

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

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(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

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.