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7 CFR Ch. VI (1-1-16 Edition)

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.

§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:

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(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 modi-

fying 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:

(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