

§ 614.4 Decisions not subject to informal appeal procedures.

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

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

(6) Decisions issued by the Office of the General Counsel, in the exercise of authority delegated to it by the Attorney General, concerning the application of real property title standards issued by the Attorney General.

(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 Civilian Board of Contract Appeals are not appealable under the procedures within this part.

(d) Where NRCS is unable to fund an application for program participation due to a lack of funds. The agency may not deny appeal of the underlying computations used to rank and prioritize the application.

§ 614.5 Reservation of authority.

The Secretary of Agriculture, Chief of NRCS, if applicable, or designee, reserves the right to make a determination at any time on any question arising under the programs covered under this regulation within their respective authority, including reversing or modifying in writing, with sufficient reason given therefore, any program 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, 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 part 780 or NAD pursuant to 7 CFR part 11.

§ 614.7 Preliminary technical determinations.

(a) A preliminary technical determination is limited to those determinations made pursuant to the HELC/WC provisions (16 U.S.C. 3801, et seq.) and 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:

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(1) Reconsideration with a field visit, office visit, or other designated location meeting site in accordance with paragraphs (b) and (c) of this section; or

(2) Mediation as set forth in §614.11.

(b)(1) If the participant requests reconsideration with a field visit, office visit, or other location visit, the designated conservationist, participant, and at the option of the conservation district, a district representative will make a field or office visit 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.

(2) Within 15 days of the field or office 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.

(3) If the reconsidered determination is no longer adverse to the participant, the designated conservationist will issue the reconsidered determination as a final technical determination.

(4) 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 technical determination upon receipt by the participant. Receipt triggers the running of the 30-day timeframe to appeal to NAD, or if applicable, to the FSA county committee.

(d) In order to address application needs or resource issues on the ground immediately (expedited finality), a participant may waive, in writing to the State Conservationist, the reconsider-

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ation rights stated in paragraph (a) of this section so that a preliminary technical decision becomes final before the expiration of the 30-day appeal period.

§614.8 Final technical determinations.

(a) Preliminary HELC/WC technical determinations become final and appealable:

(1) Thirty 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) Thirty 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 in §614.7(c).

(b) The participant may appeal the final technical determination issued under the HELC/WC provisions to:

(1) The FSA county committee pursuant to 7 CFR part 780; 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. Program decisions include all decisions issued by NRCS for programs that NRCS administers separate from the HELC/WC provisions. The participant has the following options for appeal of the program decision:

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

(2) Mediation as provided for in §614.11;

(3) An informal hearing before the FSA county committee pursuant to 7 CFR part 780 if the program decision is made under Title XII; or

(4) A hearing before NAD pursuant to 7 CFR part 11.

(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.