

Farm Management

Effectively appeal an FSA decision

THE Farm Service Agency provides valuable services and programs to farmers. The majority of the time, FSA and farmers work well together and enjoy a mutually productive relationship. Occasionally, however, a producer may receive a notice from FSA that eligibility for certain programs has been revoked. The ineligible producer is given an opportunity to appeal the decision. The manner in which the pro-

Country Counsel

By ROBERT MOORE

ducer makes that appeal can greatly affect the likelihood of a successful appeal.

The most important issue in an FSA appeal is identifying the deadline for submitting an appeal. Typically, the producer

is given 30 days to appeal FSA's determination. The appeal period will be expressly stated in the determination letter, and it is strictly enforced. An appeal made after the deadline will be rejected. The producer must submit notice of appeal in writing and should send the appeal by certified mail so delivery is documented.

The determination letter will state the reason for the adverse decision by FSA.

Typically, the letter will state the law or rule used in FSA's decision, as well as the factual conclusions made by FSA. To be successful, the producer must show that FSA used the wrong rule, applied the rule in an improper way or made incorrect conclusions of fact.

FSA will provide a reference in the determination letter to the rule used in its decision. This is the authority that FSA relies on in its determination letter. The reference is usually to a section of a handbook, such as 4-PL for payment limitations. All FSA handbooks are available online at the agency's website. The rule used in the determination should be read carefully.

Agency discretion

Challenging FSA's interpretation of a rule is not usually successful. Government agencies are given considerable discretion and deference by hearing officers and courts as to their own rules. For example, a farmer is found to be ineligible for direct payments because he did not provide labor to the farming operation. The farmer argues that FSA's definition of labor is incorrect because it does not include bookkeeping and tax management. The farmer's challenge will be denied because the hearing officer will defer to FSA's definition of labor, which does not include bookkeeping.

A better chance of a successful appeal is to argue that the rule is not properly applied. In this example, the farmer challenges FSA by arguing that even if he does not provide "labor" to the farming operation, FSA rules only require a producer to provide labor or management. The farmer explains that he does provide management. The farmer will be successful because he is not challenging the rule, but how it is applied to his situation.

The best chance of a successful appeal is challenging the factual determinations. FSA establishes factual determinations, applies these facts to the applicable rule and makes its determination. If the producer can show the facts are incorrect, FSA's determination will necessarily fail. For example, a farmer is denied eligibility because he is found to provide neither labor nor management to the farming operation. The farmer provides signed contracts, tax returns, spray logs and other evidence of his labor and management contributions. Provided there are no issues with the authenticity of the farmer's evidence, FSA must reinstate his eligibility based on these new facts.

The determination letter will clearly explain the producer's appeal rights. The producer may appeal to the county committee, state committee or National Appeals Division. When making the appeal, the producer needs to stay focused on the issues raised in the determination letter. The farmer will tend to want to talk about how long he has farmed and the importance of program payments to his farm's financial viability. Instead, the farmer should focus his discussion on the evidence he has to show he contributes labor and management.

GOTCHA

WATERHEMP



Warrant® Herbicide provides residual control of waterhemp and other tough broadleaf weeds and grasses. It also offers post-emergent application flexibility at an economical price so you can keep weeds and your budget under control. Contact your retailer to put Warrant in your residual herbicide program or visit RoundupReadyPLUS.com.



EARN UP TO \$3 PER ACRE
See your retailer or RoundupReadyPLUS.com

Always read and follow grain marketing and all other stewardship practices and pesticide label directions. Details of these practices can be found in the Trait Stewardship Responsibilities Notice to Farmers printed in this publication. ©2011 Monsanto Company

Moore is an attorney with
Wright Law Co. LPA
614-791-9112
rmoore@wright-law.net