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(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 informal appeal procedures.
- 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 NAD 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).

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§ 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 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 deci-

sion is rendered final by NRCS, participants may appeal to the National Appeals Division (NAD) as provided for under 7 CFR part 11, or to the Farm Service Agency (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:

Adverse decision means the final technical determination or the program decision issued by NRCS that is adverse to the individual participant and not a matter of general applicability.

Agency means NRCS and its employees.

Agency exhibit means those documents or materials that are used during the hearing to further explain, differentiate, or distinguish a point, concept, or criteria in an appeal but that were not those materials or documents that the agency relied upon in making the adverse decision. Agency exhibits are labeled alphabetically A, B, C, etc., with total pages in each exhibit numbered.

Agency record means all documents and materials, including documents submitted by the participant and those generated by NRCS, which the agency relies upon and bases its program decision or technical determination. The agency record will include all documents relevant to the adverse decision. NRCS maintains the agency record and will, upon request or appeal, make available a copy of the agency record for a specific adverse decision to the participant(s) involved in the dispute. Agency record documents are labeled numerically 1, 2, 3, etc., in the lower right hand of the document.

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 the participant's request has been received by the accepting official as indicated in the adverse decision notice.

Chief means the Chief of NRCS or his or her designee.

Commodity Credit Corporation means a wholly owned government corporation within USDA.

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.

County committee means a 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)).

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.

Final technical determination means a preliminary technical determination issued under the Highly Erodible Land and Wetland Conservation (HELC/WC) provisions found in 7 CFR part 12 that have become final, and thus, appealable under sections 8 or 10 of this final rule.

Hearing means an informal appeal proceeding, either before the NRCS State Conservationist or the FSA county committee 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.

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.

Mediator means a neutral third party who serves as an impartial facilitator between two or more parties to assist them in resolving a dispute. The medi-

ator 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.

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 and 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.

Preliminary technical determination means the initial written decision by NRCS for a technical matter under HELC/WC which has not become final under this part.

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 and not a technical determination made solely for the HELC/WC provisions. Program decisions may include technical matters relative to the specific conservation program. These are final decisions upon receipt by the program participant.

Qualified mediator means a mediator who is accredited under State law in those States that have a mediation program certified by USDA pursuant to 7 CFR part 785, or in those States that do not have a mediation program certified by 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, an accredited college or university, or one of the following organizations: State Bar, a State mediation association, a State approved mediation program, or a society of dispute resolution professionals.

Reconsideration means a subsequent consideration of a preliminary technical determination by the designated

§ 614.3

7 CFR Ch. VI (1-1-14 Edition)

conservationist or the State Conservationist.

Secretary means the Secretary of Agriculture.

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

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

Verbatim transcript means the official, written record of proceedings of a hearing on a 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:

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

- (i) Conservation Security Program;
- (ii) Conservation Stewardship Program;
- (iii) Conservation Reserve Program and the Conservation Reserve Enhancement Program;
- (iv) Environmental Quality Incentives Program, including the following:
 - (A) Agricultural Water Enhancement Program,
 - (B) Conservation Activity Plans,
 - (C) Colorado River Basin Salinity Control,
 - (D) Conservation Innovation Grants,
 - (E) Ground and Surface Water Conservation Program,
 - (F) Klamath Basin Program, and
 - (G) Organic Program Initiative;
- (v) Farm and Ranch Land Protection Program;
- (vi) Grassland Reserve Program;
- (vii) Highly Erodible Land Conservation;
- (viii) Wetland Conservation;
- (ix) Wetlands Reserve Program and Wetlands Reserve Enhancement Program; and
- (x) Wildlife Habitat Incentive Program.

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

- (i) Agriculture Management Assistance Program;

(ii) Emergency Watershed Protection Program including Flood Plain Easements;

(iii) Great Lakes Restoration Initiative;

(iv) Healthy Forest Reserve Program;

(v) Water Bank Program;

(vi) Watershed Protection and Flood Prevention Program; and

(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 HELC/WC provisions;

(5) Technical determinations or program decisions that affect a participant's eligibility for USDA program benefits;

(6) The failure of an NRCS official issue a technical determination or program decision subject to this part ("failure to act"); and

(7) Incorrect application of general policies, statutory or regulatory requirements.

(c)(1) 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.

(2) In order for the appeal request to be effective, the participant must personally make a written request for appeal that is signed by the participant identified in paragraph (c)(1) no later than 30 days after receipt of the adverse decision.

(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 parts 11 and 780 for informal appeals of Title XII decisions.