

SUBCHAPTER B—CONSERVATION OPERATIONS

PART 610—TECHNICAL ASSISTANCE

Subpart A—Conservation Operations

- Sec.
610.1 Purpose.
610.2 Scope.
610.3 Assistance through conservation districts.
610.4 Technical assistance furnished.
610.5 Interdisciplinary assistance.

Subpart B—Soil Erosion Prediction Equations

- 610.11 Purpose and scope.
610.12 Equations for predicting soil loss due to water erosion.
610.13 Equations for predicting soil loss due to wind erosion.
610.14 Use of USLE, RUSLE, and WEQ.

Subpart C—State Technical Committees

- 610.21 Purpose and scope.
610.22 State Technical Committee membership.
610.23 State Technical Committee meetings.
610.24 Responsibilities of State Technical Committees.
610.25 Subcommittees and Local Working Groups.

Subpart D—Conservation of Private Grazing Land

- 610.31 Purpose and scope.
610.32 Technical assistance furnished.
AUTHORITY: 16 U.S.C. 590a-f, 590q, 2005b, 3861, 3862.

SOURCE: 42 FR 38169, July 27, 1977, unless otherwise noted.

Subpart A—Conservation Operations

§ 610.1 Purpose.

This subpart sets forth Natural Resource Conservation Service (NRCS) policies and procedures for furnishing technical assistance in conservation operations.

[61 FR 27999, June 4, 1996]

§ 610.2 Scope.

(a) Conservation operations, including technical assistance, is the basic soil and water conservation program of NRCS. This program is designed to:

- (1) Reduce soil losses from erosion;
- (2) Help solve soil, water, and agricultural waste management problems;
- (3) Bring about adjustments in land use as needed;
- (4) Reduce damage caused by excess water and sedimentation;
- (5) Enhance the quality of fish and wildlife habitat; and
- (6) Improve all agricultural lands, including cropland, forestland, and grazing lands that include pastureland, rangeland, and grazed forestland so that the long-term sustainability of the resource base is achieved.

(b) The Natural Resources Conservation Service is USDA's technical agency for providing assistance to private landowners, conservation districts, and other organizations in planning and carrying out their conservation activities and programs. NRCS works with individuals, groups, and units of government to help them plan and carry out conservation decisions to meet their objectives.

[64 FR 42003, Aug. 3, 1999]

§ 610.3 Assistance through conservation districts.

(a) Technical assistance is provided through and in cooperation with conservation districts in the 50 States, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. These districts, formed under authority of State laws, are operated and controlled by local citizens. They provide the leadership and the program needed to meet the conservation objectives of the district.

(b) NRCS furnishes technical assistance to conservation districts as specified in memorandums of understanding. Soil conservationists assigned to conservation districts work directly with land users and others according to the program needs and the priorities established by the conservation districts.

(c) The practical experience of land users is combined with the scientific knowledge and skills of professional conservationists to plan and carry out locally formulated conservation programs.

(d) When requested, technical assistance may be provided to owners, operators, or groups using land that is under the jurisdiction of the United States Department of the Interior if such land is included in a conservation district or if assistance is in accordance with memorandums of understanding identifying the coordination of agency activities.

§ 610.4 Technical assistance furnished.

The Natural Resources Conservation Service provides technical assistance to land users and others who are responsible for making decisions and setting policies that influence land use, conservation treatment, and resource management. Technical assistance furnished by NRCS consists of program assistance, planning assistance, application of conservation practices, and assistance in the technical phases of USDA cost-share programs.

(a) Program assistance is provided to conservation districts and other organizations concerned with the conservation of soil, water, plant, and wildlife resources. This assistance includes providing resource inventory data and identifying conservation problems and needs in order for districts to develop long-range soil and water conservation programs. Individuals, groups, and organizations requesting NRCS assistance through conservation districts include:

- (1) Farmers, ranchers, and other land users concerned with the conservation of land and water resources.
- (2) County and other local government units such as park authorities, departments of public works, planning, zoning (rural, urban, and flood plain), school, and institution boards, highway departments, and tax assessors.
- (3) Citizen groups, youth groups, recreation groups, and garden clubs.
- (4) State and local units of government (highway, health, recreation, water resources, and regional planning) involved in establishing public policy regarding the use of resources.
- (5) Federal departments and agencies such as Defense, Housing and Urban Development, Public Roads, Health and Human Services; and Interior.
- (6) Professional consultants who provide services such as engineering, plan-

ning, environmental assessment, tax assessment, and forest management.

(b) Planning assistance includes evaluation of soil, water, vegetation, and other resource data needed for making land use, environmental and conservation treatment decisions. NRCS helps land users make conservation plans for farms, ranches, and other land units. This help includes onsite planning assistance in making conservation plans. The plans are based on a soil survey and interpretations for the intended land uses and conservation treatment. Plans may also include other inventories of soil, water, plant, and related resources needed in the planning process. Information about the responses of each kind of soil and the conservation practices and resource management needed for different land uses is provided. The land user's decisions recorded in the plan are based on his conservation objectives. Conservation plans provide for the orderly installation of conservation practices. Conservation plans reflect changing conditions.

(c) Application assistance is provided to help land users apply and maintain planned conservation work. NRCS assistance for applying the conservation practices in the plan may include:

- (1) Designing, constructing, and maintaining conservation practices;
- (2) Selecting management alternatives and cultural practices needed to establish and maintain vegetation; and
- (3) Other conservation practices needed to protect land and water resources.

(d) The Natural Resources Conservation Service assists in carrying out certain phases of USDA soil and water conservation cost-share programs. NRCS assists individual program participants with conservation plans needed for long-term cost-share agreements. NRCS is assigned responsibility by the Secretary of Agriculture for technical phases of applying conservation practices on the land. This assignment includes:

- (1) Determining what practices are needed and feasible to install,
- (2) Selecting sites and planning and designing practices,

§610.5

(3) Providing assistance for installing practices, and

(4) Certifying that the work done is in accordance with NRCS standards and specifications.

[42 FR 38169, July 27, 1977, as amended at 47 FR 56473, Dec. 17, 1982]

§610.5 Interdisciplinary assistance.

Technical assistance is based on the principle that soil, water, plant, and related resources are interdependent and must be managed accordingly. Soil conservationists integrate the various technical fields in providing for the conservation of land and water resources. Staff scientists and specialists develop conservation standards, prepare necessary specifications, provide training, and review work performance. NRCS uses consultants for conservation problems that require special expertise.

Subpart B—Soil Erosion Prediction Equations

SOURCE: 61 FR 27999, June 4, 1996, unless otherwise noted.

§610.11 Purpose and scope.

This subpart sets forth the equations and rules for utilizing the equations that are used by the Natural Resources Conservation Service (NRCS) to predict soil erosion due to water and wind. Section 301 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIRA) and the Food Security Act, as amended, 16 U.S.C. 3801-3813 specified that the Secretary would publish the universal soil loss equation (USLE) and wind erosion equation (WEQ) used by the Department within 60 days of the enactment of FAIRA. This subpart sets forth the equations, definition of factors, and provides the rules under which NRCS will utilize the USLE, the revised universal soil loss equation (RUSLE), and the WEQ.

§610.12 Equations for predicting soil loss due to water erosion.

(a) The equation for predicting soil loss due to erosion for both the USLE and the RUSLE is $A = R \times K \times LS \times C \times P$. (For further information about USLE see the U.S. Department of Agri-

7 CFR Ch. VI (1-1-10 Edition)

culture Handbook 537, "Predicting Rainfall Erosion Losses—A Guide to Conservation Planning," dated 1978. Copies of this document are available from the Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013. For further information about RUSLE see the U.S. Department of Agriculture Handbook 703, "Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE)." Copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.)

(b) The factors in the USLE equation are:

(1) *A* is the estimation of average annual soil loss in tons per acre caused by sheet and rill erosion.

(2) *R* is the rainfall erosivity factor. Accounts for the energy and intensity of rainstorms.

(3) *K* is the soil erodibility factor. Measures the susceptibility of a soil to erode under a standard condition.

(4) *LS* is the slope length and steepness factor. Accounts for the effect of length and steepness of slope on erosion.

(5) *C* is the cover and management factor. Estimates the soil loss ratio for each of 4 or 5 crop stage periods throughout the year, accounting for the combined effect of all the inter-related cover and management variables.

(6) *P* is the support practice factor. Accounts for the effect of conservation support practices, such as contouring, contour stripcropping, and terraces on soil erosion.

(c) The factors in the RUSLE equation are defined as follows:

(1) *A* is the estimation of average annual soil loss in tons per acre caused by sheet and rill erosion.

(2) *R* is the rainfall erosivity factor. Accounts for the energy and intensity of rainstorms.

(3) *K* is the soil erodibility factor. Measures the susceptibility of a soil to erode under a standard condition and adjusts it bi-monthly for the effects of freezing and thawing, and soil moisture.

(4) *LS* is the slope length and steepness factor. Accounts for the effect of

length and steepness of slope on erosion based on 4 tables reflecting the relationship of rill to interrill erosion.

(5) *C* is the cover and management factor. Estimates the soil loss ratio at one-half month intervals throughout the year, accounting for the individual effects of prior land use, crop canopy, surface cover, surface roughness, and soil moisture.

(6) *P* is the support practice factor. Accounts for the effect of conservation support practices, such as cross-slope farming, stripcropping, buffer strips, and terraces on soil erosion.

§ 610.13 Equations for predicting soil loss due to wind erosion.

(a) The equation for predicting soil loss due to wind in the Wind Erosion Equation (WEQ) is $E = f(KCLV)$. (For further information on WEQ see the paper by N.P. Woodruff and F.H. Siddaway, 1965, "A Wind Erosion Equation," Soil Science Society of America Proceedings, Vol. 29, No. 5, pages 602-608, which is available from the American Society of Agronomy, Madison, Wisconsin. In addition, the use of the WEQ in NRCS is explained in the Natural Resources Conservation Service (NRCS) National Agronomy Manual, 190-V-NAM, second ed., Part 502, March, 1988, which is available from the NRCS, P.O. Box 2890, Washington, DC 20013.)

(b) [Reserved]

(c) The factors in the WEQ equation are defined as follows:

(1) *E* is the estimation of the average annual soil loss in tons per acre.

(2) *f* indicates the equation includes functional relationships that are not straight-line mathematical calculations.

(3) *I* is the soil erodibility index. It is the potential for soil loss from a wide, level, unsheltered, isolated field with a bare, smooth, loose and uncrusted surface. Soil erodibility is based on soil surface texture, calcium carbonate content, and percent clay.

(4) *K* is the ridge roughness factor. It is a measure of the effect of ridges formed by tillage and planting implements on wind erosion. The ridge roughness is based on ridge spacing, height, and erosive wind directions in relation to the ridge direction

(5) *C* is the climatic factor. It is a measure of the erosive potential of the wind speed and surface moisture at a given location compared with the same factors at Garden City, Kansas. The annual climatic factor at Garden City is arbitrarily set at 100. All climatic factor values are expressed as a percentage of that at Garden City.

(6) *L* is the unsheltered distance. It is the unsheltered distance across an erodible field, measured along the prevailing wind erosion direction. This distance is measured beginning at a stable border on the upwind side and continuing downward to the nonerodible or stable area, or to the downwind edge of the area being evaluated.

(7) *V* is the vegetative cover factor. It accounts for the kind, amount, and orientation of growing plants or plant residue on the soil surface.

§ 610.14 Use of USLE, RUSLE, and WEQ.

(a) All Highly Erodible Land (HEL) determinations are based on the formulas set forth in 7 CFR §12.21 using some of the factors from the USLE and WEQ and the factor values that were contained in the local Field Office Technical Guide (FOTG) as of January 1, 1990. In addition, this includes the soil loss tolerance values used in those formulas for determining HEL. The soil loss tolerance value is used as one of the criteria for planning soil conservation systems. These values are available in the FOTG in the local field office of the Natural Resources Conservation Service.

(b) RUSLE will be used to:

(1)(i) Evaluate the soil loss estimates of conservation systems contained in the FOTG.

(ii) Evaluate the soil loss estimates of systems actually applied, where those systems were applied differently than specified in the conservation plan adopted by the producer or where a conservation plan was not developed, in determining whether a producer has complied with the HEL conservation provisions of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 et seq., set forth in 7 CFR part 12; and

(2) Develop new or revised conservation plans.

Subpart C—State Technical Committees

SOURCE: 74 FR 66912, Dec. 17, 2009, unless otherwise noted.

§ 610.21 Purpose and scope.

This subpart sets forth the procedures for establishing and using the advice of State Technical Committees. The Natural Resources Conservation Service (NRCS) will establish in each State a Technical Committee to assist in making recommendations relating to the implementation and technical aspects of natural resource conservation activities and programs. The Department of Agriculture (USDA) will use State Technical Committees in an advisory capacity in the administration of certain conservation programs and initiatives. Pursuant to 16 U.S.C. 3862(d), these State Technical Committees and Local Working Groups are exempt from the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2).

§ 610.22 State Technical Committee membership.

(a) State Technical Committees will include agricultural producers, non-industrial private forest land owners, and other professionals who represent a variety of disciplines in soil, water, wetlands, plant, and wildlife sciences. The State Conservationist in each State will serve as chairperson. The State Technical Committee for each State will include representatives from among the following, if willing to serve:

- (1) NRCS, USDA;
- (2) Farm Service Agency, USDA;
- (3) State Farm Service Agency Committee, USDA;
- (4) Forest Service, USDA;
- (5) National Institute of Food and Agriculture, USDA;
- (6) Each of the Federally recognized Indian Tribes in the State;
- (7) State departments and agencies within the State, including the:
 - (i) Fish and wildlife agency;
 - (ii) Forestry agency;
 - (iii) Water resources agency;
 - (iv) Department of agriculture;
 - (v) Association of soil and water conservation districts; and

(vi) Soil and water conservation agency;

(8) Agricultural producers representing the variety of crops and livestock or poultry raised within the State;

(9) Owners of nonindustrial private forest land;

(10) Nonprofit organizations, within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, with demonstrable conservation expertise and experience working with agriculture producers in the State; and

(11) Agribusiness.

(b) The State Conservationist will invite other relevant Federal, State, and regional agencies, organizations, and persons knowledgeable about economic and environmental impacts of natural resource conservation techniques and programs to participate as needed.

(c) To ensure that recommendations of State Technical Committees take into account the needs of the diverse groups served by USDA, membership will include, to the extent practicable, individuals with demonstrated ability to represent the conservation and related technical concerns of particular historically underserved groups and individuals; i.e., minorities, women, persons with disabilities, socially and economically disadvantaged groups, and beginning farmers and ranchers.

(d) In accordance with the guidelines in paragraphs (a), (b), and (c) of this section, it is the responsibility of the State Conservationist to seek a balanced representation of interests among the membership on the State Technical Committee. Individuals or groups wanting to participate on a State Technical Committee within a specific State may submit a request to the State Conservationist that explains their interest and outlines their credentials which they believe are relevant to becoming a member. Decisions regarding membership are at the discretion of the State Conservationist. State Conservationist decisions on membership are final and not appealable to any other individual or group within USDA.

§ 610.23 State Technical Committee meetings.

(a) The State Conservationist, as Chairperson, schedules and conducts the meetings, although a meeting may be requested by any USDA agency or State Technical Committee member.

(b) NRCS will establish and maintain national standard operating procedures governing the operation of State Technical Committees and Local Working Groups in its directive system. The standard operating procedures will outline items such as: The best practice approach to establishing, organizing, and effectively utilizing State Technical Committees and Local Working Groups; direction on publication of State Technical Committee and Local Working Group meeting notices and agendas; State Technical Committee meeting summaries; how to provide feedback on State Conservationist decisions regarding State Technical Committee recommendations; and other items as determined by the Chief.

(c) In addition to the standard operating procedures established under paragraph (b) of this section, the State Conservationist will provide public notice and allow public attendance at State Technical Committee and Local Working Group meetings. The State Conservationist will publish a meeting notice no later than 14 calendar days prior to a State Technical Committee meeting. Notification may exceed this 14-day minimum where State open meeting laws exist and provide for a longer notification period. This minimum 14-day notice requirement may be waived in the case of exceptional conditions, as determined by the State Conservationist. The State Conservationist will publish this notice in at least one or more newspaper(s), including recommended Tribal publications, to attain statewide circulation.

§ 610.24 Responsibilities of State Technical Committees.

(a) Each State Technical Committee established under this subpart will meet on a regular basis, as determined by the State Conservationist, to provide information, analysis, and recommendations to appropriate officials of USDA who are charged with implementing and establishing priorities and

criteria for natural resources conservation activities and programs under Title XII of the Food Security Act of 1985 including, but not limited to, the Conservation Reserve Program, Wetlands Reserve Program, Conservation Security Program, Conservation Stewardship Program, Farm and Ranch Lands Protection Program, Grassland Reserve Program, Environmental Quality Incentives Program, Conservation Innovation Grants, Cooperative Conservation Partnership Initiative, Agricultural Water Enhancement Program, Conservation of Private Grazing Land, Wildlife Habitat Incentive Program, Grassroots Source Water Protection Program, Great Lakes Basin Program, Chesapeake Bay Watershed Initiative, and the Voluntary Public Access and Habitat Incentive Program. The members of the State Technical Committee may also provide input on other natural resource conservation programs and issues as may be requested by the State Conservationist or other USDA agency heads at the State level as long as they are within the programs authorized by Title XII. Such recommendations may include, but are not limited to, recommendations on:

- (1) The criteria to be used in prioritizing program applications;
- (2) The State-specific application criteria;
- (3) Priority natural resource concerns in the State;
- (4) Emerging natural resource concerns and program needs; and
- (5) Conservation practice standards and specifications.

(b) The role of the State Technical Committee is advisory in nature, and the committee will have no implementation or enforcement authority. The implementing agency reserves the authority to accept or reject the committee's recommendations. However, the implementing USDA agency will give strong consideration to the State Technical Committee's recommendations.

(c) State Technical Committees will review whether Local Working Groups are addressing State priorities.

§ 610.25 Subcommittees and Local Working Groups.

(a) *Subcommittees.* In some situations, specialized subcommittees, made up of

§610.31

State Technical Committee members, may be needed to analyze and examine specific issues. The State Conservationist may assemble certain members, including members of Local Working Groups and other knowledgeable individuals, to discuss, examine, and focus on a particular technical or programmatic topic. The subcommittee may seek public participation, but it is not required to do so. Nevertheless, recommendations resulting from these subcommittee sessions, other than sessions of Local Working Groups, will be made only in a general session of the State Technical Committee where the public is notified and invited to attend. Decisions resulting from recommendations of Local Working Groups will be communicated to NRCS in accordance with the standard operating procedures described in §610.23(b).

(b) *Local Working Groups.* (1) Local Working Groups will be composed of conservation district officials, agricultural producers representing the variety of crops and livestock or poultry raised within the local area, nonindustrial private forest land owners, and other professionals representing relevant agricultural and conservation interests and a variety of disciplines in the soil, water, plant, wetland, and wildlife sciences who are familiar with private land agricultural and natural resource issues in the local community;

(2) Local Working Groups will provide recommendations on local natural resource priorities and criteria for conservation activities and programs; and

(3) Local Working Groups will follow the standard operating procedures described in §610.23(b).

Subpart D—Conservation of Private Grazing Land

SOURCE: 67 FR 68497, Nov. 12, 2002, unless otherwise noted.

§610.31 Purpose and scope.

(a) This subpart sets forth the policies for the Conservation of Private Grazing Land (CPGL) Program, as authorized by Section 386 of the Federal Agriculture Improvement and Reform Act of 1996, (Pub. L. 104-127, April 4, 1996) 16 U.S.C. 2005b. Under the CPGL

7 CFR Ch. VI (1-1-10 Edition)

Program, NRCS will provide technical assistance to landowners and managers who request assistance based on locally-established priorities and resource concerns. The purpose of the CPGL Program is to provide technical assistance to private grazing land owners and managers to voluntarily conserve or enhance grazing land resources to meet ecological, economic, and social demands.

(b) The term “private grazing land” means private, State-owned, tribally owned, and any other non-federally owned rangeland, pastureland, grazed forestland, hayland, and other lands used for grazing.

(c) The NRCS Chief may implement the CPGL Program in any of the 50 States, the District of Columbia, Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands, and American Samoa. NRCS will provide assistance in cooperation with conservation districts, or directly to a landowner or operator.

§610.32 Technical assistance furnished.

(a) Provide technical assistance to grazing-land owners and managers to plan and implement resource conservation on grazing land. The objective of planning on grazing land is to assist landowners and managers in understanding the basic ecological principles associated with managing their land. This objective can be met by implementing a plan that meets the needs of the resources (soil, water, air, plants, and animals) and management objectives of the owner or manager. NRCS may provide assistance, at the request of the private grazing-land owner or manager to:

(1) Maintain and improve private grazing land resources that provide multiple benefits;

(2) Ensure the long-term sustainability of private grazing land resources;

(3) Implement new grazing land management technologies;

(4) Manage resources on private grazing land through conservation planning, including, but not limited to; grazing management, nutrient management, and weed and invasive species control;

(5) Maintain and improve water quality and quantity, aquatic and wildlife habitat, recreational opportunities, and aesthetics on private grazing land;

(6) Harvest, process, and market private grazing land resources; and

(7) Identify opportunities to diversify private grazing land enterprises.

(b) Refer to 7 CFR 610.4 on other items relating to technical assistance.

(c) To receive technical assistance, a landowner or manager may contact NRCS or the local conservation district to seek assistance to solve identified natural resource problems or opportunities. Participation in this program is voluntary.

PART 611—SOIL SURVEYS

Subpart A—General

Sec.

611.1 Purpose and scope.

611.2 Cooperative relationships.

Subpart B—Soil Survey Operations

611.10 Standards, guidelines, and plans.

611.11 Soil survey information.

Subpart C—Cartographic Operations

611.20 Function.

611.21 Availability of aerial photography.

611.22 Availability of satellite imagery.

AUTHORITY: 16 U.S.C. 590a-590f, 590q, 42 U.S.C. 3271-3274.

SOURCE: 69 FR 60283, Oct. 8, 2004, unless otherwise noted.

Subpart A—General

§ 611.1 Purpose and scope.

(a) This part sets forth policy on soil survey operations of the Natural Resources Conservation Service (NRCS).

(b) NRCS is responsible for soil survey activities of the U.S. Department of Agriculture (USDA). A soil survey provides:

(1) An orderly, on-the-ground, scientific inventory of soil resources according to their potentialities and problems of use; and

(2) Information about each kind of soil in sufficient detail to meet all reasonable needs of farmers, agricultural technicians, community planners, engineers, and scientists in planning and

transferring the findings of research and experience to specific land areas.

§ 611.2 Cooperative relationships.

(a) Soil surveys on nonfederal lands are carried out cooperatively with State agricultural experiment stations and other State agencies. The cooperative effort is evidenced in a memorandum of understanding setting forth guidelines for actions to be taken by each cooperating party in the performance of soil surveys. Similar cooperative arrangements exist between NRCS and other Federal agencies for soil surveys on Federal lands.

(b) Arrangements for nonfederal financial participation in the cost of soil surveys may be made with States, counties, soil conservation districts, planning agencies, and other local groups.

Subpart B—Soil Survey Operations

§ 611.10 Standards, guidelines, and plans.

(a) NRCS conducts soil surveys under national standards and guidelines for naming, classifying, and interpreting soils and for disseminating soil survey information.

(b) A soil survey Memorandum of Understanding (MOU) is prepared prior to the start of each soil survey project, or a work plan is prepared for soil survey maintenance activities. These documents provide specific details and technical specifications to support the interpretive and data needs of the area to be surveyed. The MOU is signed by representatives of NRCS, land grant universities, and in some States representatives of other State agencies. Federal land administering agencies also sign the MOU if federal lands are included in the survey.

§ 611.11 Soil survey information.

(a) *Availability.* NRCS disseminates soil survey information to the public by any of the means described in paragraph (d) of this section. NRCS makes soil survey information available as soon as is practicable following field work or other soil survey activity that provides new soil survey information.

(b) *Content.* Soil survey information conforms with standards and meets the

§611.20

needs identified in the soil survey MOU or work plan as described in §611.10 of this part. Soil survey information includes:

- (1) Soil maps that delineate the location and extent of various soil areas;
- (2) Soil characteristics for each of the soil areas shown on soil maps;
- (3) Interpretations of the soil characteristics; and
- (4) Information about the source, version, and applicability or limitations associated with the soil survey information.

(c) *Maintenance.* Soil survey information is reviewed on a periodic basis to ensure that the information continues to meet evolving needs.

(d) *Distribution.* Soil survey information is disseminated to the public through electronically accessible maps and reports, electronic access to data files, or printed documents. To the extent practicable, as limited by commonly accepted technology, soil survey information is disseminated in electronic form.

(e) *Resource conservation plan data.* Information prepared specifically for use in developing resource conservation plans for soil conservation district co-operators is considered confidential. Soil maps and interpretations prepared for this use will not be made available to others without the consent of the landowner as well as the district governing body. However, soil survey information from which the conservation plan was developed may be disseminated as described in paragraph (a) of this section.

Subpart C—Cartographic Operations

§611.20 Function.

The NRCS National Cartography and Geospatial Center provides cartographic services needed to carry out NRCS functions. Cartographic services include general cartography, photogrammetry, aerial photography, planimetric and topographic mapping, drafting, and specialized types of reproduction.

7 CFR Ch. VI (1–1–10 Edition)

§611.21 Availability of aerial photography.

The National Cartography and Geospatial Center obtains necessary clearance for all aerial photography for NRCS. New aerial photography of designated areas in the United States is obtained yearly by NRCS through competitive contracting. This photography is obtained only after it is determined that imagery of these areas available from other sources does not meet NRCS scale and quality requirements. Orders for reproductions of NRCS aerial photography are subject to the fee schedule cited in §1.2(b) of this title. Order reproductions from the National Cartography and Geospatial center: USDA—National Resources Conservation Service; P.O. Box 6567, FWFC-Bldg. 23; 501 W. Felix Street; Forth Worth, Texas 76115.

§611.22 Availability of satellite imagery.

Cloud-free maps of the United States based on imagery received from a satellite are prepared and released to the public by NRCS. The maps offer the first image of the United States not obscured by clouds or distortions. Orders or requests for information should be directed to the National Cartography and Geospatial Center, USDA—Natural Resources Conservation Service; P.O. Box 6567, FWFC-Bldg. 23; 501 W. Felix Street; Forth Worth, Texas 76115. Orders are subject to the fee schedule cited in §1.2(b) of this title.

PART 612—SNOW SURVEYS AND WATER SUPPLY FORECASTS

Sec.

612.1 Purpose and scope.

612.2 Snow survey and water supply forecast activities.

612.3 Data collected and forecasts.

612.4 Eligible individuals or groups.

612.5 Dissemination of water supply forecasts and basic data.

612.6 Application for water supply forecast service.

612.7 Forecast user responsibility.

AUTHORITY: 26 Stat. 653; Sec. 8, Reorg. Plan No. IV of 1940, 54 Stat. 1234 (5 U.S.C. App. II); 5 FR 2421, 3 CFR 1938–1943 Comp. P. 1288.

SOURCE: 40 FR 12067, Mar. 17, 1975, unless otherwise noted.

Natural Resources Conservation Service, USDA

§ 612.5

§ 612.1 Purpose and scope.

This part sets forth Natural Resources Conservation Service (NRCS) policy and procedure for the administration of a cooperative snow survey and water supply forecast program. The program provides agricultural water users and other water management groups in the western states area with water supply forecasts to enable them to plan for efficient water management. The program also provides the public and the scientific community with a data base that can be used to accurately determine the extent of the snow resource. The western states area comprises Alaska, Arizona, California (east side of the Sierra Nevada mountain range only), Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

§ 612.2 Snow survey and water supply forecast activities.

To carry out the cooperative snow survey and water supply forecast program, NRCS:

(a) Establishes, maintains, and operates manual and automated snow course and related hydro meteorological networks. Planning for such networks is carried out in accordance with OMB Circular A-62.

(b) Determines and provides information on the expected water supply, including seasonal streamflow data. If pertinent and appropriate to the needs of cooperators and not otherwise available to them, may provide necessary interpretative analyses and forecasts required for operation of water-control structures and/or agricultural operations.

(c) On request and to the extent NRCS resources and any required cooperator contributions are available, establishes hydrometeorological stations to collect and provide data and necessary interpretative analyses to the requesting party. By written agreement NRCS may accept cooperators' funds, materials, equipment, and services for this purpose.

(d) Develops and encourages use of new techniques and improving data collection and processing.

(e) Cooperates with other federal, state, and local agencies, organiza-

tions, and Canadian provinces and agencies.

§ 612.3 Data collected and forecasts.

(a) Basic data are currently collected at numerous sites in the western states area. Data sites generally include a snow course where both snow depth and water equivalent of snow are measured. However, special sites may measure only snow depth or water equivalent. Many of these sites also provide related meteorological data, such as precipitation, temperature, humidity, solar radiation, and wind.

(b) Water supply forecasts in the western states area are generally made monthly from January through June. Forecasts may be made more frequently for an established need when data are available to NRCS.

§ 612.4 Eligible individuals or groups.

(a) Any individual or group who is a significant water user and who would benefit from a water supply forecast may obtain forecasts from NRCS on a regular basis provided data are available to NRCS to develop a forecast at the desired location.

(b) The program collects and interprets data as a service and an aid to agricultural interests, particularly those served by or affiliated with soil, water, and other conservation districts. Information collected by NRCS for these agricultural users is also made available to other Federal, State, and private agencies and to the general public without charge. Cooperator financial contribution is usually required for special measurements or interpretations beyond the scope of the regular program.

§ 612.5 Dissemination of water supply forecasts and basic data.

Water supply outlook reports prepared by NRCS and its cooperators containing water supply forecasts and basic data are usually issued monthly by each NRCS state office in the western states area for the months of January through June. Other reports jointly issued by NRCS and its cooperators include a fall water supply summary, annual and accumulative summaries of data, and a western states area report covering water supply outlook.

§ 612.6

§ 612.6 Application for water supply forecast service.

Requests for obtaining water supply forecasts or related assistance may be directed to any NRCS office in the western states areas. NRCS offices are described in part 600 of this chapter.

§ 612.7 Forecast user responsibility.

The forecast user's obligation to the federal government is to give appropriate credit and recognition to NRCS for information furnished. The Federal Government does not assume any responsibility for management decisions the user makes which may be based in whole or part on information provided by NRCS.

PART 613—PLANT MATERIALS CENTERS

Sec.

613.1 Purpose.

613.2 Policy and objectives.

613.3 NRCS responsibilities in plant materials.

613.4 Special production of plant materials.

613.5 PMCs.

AUTHORITY: 16 U.S.C. 590a-590f, 5908; 7 U.S.C. 1010-1011.

SOURCE: 73 FR 51351, Sept. 3, 2008, unless otherwise noted.

§ 613.1 Purpose.

This part provides NRCS policy on the operation of PMCs. The Centers have responsibilities for assembling, testing, releasing, and providing for the commercial production and use of plant materials and plant materials technology for programs of soil, water, and related resource conservation and development.

§ 613.2 Policy and objectives.

(a) It is NRCS policy to assemble, comparatively evaluate, release, and distribute for commercial increase new or improved plant materials and plant materials technology needed for broad programs of resource conservation and development for agriculture, wildlife, urban, recreation, and other land uses and environmental needs. It is the policy of NRCS to conduct plant materials work in cooperation with other agencies of the Department of Agriculture,

7 CFR Ch. VI (1-1-10 Edition)

such as the Agricultural Research Service, and with other Federal and State research agencies, including State agricultural experiment stations. The emphasis of the NRCS plant materials work is to find suitable plants to address conservation needs. In contrast, the emphasis of research agencies and organizations in plant development is to improve economically important crops. The NRCS program of testing and releasing new seed-propagated plant materials follows the guidelines in "Statement of Responsibilities and Policies Relating to the Development, Release, and Multiplication of Publicly Developed Varieties of Seed-Propagated Crops," which was adopted in June 1972, by Land Grant Colleges and interested Federal agencies. NRCS releases improved conservation plant materials requiring vegetative multiplication in ways appropriate for particular States and particular species by working with experiment stations, crop improvement associations, and other State and Federal agencies.

(b) The objective of the plant materials activity is to select or develop special and improved plants and techniques for their successful establishment and maintenance to solve conservation problems and needs related to:

(1) Controlling soil erosion on all lands;

(2) Conserving water;

(3) Protecting upstream watersheds;

(4) Reducing sediment movement into waterways and reservoirs through the stabilization of critical sediment sources, such as surface mined lands, highway slopes, recreation sites, and urban and industrial development areas;

(5) Stabilizing disposal areas for liquid and solid wastes;

(6) Improving plant diversity and lengthening the grazing season on dryland pastures and rangelands;

(7) Managing brush on mountain slopes with fire-retarding plant cover to reduce the possibility of fires that threaten life and property, or result in serious sediment sources;

(8) Improving the effectiveness of windbreaks and shelterbelts for reducing airborne sediment, controlling

snow drifting, and preventing crop damage from wind erosion;

(9) Protecting streambank, pond, and lake waterlines from erosion by scouring and wave action;

(10) Improving wildlife food and cover, including threatened and endangered and pollinator species;

(11) Selecting special purpose plants to meet specific needs for environment protection and enhancement;

(12) Selecting plants that tolerate air pollution agents and toxic soil chemicals;

(13) Selecting plants that mitigate odor, Particulate Matter (PM)-10, and PM-2.5;

(14) Testing plants for biofuels and other energy-related activities; and

(15) Evaluating plants and techniques to combat invasive plant species and for reestablishment of desirable species after eradication.

§ 613.3 NRCS responsibilities in plant materials.

NRCS operates or enters into agreements with State universities or other State organizations to operate PMCs. NRCS also cooperates, both formally and informally, with other Federal, State, county, and nonprofit agencies or organizations on the selection of plants and evaluation of plant technology to increase the capabilities of PMCs. NRCS employs specialists for testing and selecting plant materials for conservation uses and the development of plant materials technology. NRCS' responsibilities are to:

(a) Identify the resource conservation needs and cultural management methods for environmental protection and enhancement.

(b) Assemble and comparatively evaluate plant materials at PMCs and on sites where soil, climate, or other conditions differ significantly from those at the Centers.

(c) Make comparative field plantings for final testing of promising plants and techniques in cooperation with conservation districts and other interested cooperators.

(d) Release cooperatively improved conservation plants and maintain the breeder or foundation stocks in ways appropriate for particular State and plant species by working with experi-

ment stations, crop improvement associations, and other State and Federal agencies.

(e) Produce limited amounts of foundation or foundation-quality seed and plants available for allocation to conservation districts, experiment stations, other Federal and State research agencies, State seed certifying organizations and directly to commercial growers (if other options do not exist) that will use the material to establish seed fields, seed orchards, or vegetative plantings for large-scale increase.

(f) Encourage and assist conservation districts, commercial seed producers, and commercial and State nurseries to produce needed plant materials for conservation uses.

(g) Encourage the use of improved plant materials and plant materials technology in resource conservation and environmental improvement programs.

§ 613.4 Special production of plant materials.

NRCS can produce plant materials in the quantity required to do a specific conservation job if this production will serve the public welfare and only if the plant materials are not available commercially. This function will be performed only until the plant materials are available commercially. Specific production of plant materials by NRCS requires the approval of the Chief.

§ 613.5 PMCs.

(a) *The Norman A. Berg National PMC.* The Norman A. Berg National PMC at Beltsville, Maryland, focuses on national initiatives and provides coordination for plant materials work across all 50 States. In addition, the center provides plants and plant technology to address resource concerns in the mid-Atlantic region.

(b) *Other PMCs.* There are 26 other PMCs. Each serves several major land resource areas. NRCS operates 24 of these Centers, and 2 by cooperating agencies, as follows:

(1) Operated by NRCS: Tucson, AZ, Booneville, AR, Lockeford, CA, Brooksville, FL, Americus, GA, Molokai, HI, Aberdeen, ID, Manhattan, KS, Galliano, LA, East Lansing, MI, Coffeeville, MS, Elsberry, MO, Bridger,

MT, Fallon, NV, Cape May Courthouse, NJ, Los Lunas, NM, Big Flats, NY, Bismarck, ND, Corvallis, OR, Kingsville, TX, Knox City, TX, Nacogdoches, TX, Pullman, WA, and Alderson, WV.

(2) Operated by cooperating agencies with financial and technical assistance from NRCS: Meeker, CO—White River and Douglas Creek Soil Conservation Districts with partial funding from NRCS.

(3) Operated by cooperating agencies with technical assistance from NRCS: Palmer, AK—State of Alaska, Department of Natural Resources.

PART 614—NRCS APPEAL PROCEDURES

Sec.

- 614.1 General.
- 614.2 Definitions.
- 614.3 Decisions subject to informal appeal procedures.
- 614.4 Decisions not subject to appeal.
- 614.5 Reservation of authority.
- 614.6 Agency records and decision notices.
- 614.7 Preliminary technical determinations.
- 614.8 Final technical determinations.
- 614.9 Program decisions.
- 614.10 Appeals before the Farm Service Agency county committee.
- 614.11 Mediation.
- 614.12 Transcripts.
- 614.13 Appealability review.
- 614.14 Computation of time.
- 614.15 Implementation of final agency decisions.
- 614.16 Participation of third parties in NRCS proceedings.
- 614.17 Judicial review.

AUTHORITY: 5 U.S.C. 301; 7 U.S.C. 6932 and 6995; and 16 U.S.C. 3822(a).

SOURCE: 71 FR 28245, May 16, 2006, unless otherwise noted.

§614.1 General.

This part sets forth the informal appeal procedures under which a participant may appeal adverse technical determinations or program decisions made by officials of the Natural Resources Conservation Service (NRCS), an agency under the United States Department of Agriculture (USDA). These regulations reflect NRCS policy to resolve at the agency level, to the greatest extent possible, disputes arising from adverse technical determinations and program decisions made by NRCS. Once a decision is rendered final by

NRCS, participants may appeal to the National Appeals Division (NAD) as provided for under 7 CFR part 11, or the FSA county committee pursuant to 7 CFR part 780 for decisions rendered under Title XII of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 et seq. (Title XII).

§614.2 Definitions.

The following definitions are applicable for the purposes of this part:

(a) *Agency* means NRCS and its personnel.

(b) *Agency record* means all documents and materials, including documents submitted by the participant and those generated by NRCS, upon which the agency bases its program decision or technical determination. NRCS maintains the agency record and will, upon request, make available a copy of the agency record to the participant(s) involved in the dispute.

(c) *Appeal* means a written request by a participant asking for review (including mediation) of an adverse NRCS technical determination or program decision under this part. An appeal must set out the reason(s) for appeal and include any supporting documentation. An appeal is considered filed when it is received by the appropriate NRCS official as indicated in the decision notice.

(d) *Chief* means the Chief of NRCS or his or her designee.

(e) *Commodity Credit Corporation (CCC)* means a wholly owned Government corporation within USDA.

(f) *Conservation district* means any district or unit of State or local government developed under State 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 and water conservation district, natural resource district, conservation committee, or similar name.

(g) *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)).

(h) *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.

(i) *Final technical determination* means a decision by NRCS concerning the status and condition of the natural resources and cultural practices based on science and best professional judgment of natural resource professionals concerning soils, water, air, plants, and animals that has become final through the informal appeal process, the expiration of the time period to appeal, or waiver of the appeal process.

(j) *Hearing* means an informal appeal proceeding that affords a participant opportunity to present testimony and documentary evidence to show why an adverse program decision is in error and why the adverse decision should be reversed or modified.

(k) *Mediation* means a process in which a neutral third party, the mediator, meets with the disputing parties, usually the participant and the agency. Through mediation, the parties have the opportunity to work together with the assistance of the mediator to: Improve communications, understand the relevant issues, develop and explore alternatives, and reach a mutually satisfactory resolution.

(l) *Mediator* means a neutral third party who serves as an impartial facilitator between two or more disputants to assist them in resolving a dispute. The mediator does not take sides or render decisions on the merits of the dispute. The mediator assists the parties in identifying areas of agreement and encourages the parties to explore potential options toward resolution.

(m) *Participant* means any individual or entity who has applied for, or whose right to participate in or receive, a payment or other benefit in accordance with any program administered by NRCS to which the regulations in this part apply is affected by a decision of NRCS. The term does not include those individuals or entities excluded in the definition of participant published at 7 CFR 11.1.

(n) *Preliminary technical determination* means the initial written decision by NRCS on a technical matter concerning the status and condition of the

natural resources and cultural practices based on science and best professional judgment of natural resources professionals concerning soils, water, air, plants and animals, which has not become final under this part.

(o) *Program decision* means a written decision by NRCS concerning eligibility for program benefits, program administration or program implementation and based upon applicable regulations and program instructions. Program decisions are issued as final decisions.

(p) *Qualified mediator* means a mediator who is accredited under State law in those States that have a mediation program certified by the USDA pursuant to 7 CFR part 785, or, in those States that do not have a mediation program certified by the USDA, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and, to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by USDA, by an accredited college or university, or by one of the following organizations: State Bar, a State mediation association, a State approved mediation program, or a society of dispute resolution professionals.

(q) *Reconsideration* means a subsequent consideration of a preliminary technical determination by the designated conservationist or the State Conservationist.

(r) *Secretary* means the Secretary of Agriculture.

(s) *State Conservationist* means the NRCS official, or his or her designee, in charge of NRCS operations within a State.

(t) *Title XII* means Title XII of the Food Security Act of 1985, as amended, 16 U.S.C. 3801 et seq.

(u) *Verbatim transcript* means the official, written record of proceedings of a hearing of an adverse program decision appealable under this part.

§ 614.3 Decisions subject to informal appeal procedures.

(a) This part applies to NRCS adverse program decisions and technical determinations made with respect to:

§ 614.4

(1) Conservation programs and regulatory requirements authorized under Title XII, including:

- (i) Conservation Security Program;
- (ii) Conservation Reserve Program and the Conservation Reserve Enhancement Program;
- (iii) Environmental Quality Incentives Program;
- (iv) Farm and Ranch Lands Protection Program;
- (v) Grassland Reserve Program;
- (vi) Highly Erodible Land Conservation;
- (vii) Wetland Conservation;
- (viii) Wetlands Reserve Program;
- (ix) Wildlife Habitat Incentives Program; and
- (x) Conservation Innovation Grants.

(2) Non-Title XII conservation programs or provisions, including:

- (i) Agriculture Management Assistance Program;
- (ii) Emergency Watershed Protection Program;
- (iii) Soil and Water Conservation Program;
- (iv) Water Bank Program;
- (v) Watershed Protection and Flood Prevention Program; and
- (vi) Healthy Forest Reserve Program.

(3) Any other program to which this part is made applicable.

(b) With respect to matters identified in paragraph (a) of this section, participants may appeal adverse decisions concerning:

- (1) Denial of participation in a program;
- (2) Compliance with program requirements;
- (3) Issuance of payments or other program benefits to a participant in a program;
- (4) Technical determinations made under Title XII;
- (5) Technical determinations or program decisions that affect a participant's eligibility for USDA program benefits;
- (6) The failure of an official of NRCS to issue a technical determination or program decision subject to this part; and
- (7) Incorrect application of general policies, statutory or regulatory requirements.

(c) Only a participant directly affected by a program decision or a technical

7 CFR Ch. VI (1-1-10 Edition)

determination made by NRCS may invoke the informal appeal procedures contained in this part.

(d) Appeals of adverse final technical determinations and program decisions subject to this part are also covered by the NAD rules of procedure, set forth at 7 CFR part 11, and by the FSA county committee appeals process, set forth at 7 CFR part 780, for informal appeals of Title XII decisions.

§ 614.4 Decisions not subject to appeal.

(a) Decisions that are not appealable under this part include:

(1) Any general program provision, program policy, or any statutory or regulatory requirement that is applicable to all similarly situated participants, such as:

- (i) Program application ranking criteria;
- (ii) Program application screening criteria
- (iii) Published soil surveys; or
- (iv) Conservation practice technical standards included in the local field office technical guide or the electronic FOTG (eFOTG).

(2) Mathematical or scientific formulas established under a statute or program regulation and a program decision or technical determination based solely on the application of those formulas;

(3) Decisions made pursuant to statutory provisions or implementing regulations that expressly make agency program decisions or technical determinations final;

(4) Decisions on equitable relief made by a State Conservationist or the Chief pursuant to Section 1613 of the Farm Security and rural Investment Act of 2002, 7 U.S.C. 7996;

(5) Disapproval or denials of assistance due to lack of funding or lack of authority;

(6) Decisions that are based on technical information provided by another federal or State agency, *e.g.*, lists of endangered and threatened species; or

(7) Corrections by NRCS of errors in data entered on program contracts, easement documents, loan agreements, and other program documents.

(b) Complaints involving discrimination in program delivery are not appealable under this part and are handled under the existing USDA civil rights rules and regulations.

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

(d) Enforcement actions under conservation easement programs administered by NRCS.

§ 614.5 Reservation of authority.

The Secretary of Agriculture, the Chief of NRCS, if applicable, or a designee, reserve the right to make a determination at any time on any question arising under the programs covered under this part within their respective authority, including reversing or modifying in writing, with sufficient reason given therefore, any decision or technical determination made by an NRCS official.

§ 614.6 Agency records and decision notices.

(a) All NRCS decisions under this part are based upon an agency record. NRCS will supplement the agency record, as appropriate, during the informal appeals process.

(b) NRCS notifies participants of the agency's preliminary and final technical determinations and program decisions through decision notices. By certified mail return receipt requested, NRCS will send to the participant a decision notice within 10 working days of rendering a technical determination or program decision. In lieu of certified mail, NRCS may hand deliver notices to participants with written acknowledgment of delivery by the participant. Each decision notice contains the following:

- (1) The factual basis for the technical determination or program;
- (2) The regulatory, statutory, and/or policy basis for the technical determination or program decision; and
- (3) Information regarding any informal appeal rights available under this part; the process for requesting such appeal; and the procedure for requesting further review before the FSA county committee pursuant to 7 CFR

780 or NAD pursuant to 7 CFR part 11, if applicable.

§ 614.7 Preliminary technical determinations.

(a) A preliminary technical determination becomes final 30 days after the participant receives the decision, unless the participant files an appeal with the appropriate NRCS official as indicated in the decision notice requesting:

- (1) Reconsideration with a field visit in accordance with paragraphs (b) and (c) of this section; or
- (2) Mediation as set forth in § 614.11.

(b) If the participant requests reconsideration with a field visit, the designated conservationist, participant, and, at the option of the conservation district, a district representative will visit the subject site for the purpose of gathering additional information and discussing the facts relating to the preliminary technical determination. The participant may also provide any additional documentation to the designated conservationist. Within 15 days of the field visit, the designated conservationist, based upon the agency record as supplemented by the field visit and any participant submissions, will reconsider his or her preliminary technical determination. If the reconsidered determination is no longer adverse to the participant, the designated conservationist issues the reconsidered determination as a final technical determination. If the preliminary technical determination remains adverse, then the designated conservationist will forward the revised decision and agency record to the State Conservationist for a final determination pursuant to paragraph (c) of this section, unless further appeal is waived in writing by the participant in accordance with paragraph (d) of this section.

(c) The State Conservationist will issue a final technical determination to the participant as soon as is practicable after receiving the reconsideration and agency record from the designated conservationist. The technical determination issued by the State Conservationist becomes a final NRCS decision upon receipt by the participant. Receipt triggers the running of the 30

§ 614.8

day appeal period to NAD, or, if applicable, to the FSA county committee.

(d) In order to address resource issues on the ground immediately, a participant may waive, in writing to the State Conservationist, appeal rights so that a preliminary technical decision becomes final before the expiration of the 30 day appeal period.

§ 614.8 Final technical determinations.

(a) Preliminary technical determinations become final and appealable:

(1) 30 days after receipt of the preliminary technical decision by the participant unless the determination is appealed in a timely manner as provided for in this regulation.

(2) 30 calendar days after the beginning of a mediation session if a mutual agreement has not been reached by the parties; or

(3) Upon receipt by the participant of the final technical determination issued on reconsideration as provided above in § 614.7(c).

(b) The participant may appeal the final technical determination to:

(1) The FSA county committee pursuant to 7 CFR part 780 if the determination is made under Title XII; or

(2) NAD pursuant to 7 CFR part 11.

§ 614.9 Program decisions.

(a) Program decisions are final upon receipt of the program decision notice by the participant. The participant has the following options for appeal of the program decision:

(1) An informal hearing before NRCS as provided for in paragraphs (b) through (d) of this section;

(2) Mediation as provided for at § 614.11; or

(3) A hearing before NAD pursuant to 7 CFR part 11 or, if the program decision is made under Title XII, appeal before the FSA county committee pursuant to 7 CFR part 780.

(b) A program participant must file an appeal request for a hearing with the appropriate State Conservationist as indicated in the decision notice within 30 calendar days from the date the participant received the program decision.

(c) The State Conservationist may accept a hearing request that is untimely filed under paragraph (b) of this

7 CFR Ch. VI (1-1-10 Edition)

section if the State Conservationist determines that circumstances warrant such an action.

(d) The State Conservationist will hold a hearing no later than 30 days from the date that the appeal request was received. The State Conservationist will issue a written final NRCS decision no later than 30 days from the close of the hearing.

§ 614.10 Appeals before the Farm Service Agency county committee.

(a) In accordance with 7 CFR part 780, a participant may appeal a final technical determination or a program decision to the FSA county committee for those decisions made under Title XII.

(b) When the FSA county committee hearing the appeal requests review of the technical determination by the applicable State Conservationist prior to issuing their decision, the State Conservationist will:

(1) Designate an appropriate NRCS official to gather any additional information necessary for review of the technical determination;

(2) Obtain additional oral and documentary evidence from any party with personal or expert knowledge about the facts under review;

(3) Conduct a field visit to review and obtain additional information concerning the technical determination; and

(4) After the actions set forth in paragraphs (b)(1) through (3) of this section are completed, provide the FSA county committee with a written technical determination in the form required by § 614.6(b)(1) through (2) as well as a copy of the agency record.

§ 614.11 Mediation.

(a) A participant who wishes to pursue mediation must file request for mediation under this part with the NRCS official designated in the decision notice no later than 30 days after the date on which the decision notice was received. Participants in mediation may be required to pay fees established by the mediation program.

(b) A dispute will be mediated by a qualified mediator as defined at § 614.2(p).

(c) The parties will have 30 days from the date of the first mediation session to reach a settlement agreement. The mediator will notify the State Conservationist whether the parties have reached an agreement.

(d) Settlement agreement reached during, or as a result of, the mediation process must be in writing, signed by all parties to the mediation, and comport with the statutory and regulatory provisions and policies governing the program. In addition, the participant must waive all appeal rights as to the issues resolved by the settlement agreement.

(e) At the outset of mediation, the parties must agree to mediate in good faith. NRCS demonstrates good faith in the mediation process by, among other things:

(1) Designating an NRCS representative in the mediation;

(2) Making pertinent records available for review and discussion during the mediation; and

(3) To the extent the NRCS representative does not have authority to bind the agency, directing the NRCS representative to forward in a timely manner any written agreement proposed in mediation to the appropriate NRCS official for consideration.

(f) *Mediator impartiality.* (1) No person may serve as mediator in an adverse program dispute who has previously served as an advocate or representative for any party in the mediation.

(2) No person serving as mediator in an adverse program dispute may thereafter serve as an advocate for a participant in any other proceeding arising from or related to the mediated dispute, including, without limitation, representation of a mediation participant before an administrative appeals entity of USDA or any other Federal agency.

(g) *Confidentiality.* Mediation is a confidential process except for those limited exceptions permitted by the Administrative Dispute Resolution Act at 5 U.S.C. 574. All notes taken by participants (Mediator, Management Representative, Disputants, and Disputants' Representative) during the mediation must be destroyed. As a condition of participation, the participants and any interested parties joining the

mediation must agree to the confidentiality of the mediation process. The parties to mediation, including the mediator, will not testify in administrative or judicial proceedings concerning the issues discussed in mediation, nor submit any report or record of the mediation discussions, other than the mediation agreement or the mediation report, except as required by law.

§ 614.12 Transcripts.

(a) No recordings shall be made of any hearing conducted under § 614.9. In order to obtain an official record of a hearing, a participant may obtain a verbatim transcript as provided in paragraph (b) of this section.

(b) Any party to an informal hearing appeal under § 614.9 may request that a verbatim transcript is made of the hearing proceedings and that such transcript is made the official record of the hearing. The party requesting a verbatim transcript must pay for the transcription service and provide a copy of the transcript to NRCS at no charge.

§ 614.13 Appealability review.

A participant may request a review of a decision denying an appeal based upon appealability by submitting a written request to the appropriate State Conservationist as indicated in the decision notice. This written request must be received by the State Conservationist within 30 calendar days from the date the participant received notice from NRCS that a decision was not appealable. The State Conservationist will render a decision on appealability within 30 days of receipt of the participant's review request. In the alternative, the participant may request review of the appealability decision by NAD pursuant to 7 CFR part 11.

§ 614.14 Computation of time.

(a) The word "days" as used in this part means calendar days, unless specifically stated otherwise.

(b) Deadlines for any action under this part, including deadlines for filing and decisions, which fall on a Saturday, Sunday, federal holiday or other day on which the relevant NRCS office is closed during normal business hours,

§ 614.15

will be extended to close of business the next working day.

§ 614.15 Implementation of final agency decisions.

No later than 30 days after an agency decision becomes a final administrative decision of USDA, NRCS will implement the decision.

§ 614.16 Participation of third parties in NRCS proceedings.

When an appeal is filed under this part, NRCS will notify any party third

7 CFR Ch. VI (1–1–10 Edition)

party whose interests may be affected of the right to participate as an appellant in the appeal. If the third party declines to participate then NRCS's decision will be binding as to that third party as if the party had participated.

§ 614.17 Judicial review.

A participant must receive a final determination from NAD pursuant to 7 CFR part 11 prior to seeking judicial review.