**. You have been identified as a possible interested party to this appeal pursuant to Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.15(b). This section defines an interested party as a party other than the appellant or the agency, who may desire to participate in the appeal because of the derivative impact the appeal determination will have on that party. **(The Hearing Officer OR I)** will conduct the NAD appeal hearing in this case. You have the right to participate in the appeal, but are not required to do so.

Enclosed are copies of notices that have been issued in this appeal. Please contact **(The Hearing Officer OR me)** if you plan to participate.

If there are any questions, contact **(name and telephone number)**.

Sincerely,

**(name)**

**(title)**

Enclosures:

All NAD notices concerning the appeal  
NAD Information Sheet

*(Used by Regional Office and Hearing Officers)*

**REQUEST FOR APPEAL/RELEASE OF INFORMATION AND DECLARATION OF ENTRY OF APPEARANCE**

**(I hereby request an appeal. – For Regional Office use Only)**

I/We hereby authorize *(print name)* \_\_\_\_\_ as my/our representative in all proceedings with the National Appeals Division (NAD). I/We further authorize and request that NAD and the agency release all information and documents concerning me/us to my/our representative. This authorization shall remain in effect until revoked in writing.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, **(year)**.

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Participant

**DECLARATION OF ENTRY OF APPEARANCE**

Take notice that I, *(print name)* \_\_\_\_\_, am entering my appearance to represent the participant(s), \_\_\_\_\_, throughout the appeals process with the National Appeals Division. I have been duly authorized in writing by the participant(s) and will accept the service of all notices and documents related to the appeal. Should my representation end before the conclusion of the appeal process, I shall provide written notice to NAD.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on the \_\_\_\_\_ day of \_\_\_\_\_, **(year)**.

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone Number

*(Used by Hearing Officer)*

## **INSTRUCTIONS FOR TELEPHONE CONFERENCE CALLS**

1. Issue the Notice scheduling the telephonic pre-hearing and/or hearing.
2. If using MCI “Instant Meeting”:

Call the assigned toll-free number. When prompted, the Hearing Officer enters the assigned “leader” pass code followed by the # key.

If using three-way calling:

Call the first party, announce the conference, and ask the party to hold while connecting the other party. Press and release the receiver button to put the first call on hold. (As an alternative, use the flash, tap, switch hook, or recall button in place of the receiver button.) There will be three beeps and a dial tone. Call the other party, announce the conference and ask the party to hold. To connect the three lines, press and release the receiver button. The Hearing Officer should have all three individuals on the line.

4. Start the recorder when the parties join the conference and advise them the recording has begun. If a party is not present at the scheduled time, the Hearing Officer will wait a reasonable period of time (suggest no fewer than 10 minutes.) The Hearing Officer will check his/her fax machine in case the party or the regional office is trying to contact him/her about connection difficulties.
5. Take attendance and record on Attendance Sheet.
6. Use the pre-hearing format for the pre-hearing conference and the hearing format for the hearing.





*For a record review:*

5. The Appellant has elected a record review. There will be no hearing. The parties must submit all relevant information to me and the other party so it is received no later than **(date)**. Each party may respond to the information submitted by the opposing party by **(date)**. Responses must be sent to the other party(ies) at their mailing address or fax number and to me at **(address)**. Parties must label all submissions in a manner consistent with the instructions listed on the **NAD INFORMATION SHEET**.

Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**





I may grant a postponement for exceptional reasons beyond the control of the requesting party. The requesting party must contact me in advance if a postponement is necessary.

I will record the hearing and enter the recording into the case record. A copy of the recording will be available to all parties free of charge upon written request.

Please review the NAD Information Sheet provided with the Notice of Appeal. Contact me with all procedural questions at **(address and telephone number)**.

NAD supports the Americans with Disabilities Act. Anyone who needs accommodations because of a disability should notify me at the phone number listed above immediately.

Anyone who needs an interpreter should notify me immediately.

Dated and mailed this **(day)** of **(month year)**.

**(name)**  
**(title)**



If other witnesses will participate in the hearing, the party calling such witnesses is responsible for ensuring their presence and notifying all parties of their attendance.

The parties are expected to proceed with the hearing as scheduled. If a party is not available at the scheduled time, I may proceed without the absent party.

I may grant postponements for exceptional reasons beyond the control of the requesting party. The requesting party must contact me in advance if a postponement is necessary.

I will record the hearing and enter the recording into the case record. A copy of the recording will be available to all parties free of charge upon written request.

Please review the information sheet provided with the Notice of Appeal. You may direct procedural questions to me at **(telephone number)**.

NAD supports the Americans with Disabilities Act. Anyone who needs accommodations because of a disability should notify me immediately.

Anyone who needs an interpreter should notify me immediately.

Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**





The issue(s) on appeal and applicable regulations are set out in the **(date)**, Notice of Hearing. All information and instructions contained in that Notice remain in effect.

Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**



You may submit additional written information and arguments for my consideration. Do not resubmit information previously entered into the record. You must provide your submissions simultaneously to me and to all other parties by **(date)**.

Send written submissions to me at the following address:

**(address)**  
**(telephone) number**  
**(facsimile)**

Dated and mailed this **(day)** of **(month year)**.

**(name)**  
**(title)**

*(Used by Hearing Officer)*

**NOTE:** This form is not required. Any written waiver may be accepted. A verbal waiver is acceptable but must be reduced to writing and put in the case record.

**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION**

In the matter of	)	
	)	
JOHN DOE	)	
	)	
and	)	Case No. 0000000000
	)	
ABC AGENCY	)	

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**WAIVER OF APPELLANT'S RIGHT TO A HEARING  
WITHIN 45 DAYS OF RECEIPT OF APPEAL REQUEST**

I/We, (*print name(s)*) \_\_\_\_\_, the Appellant in the above-referenced appeal before the National Appeals Division (NAD), hereby waive my/our right to a hearing within 45 days of the receipt by NAD of my/our request for appeal.

I/We understand that this waiver relates only to this case.

\_\_\_\_\_  
Signature(s)

\_\_\_\_\_  
Date



Please direct all future correspondence and questions regarding the appeal to **(name)**.

Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**

*(Used by Hearing Officer)*

**AFFIRMATIONS (OATHS)**

Before an individual (including a party) testifies at a hearing, the Hearing Officer will administer an affirmation, or oath. It is not necessary for individuals to raise their hands when making an affirmation, nor is a bible necessary. Affirmations must be administered to all individuals who will testify at a hearing. Representatives of the appellant or agency are not required to make an affirmation unless they give testimony.

**Affirmation for parties giving testimony:**

Do you affirm that the testimony you are about to give will be the truth, the whole truth, and nothing but the truth under penalty of perjury?

**Affirmation for those submitting documentary evidence:**

Do you certify that any documents that you may submit as exhibits of evidence are true, correct, and complete to the best of your knowledge and belief?

**NOTE:** This affirmation may be in a written statement attached to the documents or administered verbally before the documents are presented.

**Affirmation for interpreters:**

Do you affirm that you will translate all questions and answers fully, truthfully, and accurately to the best of your ability?

*(Used by Hearing Officer)*

**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION**

In the matter of )  
 )  
JOHN DOE )  
 )  
and ) Case No. 00000000000  
 )  
ABC AGENCY )

---

**NOTICE OF PRE-HEARING CONFERENCE ON REMAND**

The **(Director OR Deputy Director)** of the National Appeals Division (NAD) remanded the above-referenced case for further proceedings. I will conduct a pre-hearing teleconference before determining how to proceed in completing the record.

The pre-hearing conference will be held by telephone on:

**DATE: (include day of week)**  
**TIME: (include time zone)**

At the scheduled time, the Appellant(s), Agency representative and **(other participants)** are to call this toll free number: **(number)**. When prompted, enter this passcode: **(number)** followed by the # key. You will be connected to the conference call or placed on hold. If you are placed on hold, you will be joined to the conference when I join the call. If you have any problems connecting, or are kept on hold more than a few moments beyond the scheduled time, please contact me at **(telephone number)** or the NAD Regional Office at **(telephone number)**.

The parties must be available and ready to proceed with the scheduled pre-hearing conference. If a party is not available at the scheduled time, I may conclude the pre-hearing conference or proceed without the absent party.

I may grant a postponement only for exceptional reasons beyond the control of the requesting party. The requesting party must notify me if a postponement is necessary. The attached Director review determination sets the scope of the remand.

I will consider the case record from the original hearing. If you wish to submit additional written evidence, you must provide the evidence to me and all other parties to the appeal by **(date)**.

Do not resubmit information submitted in connection with the original hearing. Please review the NAD Information Sheet provided with the Notice of Appeal for important information on how to label your written submissions and on other matters.

NAD supports the Americans with Disabilities Act. Anyone who needs accommodations because of a disability, or who needs an interpreter should notify me immediately.

Please call me at the number below if you have procedural questions. Send all written submissions to me at the following address:

**(address)**  
**(telephone)**  
**(facsimile)**

Dated and mailed this **(day)** of **(month year)**.

**(name)**  
**(title)**

Attachments:  
Remand Order (Director Review Determination)  
NAD Information Sheet



The parties are expected to proceed with the hearing as scheduled. If the Appellant is not available at the scheduled time, I may conclude the appeal or conduct a review of the record without a hearing. If the Agency representative is not available at the scheduled time, the hearing may begin without **(him OR her)**.

I will grant postponements only for exceptional reasons beyond the control of the requesting party. A party requesting a postponement must contact me at the address or telephone number below.

I will record the hearing. NAD will provide all parties a free copy of the recording upon request.

NAD supports the Americans with Disabilities Act. Anyone who needs accommodations because of a disability, or who needs an interpreter should contact me immediately.

Please call me at the number below if you have procedural questions. Send all written submissions to me at the following address:

**(address)**  
**(telephone)**  
**(facsimile)**

Dated and mailed **(day)** of **(month year)**.

**(name)**  
**(title)**



Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**



Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**



Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**



Dated and mailed this **(day)** of **(month year)**.

**(name)**

**(title)**

*(Used by Hearing Officer)*

**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION**

In the matter of )  
 )  
JOHN DOE )  
 )  
and ) Case No. 00000000000  
 )  
ABC AGENCY )

---

**NOTICE OF RECORD REVIEW ON REMAND**

The **(Director OR Deputy Director)** of the National Appeals Division (NAD) remanded the above-referenced case for further proceedings. After considering the appeal parties' positions on how to proceed with the remand, I will conduct a record review in accordance with Title 7 of the Code of Federal Regulations (7 C.F.R.) Part 11.

The attached Director Review Determination sets the scope of the issue(s) on appeal.

I will base my remand determination on the existing record and on any new evidence the parties timely submit. I will not hold a hearing.

John Doe (Appellant) **(Third Party, if applicable)** and ABC Agency (Agency) have until **(date)** to submit additional written evidence and arguments.

The Appellant **(Third Party, if applicable)** and Agency have until **(date)** to submit written comments and/or rebuttal to the other party's information.

Each party must provide their written submissions simultaneously to me and to all other parties. I will enter all submissions into the record. The record closes on **(date)**.

Do not resubmit information that is already in the case record for this appeal. Please review the NAD Information Sheet provided with the Notice of Appeal for information on how to label your submissions and on other important matters.

Send all written submissions to me at the following address:

**(address)**  
**(telephone)**  
**(facsimile)**

Dated and mailed this **(day)** of **(month year)**.

**(name)**  
**(title)**

*(Used by Hearing Officer)*

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION

In the matter of )  
 )  
JOHN DOE )  
 )  
and ) Case No. 00000000000  
 )  
ABC AGENCY )

---

**NOTICE OF REOPENING OF CASE RECORD**

I hereby reopen the case record in the above-referenced appeal because **(variable)**.

***If a pre-hearing will be held:*** use appropriate language from Notice of Pre-Hearing Conference.

***If a hearing will be held:*** use appropriate language from Notice of Hearing.

***If written submissions will be accepted, but no subsequent hearing held:***

The parties may submit written information and arguments for my consideration. ***(If the Hearing Officer wishes to obtain specific information, [he OR she] should describe the requested information.)***

Each party must provide submissions simultaneously to me and to the other party(ies) by **(date)**.

Each party has until **(date)** to submit written comments and/or rebuttal to the other party's information.

I will enter all submissions into the record. The record closes on **(date)**.

Please review the National Appeals Division (NAD) Information Sheet provided with the Notice of Appeal for information on how to label your submissions and on other important matters.

Send all written submissions to me at the following address:

**(address)**  
**(telephone)**  
**(facsimile)**

Dated and mailed this **(day)** of **(month year)**.

**(name )**

**(title)**

*(Used by Hearing Officer)*

**NOTICE OF RIGHT TO REQUEST DIRECTOR REVIEW  
AND/OR COPY OF AUDIO RECORD**

**DIRECTOR REVIEW REQUEST**

Either party may request that the Director of the National Appeals Division (NAD) review this determination. A suggested format is attached, but any request is acceptable if it has all the information in the “Instructions for Request for Review” listed below.

**An appellant or third party** who believes that this determination is wrong must file a request for Director review within **30 days** of receipt of this determination. Unless appropriate documentation shows otherwise, the Director presumes that it usually takes 7 days for a determination to reach an appellant by mail. However, the Director will accept requests filed more than 37 days from the date of the determination if the person shows that receipt of the determination took longer than usual. A request must be in writing and be signed by the appellant or third party. A request must also follow the “Instructions for Request for Review” listed below.

**The agency** may also file a request for Director review if it believes this determination is wrong. The agency must file its request within **15 business days** of receipt of this determination. The head of the agency or someone acting in that capacity must sign the request. The agency must also follow the “Instructions for Request for Review” listed below.

Parties may file written responses to a request for Director review within **5 business days** of receipt of a copy of the request for review.

The date a document is considered “filed” is either the date it is delivered in writing to NAD, its postmark date, or the date that a complete facsimile copy is received by NAD.

**Instructions for Requests for Review**

A request for review must include the following information:

- be personally signed and dated by appellant, third party or head of the agency;
- specifically request a review;
- give the case number for the Hearing Officer determination (the case number is on the top right-hand side of the first page of the determination);
- note the date the requester received the Hearing Officer determination;
- say why the determination is wrong;
- confirm that the requester has also sent a copy of the request and additional information, if any, to the other party at the same time that the request was sent to NAD; and
- be mailed, faxed or delivered by commercial delivery service to:

National Appeals Division  
Regional Office  
**(address)**  
**(facsimile)**  
**(1- 800 number)**  
**(TDD number)**

**COPY OF AUDIO RECORD REQUEST**

The appellant(s), third parties, and the agency may obtain a copy of the audio record made of the pre-hearing/hearing proceedings at no cost. Copies may be obtained by making a written request to the NAD Regional Office.

**REQUEST FOR DIRECTOR REVIEW**

I/We, (*print name(s)*) \_\_\_\_\_, am/are the Appellant(s)/Third Party/Agency head in the above-referenced appeal and I/we request a Director review of the appeal determination in this case.

The case number is: \_\_\_\_\_.

I/We received the appeal determination on \_\_\_\_\_.

The specific reasons why I/we believe the appeal determination is wrong are: (The requester may attach additional sheets and documents, if desired.)

A copy of this request, along with any attachments, was mailed to the other parties on \_\_\_\_\_.

I swear that all statements in this filing are true to the best of my knowledge and belief.

\_\_\_\_\_  
Appellant(s)/Third Party/Agency head signature(s)

\_\_\_\_\_  
Date



*(For optional use by Hearing Officer when Hearing Officer deems appropriate)*

**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION**

In the matter of )  
 )  
JOHN DOE )  
 )  
and ) Case No. 00000000000  
 )  
ABC AGENCY )

---

**NOTICE OF EX PARTE COMMUNICATION**

John Doe (Appellant) filed an appeal challenging an ABC Agency (Agency) decision dated **(date)**. On **(date)**, I received a communication from **(Appellant OR Agency)** that consisted of **(describe the substance of the written or oral communication)**. **(I have attached a copy of the written communication.)**

The **(Appellant’s OR Agency’s)** communication was relevant to the merits of the appeal because **(explain relevance)**.

The **(Appellant OR Agency)** did not provide a copy or other notice of the communication to the **(Agency/Appellant – identify other party as applicable)**.

Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.1 defines ex parte communication as an oral or written communication to any officer or employee of the National Appeals Division (NAD) with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports, or inquiries on Division procedure, in reference to any matter or proceeding connected with the appeal involved.

Seven C.F.R. § 11.7(b) provides that no interested person shall make or knowingly cause to be made to any officer or employee of the Division an ex parte communication relevant to the merits of the appeal.

I have determined that the **(Appellant/Agency’s)** communication of **(date)** was an ex parte communication, relevant to the merits of the appeal, made in violation of 7 C.F.R. § 11.7(b). Pursuant to 7 C.F.R. § 11.7(c), I have placed the ex parte communication **(or a memoranda stating the substance of an oral ex parte communication)** in the hearing record. Any party who wishes to provide a written response to the ex parte communication may do so. I will

include all responses in the hearing record. Responses must be simultaneously submitted to me and to all other parties no later than **(date)**.

Submit responses to me at the following address:

**(address)**  
**(telephone)**  
**(facsimile)**

Dated and mailed this **(day)** day of **(month year)**.

**(name)**  
**(title)**

**(Attachment)**

*(For optional use by Hearing Officer when Hearing Officer deems appropriate)*

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION

In the matter of )  
 )  
JOHN DOE )  
 )  
and ) Case No. 00000000000  
 )  
ABC AGENCY )

---

**NOTICE OF EX PARTE COMMUNICATION AND ORDER TO SHOW CAUSE**

John Doe (Appellant) filed an appeal challenging an ABC Agency (Agency) decision dated **(date)**. On **(date)**, I received a communication from **(Appellant OR Agency)** that consisted of **(describe the substance of the written or oral communication)**. **(I have attached a copy of the written communication.)**

The **(Appellant OR Agency's)** communication was relevant to the merits of the appeal because **(explain relevance)**.

The **(Appellant OR Agency)** did not provide a copy or other notice of the communication to the **(Agency OR Appellant – identify other party as applicable)**.

Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.1 defines ex parte communication as an oral or written communication to any officer or employee of the National Appeals Division (NAD) with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports, or inquiries on Division procedure, in reference to any matter or proceeding connected with the appeal involved.

Seven C.F.R. § 11.7(b) provides that no interested person shall make or knowingly cause to be made to any officer or employee of the Division an ex parte communication relevant to the merits of the appeal.

Seven C.F.R. § 11.7(d) provides that upon the receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Hearing Officer may, to the extent consistent with the interests of justice and the policy of the underlying program, require the party to show cause why such party's claim or interest in the appeal should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

I have determined that the **(Appellant's OR Agency's)** communication of **(date)** was an ex parte communication relevant to the merits of the appeal knowingly made in violation of 7 C.F.R. § 11.7(b). Because **(Appellant OR Agency)** knowingly engaged in a prohibited ex parte communication, in violation of 7 C.F.R. § 11.7(b), **(Appellant OR Agency)** is hereby required to show cause why its claim or interest in subject appeal should not be dismissed, denied, disregarded, or be otherwise adversely affected on account of such violation.

**(Appellant OR Agency)** must provide a response to this notice simultaneously to me and all other parties in a manner that ensures receipt by all parties no later than the close of business on **(date)**.

If the **(Agency OR Appellant – identify other party)** wishes to respond to this notice, **(Agency OR Appellant – identify other party)** must submit its response to me and to all other parties in a manner that ensures receipt by all parties no later than the close of business on **(date)**.

The parties should submit their responses to me at the following address:

**(address)**  
**(telephone)**  
**(facsimile)**

Dated and mailed this **(day)** day of **(month year)**.

**(name)**  
**(title)**

**(Attachment)**

## **SECTION 5 – SUBPOENAS**

*(Used by Hearing Officer)*

**(date)**

John Doe  
1234 Main Street  
Anywhere, USA Zip

Re: Case No. 00000000000

Dear Mr. Doe:

You timely requested the National Appeals Division (NAD) issue a subpoena requiring **(name of witness(es) to testify) OR (name of person[s] to produce certain documents)** in the above-referenced case.

*Use one of the following sections as appropriate:*

***(FOR THE CASE WHEN A PARTY WANTS TO SUBPOENA DOCUMENTS)***

Under Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.8(a)(2)(iii)(A), a subpoena shall be issued only if the Hearing Officer determines that you have established that production of documents is necessary and is reasonably calculated to lead to information which would affect the final determination or is necessary to fully present the case before NAD. Furthermore, according to 7 C.F.R. § 11.8(a)(5)(ii), the Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions.

For me to consider your subpoena request for the production of documents, you must provide certain information. I have attached forms that specify the required information. Please provide the information specified in such forms by **(date)**. After I have considered the information you submit, I will either issue a subpoena or a notice denying your subpoena request.

***(FOR THE CASE WHEN A PARTY WANTS TO SUBPOENA WITNESS(ES))***

Under 7 C.F.R. § 11.8(a)(2)(iii)(B), a subpoena shall be issued only if the Hearing Officer determines you have established that an individual possesses information pertinent and necessary for disclosure of all relevant facts which could impact the final determination. You must also show that you cannot obtain the information except through testimony of the requested person and that such person's testimony cannot be obtained without a subpoena. Furthermore, according to 7 C.F.R. § 11.8(a)(5)(ii), the Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions.

For me to consider your subpoena request of **(name of witness)**, you must provide certain information. I have attached forms that specify the required information. Please provide the information specified in such forms by **(date)**. After I have considered the information you submit, I will either issue a subpoena or a notice denying your subpoena request.

Sincerely,

**(name)**

**(title)**

Attached:

Subpoena information forms

*(Hearing Officer may attach to letter responding to a Subpoena request)*

**Subpoena Information Sheet**

If a subpoena is requested, the requesting party shall provide the following information in writing to the Hearing Officer. Requests for witnesses shall be submitted at least 14 days before the scheduled hearing date.

***Request for subpoena requiring attendance of witness:***

- Name, mailing address, and telephone number of each party whose presence is requested at the hearing.
- A detailed explanation of how each subpoenaed individual's testimony will be relevant to the issue(s) under appeal.
- An explanation of why the information that would be provided from each subpoenaed individual's testimony is not otherwise available and is necessary for disclosure of relevant facts that could impact the Hearing Officer's determination.
- An explanation of the requesting party's attempt(s) to obtain the voluntary attendance of the individual to be subpoenaed. If the individual has declined in writing any attempt(s) to obtain his/her voluntary attendance, the correspondence should be included.

***Request for subpoena requiring production of evidence:***

- Recognizable title(s) of document(s) to be subpoenaed and name, mailing address, and telephone number of party in possession of each document.
- Detailed explanation of how the content of the subpoenaed document(s) is relevant to the issue(s) under appeal.
- An explanation of how the content of the document(s) is not otherwise available and is necessary for disclosure of relevant facts that could impact the Hearing Officer's determination.
- An explanation of the requesting party's attempt(s) to obtain the voluntary submission of the subpoenaed document(s). If the individual has declined in writing any attempt(s) to obtain the document voluntarily, the correspondence should be included.

If a subpoena is granted, the requesting party is responsible for service of process of the subpoena (ensuring that the subpoena is delivered to the person named in the subpoena). Subpoenas shall be served no later than 10 days before the hearing. A subpoena may be served by delivering a copy personally to the person named in the subpoena, or by registered or certified mail. Personal service must be done by someone over the age of 18 who is not a party to the appeal.

Parties are responsible for paying the reasonable travel and subsistence costs incurred by a witness they subpoena. The only exception is that the agency will pay these costs if the subpoenaed witness is a USDA employee who is being called to testify in connection with his or her official duties, even if the subpoena is requested by an appellant.

The requesting party should provide information to the Hearing Officer at **(address and telephone number)**.

Upon receiving the information, the Hearing Officer will consider whether to recommend to the Director that the subpoena request be approved. All subpoenas must be approved by the Director.

*(Used by Hearing Officer)*

**UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION**

In the matter of	)	
	)	
JOHN DOE	)	
	)	
and	)	Case No. 00000000000
	)	
ABC AGENCY	)	

---

**NOTICE OF DENIAL OF SUBPOENA**

**(John Doe [Appellant] or ABC Agency [Agency])** timely requested the National Appeals Division (NAD) issue a subpoena requiring **(name of witness[es] to testify) OR (name of person[s] to produce certain documents)** in the above-referenced case.

*Use one of the following sections as appropriate:*

***FOR THE CASE WHEN A PARTY WANTS TO SUBPOENA DOCUMENTS***

Under Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.8(a)(2)(iii)(A), a subpoena shall be issued only if the Hearing Officer determines the appellant or agency has established that production of documents is necessary and is reasonably calculated to lead to information which would affect the final determination or is necessary to fully present the case before NAD. Furthermore, according to 7 C.F.R. § 11.8(a)(5)(ii), the Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. **(Foregoing sentence optional for use when Hearing Officer needs additional support for denial.)**

**(Appellant OR Agency)** wants to obtain the **(name of document, e.g., appraisal of John Doe's wheat crop or record of Appellant's telephone calls)** in connection with **(Appellant's OR Agency's)** claim. I have considered **(Appellant's OR Agency's)** reason for requesting a subpoena of such documents under the provisions of § 11.8(a)(2)(iii)(A). I find such documents are not necessary to fully present the case before me, nor are they reasonably calculated to lead to information that would affect my final determination. **(Modify reasons for denial as applicable.)** Therefore, I deny **(Appellant's OR Agency's)** request for a subpoena of **(name of documents)**.

***FOR THE CASE WHEN A PARTY WANTS TO SUBPOENA WITNESS(ES)***

Under 7 C.F.R. § 11.8(a)(2)(iii)(B), a subpoena shall be issued only if the Hearing Officer determines the appellant or agency has established that an individual possesses information pertinent and necessary for disclosure of all relevant facts which could impact the final determination. The appellant or agency must also show that the appellant or agency cannot obtain the information except through testimony of the requested person and that such person's testimony cannot be obtained without a subpoena. Furthermore, according to 7 C.F.R. § 11.8(a)(5)(ii), the Hearing Officer may confine the presentation of facts and evidence to pertinent matters and exclude irrelevant, immaterial, or unduly repetitious evidence, information, or questions. **(Foregoing sentence optional for use when Hearing Officer needs additional support for denial.)**

**(Appellant OR Agency)** wants to obtain the **(description of testimony, e.g., testimony of Jane Doe regarding Agency's appraisal or Jane Doe's conversation with Appellant)** in connection with Appellant's or Agency's claim. I have considered **(Appellant's OR Agency's)** reason for requesting a subpoena of **(name of witness)** under the provisions of 7 C.F.R. § 11.8(a)(2)(iii)(B). I find that the testimony of **(name of witness)** is not necessary for disclosure of all relevant facts which could impact the final determination. The information which the **(Appellant OR Agency)** seeks can be obtained at the hearing by examining the **(Appellant OR the Agency's representative)**. **(Modify reasons for denial as applicable.)** Therefore, I deny **(Appellant's OR Agency's)** request for a subpoena of **(name of witness)**.

Dated and mailed this **(day)** day of **(month year)**.

**(name)**  
**(title)**

Copies mailed postage paid to:



ISSUED BY AUTHORITY OF SECTION 277(a)(2) of Pub. L. No. 103-354, and Title 7 of the Code of Federal Regulations Section 11.8.

Dated and mailed this **(day)** day of **(month year)**.

**(name)**

**(title)**

Attachment



***Attachment to subpoena:***

1. The party requesting the subpoena is responsible for serving the subpoena.
2. The person named in the subpoena shall be served the subpoena by registered mail, certified mail, or in person.
3. Personal service may be made by personal delivery of a copy of the subpoena to the person named therein. Personal service shall be made by a person not a party to these appeal proceedings who is 18 years of age or older.
4. Proof of service shall be provided to the Hearing Officer. Proof of service is a statement of the date and manner of service and of the names of the persons served, certified by the person who made the service in person or by return receipts for certified or registered mail.
5. The party who requested issuance of the subpoena is responsible for all costs associated with the issuance of the subpoena. Costs may include, but are not limited to:
  - Payment of reasonable travel and subsistence costs incurred by a witness whose presence at a hearing is compelled by a subpoena. No travel and related costs need be paid by an appellant for the attendance of an agency employee if his or her role as witness arises out of the performance of official duties.
  - Fees charged by the person serving the subpoena.
  - Charges for documents under a production-of-documents request. These charges may include copying charges, salary-related fees for personnel used in procuring documents, and postage costs. No charges or related costs need be paid by the appellant for a subpoenaed agency document.
6. Failure to pay such charges, fees and/or costs, as described in paragraph 5 above, may be considered sufficient grounds for striking the testimony of any witness whose presence was compelled by the subpoena (or refusal to accept into evidence any document obtained under subpoena).
7. The enclosed subpoena shall be served immediately, but no later than 10 days before the hearing.

*(Used by Hearing Officer)*

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION

In the matter of )  
 )  
JOHN DOE )  
 )  
and ) Case No. 00000000000  
 )  
ABC AGENCY )

---

**NOTICE DENYING MOTION TO QUASH SUBPOENA**

**(John Doe [Appellant] OR ABC Agency [Agency])** filed a request for a subpoena of **(name)**. After reviewing the record, I found that **(name)** was an essential witness and issued a subpoena for **(name)** appearance as authorized by Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.8.

The **(Agency OR Appellant)** has requested that the National Appeals Division (NAD) quash the subpoena which NAD issued to **(name)**. **(Appellant OR Agency)** claims **(insert applicable claims, e.g. that the information is otherwise available without a subpoena)**.

I find that **(Agency OR Appellant)** has not demonstrated that the **(insert applicable grounds for denying Motion to Quash, e.g. that the information is not otherwise available because the [name] does not have equivalent personal knowledge of all matters related to the adverse decision nor would [name] appearance be unduly burdensome)**. Therefore, I deny **(Appellant's OR Agency's)** Motion to Quash.

Dated and mailed this **(day)** day of **(month year)**.

**(name)**  
**(title)**

## **SECTION 6 – REVIEW**



*(Used by Regional Office)*

(date)

John Doe  
1234 Main Street  
Anywhere, USA Zip

**OR**

ABC Agency  
4321 Main Street  
Everywhere, USA Zip

Re: Case No. 00000000000

Dear Mr. Doe:

You have requested a Director review of the appeal determination in the above-referenced case.

The request does not satisfy the requirements of NAD regulations at Title 7 of the Code of Federal Regulations (7 C.F.R.) § 11.9. Specifically: ***Select appropriate sentence from the following:***

You did not provide information on why the appeal determination is not correct.

**(You OR head of the ABC Agency)** did not sign the request for Director review.

You did not request a review within the time limit established by regulations.

Therefore, the request is denied.

***Optional if correctable error:***

I will consider the request complete if you correct the errors within the time limit established by regulations. You can resubmit documents to:

National Appeals Division  
Regional Office  
**(address)**  
**(facsimile)**

You may direct procedural questions to **(name and telephone number)**.

Sincerely,

**(name)**  
**(title)**

**SECTION 7 - EQUAL ACCESS TO JUSTICE ACT  
(EAJA)**



**(If Applicant has requested to withhold its net worth financial statement from public disclosure, the Adjudicative Officer may wish to address such disclosure or request information pertaining to such disclosure in this notice.)**

Dated and mailed this **(day)** of **(month year)**.

**(name)**  
Adjudicative Officer



The Agency has the burden of proving that an EAJA award should not be made because the Agency was substantially justified.

The Applicant has the burden of showing that his requested fees and expenses are authorized and allowed under provisions of 7 C.F.R. Part 1, Subpart J.

All documents for the EAJA record must be mailed to:

USDA, National Appeals Division  
Attn: **(name)**, Adjudicative Officer  
**(address)**

Parties may contact the Adjudicative Officer regarding procedural questions at:

**(telephone)**  
**(facsimile)**

All parties are expected to arrive on time and be prepared to proceed with the hearing. If a party fails to appear, the hearing on the application may proceed without such party. If the Applicant fails to appear, then Applicant's application may be denied.

Dated and mailed this **(day)** of **(month year)**.

**(name)**  
Adjudicative Officer



*(Used by Hearing Officer)*

UNITED STATES DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
NATIONAL APPEALS DIVISION

In the matter of )  
 )  
JOHN DOE )  
 )  
and ) Case No. 00000000000  
 )  
ABC AGENCY )

---

**NOTICE RESPONDING TO AGENCY’S REQUEST FOR DISCLOSURE OF  
APPLICANT’S FINANCIAL STATEMENT**

This Notice concerns an application for fees and expenses under the Equal Access to Justice Act (EAJA) made by John Doe (Applicant). *See Title 7 of the Code of Federal Regulations (7 C.F.R.) § 1.180, Subpart J.* On **(date)**, I received a request for disclosure of Applicant’s net worth financial statement (financial statement) from ABC Agency (Agency). By notice dated **(date)**, Applicant objected to public disclosure of (his) financial statement on legal grounds. **(May add specificity to the legal grounds upon which Applicant objects; also may modify procedural history, as appropriate.)**

I considered both parties’ requests under provisions of 7 C.F.R. § 1.191. and § 1.191(a) provides that applicants must provide with their EAJA application a detailed exhibit showing the net worth of the applicant. The exhibit may be in any form convenient to the applicant; however, it must provide full disclosure of the applicant’s assets and liabilities for a determination as to applicant’s eligibility for an EAJA award. While an applicant’s financial information may ordinarily be included in the public record, an applicant may object to public disclosure. In such case, the Adjudicative Officer may limit such disclosure. *See 7 C.F.R. § 1.191(b).*

Based on the above, I find that Applicant must submit his financial statement to the Adjudicative Officer and to counsel representing the Agency in this EAJA proceeding and require Applicant to do so by **(date)**. However, Applicant may mark such statement as “Confidential Financial Information.” Moreover, the Adjudicative Officer and the Agency’s counsel shall not disclose Applicant’s financial statement to parties outside of this EAJA proceeding without complying with the established procedures under the Freedom of Information Act in accordance with 7 C.F.R. § 1.191(b).

Dated and mailed this **(day)** of **(month year)**.

**(name)**  
Adjudicative Officer