

Nacogdoches, Texas (Stephen F. Austin University and the East Texas Association of Conservation Districts)

PART 614—APPEAL PROCEDURES

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Subpart A—General Provisions

§614.1 Purpose and scope.

This part sets forth the informal procedures under which a landowner or program participant may appeal adverse technical determinations or decisions made by officials of the Natural Resources Conservation Service (NRCS) or its successor agency.

§614.2 Definitions.

Adverse technical determination or decision includes, in addition to the definition of adverse decision in 7 CFR part 11, an NRCS technical determination or decision that affects the legal substantive status of the land, though it may not necessarily be adverse.

Chief means the Chief of NRCS. For the purposes of this part, the term “Chief” includes an official of NRCS national headquarters designated by the Chief to act for the Chief in making decisions under this part.

Conservation district means any district or unit of State or local government formed under State law or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a conservation district, soil conservation district, soil and water conservation district, natural resource district, land conservation committee, or a similar name.

County committee means a Farm Service Agency (FSA) county or area committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

Decision means a conclusion reached by an NRCS official based on applicable regulations and program instructions which relates to eligibility for program benefits, including a technical determination used as a basis for the decision.

Designated conservationist means the NRCS official, usually the district conservationist, whom the State Conservationist designates to be responsible for the program or compliance requirement to which this part is applicable.

Mediation means a process in which a neutral third party, the mediator, meets with the disputing parties (e.g., the landowner or program participant and the agency), facilitates discussions, and works with the parties to resolve their disputes, narrow areas of disagreement, and improve communications and relationships. A mediator has no authority to render a decision or determination.

Preliminary technical determination means the initial written technical determination provided to a client which will become final after 30 days unless the client takes action in accordance with §614.101 to stay the preliminary technical determination from becoming final.

State Conservationist means the NRCS official in charge of NRCS operations

within a State, as set forth in part 600 of this chapter.

Technical determination means a conclusion concerning the status and condition of the natural resources and cultural practices based on science and best professional judgment of natural resource professionals concerning the soils, water, air, plants, and animals.

Refer to 7 CFR 11.1 for other definitions applicable to appeals of adverse technical determinations and decisions covered by this part.

§614.3 Applicability.

(a) Appeals of adverse technical determinations and adverse decisions covered by this part are also governed by National Appeals Division (NAD) regulations at 7 CFR part 11.

(b) Decisions which are subject to this part include any decision under one or more NRCS programs; and technical determinations or decisions that affect the status of the land even though they may not affect the landowner's or program participant's eligibility for USDA program benefits.

(c) The failure of an official of NRCS to issue a technical determination or decision is subject to this part.

(d) Complaints involving discrimination in program delivery will be handled under the existing USDA civil rights rules and regulations.

(e) Appeals on contractual issues that are subject to the jurisdiction of the Agriculture Board of Contract Appeals are not appealable under the procedures within this part.

§614.4 Reservation of authority.

Nothing contained in the regulations of this part shall preclude the Secretary of Agriculture or the Chief from determining at any time any question arising under the programs to which the regulations of this part apply, or from reversing or modifying in writing, with sufficient reason given therefore, any technical determination or decision made by an NRCS official.

§614.5 Decisions not subject to appeal.

The following are examples of decisions which are not appealable:

(a) General program requirements that apply to all participants;

(b) Science-based formulas and criteria;

(c) Procedural decisions relating to administration of the programs; and

(d) Denials of assistance due to lack of funds or authority.

Subpart B—Appeals of Technical Determinations Related to the Conservation Title (Title XII) of the Food Security Act of 1985, as Amended

§614.100 Applicability.

The provisions of this subpart set forth the procedures under which a landowner or program participant may seek mediation of a preliminary technical determination or appeal from technical determinations made by NRCS officials on or after January 16, 1996 regarding technical determinations within the following programs:

(1) Highly Erodible Land Conservation;

(2) Wetland Conservation, including wetland technical determinations made by NRCS officials not related to a request for USDA program benefits;

(3) Conservation Reserve Program;

(4) Wetlands Reserve Program;

(5) Agricultural Water Quality Incentives Program; and

(6) Environmental Easement Program.

§614.101 Notice of preliminary technical determinations.

(a) All preliminary technical determinations related to programs provided for in §614.100 shall be in writing and shall inform the landowner or program participant of the following:

(1) The preliminary technical determination will become final after 30 days if the landowner or program participant does not arrange with the designated conservationist for either or both of the following options:

(i) A field visit to the site to gather additional information and to discuss the facts concerning the preliminary technical determination, together with, at the option of the conservation district, a district representative; and

(ii) Mediation.