(B) The holdings or sources of income of which the filer, spouse, or dependent child have no specific knowledge through a report, disclosure, or constructive receipt, whether intended or inadvertent.

(3) *Excepted investment funds.* (i) No information is required under paragraph (i)(1) of this section about the underlying holdings of an excepted investment fund as defined in paragraph (i)(3)(ii) of this section, except that the fund itself shall be identified as an interest in property and/or a source of income.

(ii) For purposes of financial disclosure reports filed under the provisions of this subpart, an ''excepted investment fund'' means a widely held investment fund (whether a mutual fund, regulated investment company, common trust fund maintained by a bank or similar financial institution, pension or deferred compensation plan, or any other investment fund), if:

(A)(*1*) The fund is publicly traded or available; or

(*2*) The assets of the fund are widely diversified; and

(B) The filer neither exercises control over nor has the ability to exercise control over the financial interests held by the fund.

(iii) A fund is widely diversified if it holds no more than 5% of the value of its portfolio in the securities of any one issuer (other than the United States Government) and no more than 20% in any particular economic or geographic sector.

(j) *Special rules.* (1) Political campaign funds, including campaign receipts and expenditures, need not be included in any report filed under this subpart. However, if the individual has authority to exercise control over the fund's assets for personal use rather than campaign or political purposes, that portion of the fund over which such authority exists must be reported.

(2) In lieu of entering data on a part of the report form designated by the Office of Government Ethics, a filer may attach to the reporting form a copy of a brokerage report, bank statement, or other material, which, in a clear and concise fashion, readily discloses all information which the filer would otherwise have been required to enter on the concerned part of the report form.

(k) For reports of confidential filers described in § 2634.904(a)(3) of this subpart, each supplemental confidential financial disclosure report shall include only the supplemental information:

(1) Which is more extensive than that required in the reporting individual's public financial disclosure report under this part; and

(2) Which has been approved by the Office of Government Ethics for collection by the agency concerned, as set forth in supplemental agency regulations and forms, issued under §§ 2634.103 and 2634.601(b) (see § 2634.901(b) and (c) of this subpart).

§ 2634.908 [Amended]

■ 22. Section 2634.908 is amended by removing the phrase ''twelve months ending September 30,'' in paragraph (a) and adding in its place the phrase ''calendar year,''.

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

■ 23. The authority citation for part 2640 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

§ 2640.102 [Amended]

■ 24. Section 2640.102 is amended by adding the phrase ''and 2634.907(i)(3)'' after the citation ''5 CFR 2634.310(c)'' at the end of the fifth sentence in the note to paragraph (a).

[FR Doc. 06–4529 Filed 5–15–06; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 614

RIN 0578–AA16

Appeal Procedures

AGENCY: Natural Resources Conservation Service.

ACTION: Interim final rule with request for comments.

SUMMARY: The Natural Resources Conservation Service (NRCS), United States Department of Agriculture (USDA) issues this interim final rule amending NRCS's informal appeals procedures as required by Title II of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994, 7 U.S.C. 6991 *et seq.* (the 1994 Act). This interim final rule amends regulations promulgated by the interim final regulations published by the Secretary of Agriculture for NRCS on December 29, 1995 (60 FR 67313), and also includes new language to address statutory changes and make procedural and structural changes. Because of the substantive changes the agency is making to its informal appeal process under the current regulation, NRCS is publishing this rule as an interim final rule with request for comments.

NRCS has determined that issuing an interim final rule with request for comments rather than a proposed rule was justified in order to implement the changes required by statute as well as to institute procedural improvements. This interim final rule with request for comments puts the public on notice of the changes being made while affording an opportunity to comment. At the same time, much needed changes and improvements to the current regulation may be implemented immediately thereby better serving the public and the USDA.

DATES: *Effective Date:* May 16, 2006. Comments must be received by June 15, 2006.

NRCS invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods: Mail: Send comments to: Beth Schuler, Natural Resources Conservation Service, 1400 Independence Avenue, SW., 103, Washington, DC 20250, or E-Mail: Send comments to *beth.schuler@wdc.usda.gov*. You may also submit comments via facsimile transmission to: (615) 673–6705; or through the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

ADDRESSES: This interim final rule can be accessed via the internet. Users can access the NRCS homepage at: *http://www.nrcs.usda.gov/programs/appeals/interimfinalrule*.

FOR FURTHER INFORMATION CONTACT: Beth A. Schuler, Conservation Planning and Technical Assistance Division, Room 6015–S, 1400 Independence Ave, SW., 103, Washington, DC 20250. Telephone: (615) 646–9741; E-mail: *beth.schuler@wdc.usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim final rule has been determined to be not significant under

Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 13132

It has been determined under Executive Order 13132, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity, or the costs to any small business to comply with these regulations, because it merely clarifies and establishes procedures for participants to use in filing appeals of adverse decisions. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The provisions of this rule are not retroactive. The provisions of this rule preempt State and local laws to the extent such State and local laws are inconsistent. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against NRCS.

Environmental Evaluation

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, and NRCS has concluded that promulgation of this rule is categorically excluded from NEPA's requirement from an environmental impact analysis under the Department of Agriculture regulations, 7 CFR 1b.3(a)(1). Actions implemented under this rule fall in the category of policy development, planning and implementation which relates to routine activities and similar administrative functions and no circumstances exist that would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12372

This regulation is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published June 24, 1983 (48 FR 29115).

Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act as well as continued pursuit of providing all services electronically when practicable. This rule requires that a participant must make a written request to appeal a determination or decision issued to a participant for a program administered by NRCS. In part, the procedures in this rule lend themselves to electronic request and submission. NRCS will pursue, either solely or jointly with the Farm Service Agency, with whom NRCS shares some appeal procedures, 7 CFR part 780, the development of an application that will allow program participants to request an appeal online. It will also enable both FSA and NRCS to manage the requests and reporting aspects electronically.

Background and Purpose

On December 29, 1995, the Secretary of Agriculture published an interim final rule for the National Appeals Division (NAD) to implement Title II, Subtitle H of the 1994 Act, which rule established interim procedures, at 7 CFR part 11, for appeals of adverse decisions by USDA agency officials to the NAD (60 FR 67298). The interim final rule also included conforming changes relating to regulations governing agency informal appeals, including part 614. NAD published its final rule in the **Federal Register** on June 23, 1999 (64 FR 33367). At that time, it was expressly noted that the final rule for NAD did not include rules for agency appeal procedures and that those rules would be published separately by the respective agencies.

Section 275 of the 1994 Act, 7 U.S.C. 6995, requires USDA agencies to hold informal hearings at the request of a participant for the decisions they render. NRCS interprets the ''informal hearing'' requirement to require the agency to provide an opportunity for informal appeal at the agency level. This interim final rule amends the current NRCS appeal procedures as promulgated by the 1995 interim final rule to better conform to the requirements of the 1994 Act and subsequent legislation, as well as to make other substantive changes to clarify and improve the agency's informal appeals process.

NRCS's goal in promulgating these informal appeals procedures is to facilitate at the agency level the resolution of disputes arising from adverse technical determinations and program decisions. In contrast to the appeals process administered by NAD under part 11, NRCS's informal appeals process establishes several means through which participants can obtain review by NRCS personnel who have detailed knowledge of agricultural conservation operations as well as expertise in farm and ranch management. After a decision rendered by NRCS becomes final, participants may pursue the appeals processes set forth at 7 CFR part 780 and 7 CFR part 11, as appropriate.

Overview of Informal Appeals Options

Program disputes in NRCS vary in complexity, sums at stake, and feasibility of resolution. Therefore, the availability of effective, informal appeal procedures is central to NRCS's goal of achieving just, speedy, and cost-effective resolutions to program and technical disputes. Accordingly, this rule sets forth three separate means of informal appeal: Mediation, reconsideration, and hearing. The text of the rule provides appeal options in the alternative, meaning a participant must choose one avenue of appeal. This structure was adopted in order to facilitate efficient resolution of disputes. The sections below describe each of the appeal options available to participants.

Mediation: The mediation informal appeal option is available for both preliminary technical decisions and program decisions. This rulemaking incorporates additional guidelines that have become a part of the agency's

practice over the last several years regarding the use of the mediation to resolve NRCS program disputes. Under this rule, all mediations will be conducted by a ''qualified mediator,'' as defined at § 614.2. In a State that has a USDA certified mediation program, a ''qualified mediator'' is a person who is accredited as a mediator under relevant State law. In a State that does not have a USDA certified program, a ''qualified mediator'' is a person who meets certain core knowledge and training requirements set forth in the definition of the term. Additionally, this rule clarifies that all mediation requests are to be submitted to the appropriate State Conservationist, as indicated in the written decision notice received by the participant.

Under 7 U.S.C. 5103(a)(1)(A), NRCS must participate in good faith in any State mediation program certified under 7 U.S.C. 5101. NRCS is applying this good faith requirement to mediation generally, regardless of whether the dispute is being mediated under a State certified mediation program. This good faith policy is set forth in this rulemaking at § 614.11. NRCS demonstrates good faith in mediation by doing, among other things, the following:

—Designating a person to represent NRCS in mediation;
—Defining the NRCS representative's authority to bind NRCS to agreements reached in the mediation;
—Instructing NRCS's representative to ensure that any agreement reached during, or as a result of, the mediation is consistent with the statutory and regulatory provisions and generally applicable program policies and is mutually agreed to in writing by all affected parties;
—Authorizing NRCS's representative to assist in identifying and exploring additional options that may resolve the dispute;
—Assisting, as necessary, in making pertinent records available for review and discussion during the mediation;
—Directing NRCS's representative in the mediation to forward any written agreement proposed in mediation to the appropriate NRCS official for approval; and
—Considering, in a timely manner, dispute resolution proposals requiring actions or approvals.

The basic issue in mediation of an agency program dispute is whether one or more parties to the mediation meet program requirements. Parties mediating a dispute are not free to make their own law or policy, and mediation is not a means to obtain a result not otherwise permissible under statute, regulations, or generally applicable agency policy and program procedure. Within these parameters, mediation of disputes can produce benefits when the mediation reveals additional relevant facts and new insights. For example, NRCS program mediation may result in: identifying alternative means for a participant to comply with regulatory requirements, exploring alternative mitigation strategies when a wetland has been converted, or considering possible changes to a farming operation with regard to compatible uses of easement acreages. Additionally, when other private parties having an interest in the issue are involved in the mediation, the mediation may assist in identifying potential flexibility in the positions of these private parties which could lead to a more global resolution of the dispute.

NRCS will endeavor to ensure that the representative designated for NRCS in any mediation is a person with appropriate knowledge of the decision-making parameters implicated in the program dispute and who has the authority to bind the agency. However, in some cases, it may not be possible to have an agency representative present who has settlement authority. In those instances, NRCS will designate an NRCS representative who will be responsible for acting as a liaison to the authorized NRCS decision-maker and will be responsible for securing timely consideration of any settlement proposal.

Mediations occurring in the informal appeal process are confidential with some limited exceptions. For example, during the course of mediation, it is anticipated that NRCS's representative may need to communicate with other agency officials such as the deciding official. At the outset of the mediation, NRCS will outline the other possible NRCS officials who may need to be contacted in order to resolve the dispute and seek the concurrence of the other parties to the mediation for such exceptions to the general rule of confidentiality. In addition, any mediated final settlement agreement will not be confidential but will become a part of the official record. Once a dispute has been settled through an executed settlement agreement, the participant waives all further appeals as to that issue. All settlement agreements must be in writing and signed by the parties with the proper authority.

Reconsideration: Reconsideration is a review by the designated conservationist or State Conservationist of an NRCS preliminary technical determination. In contrast to the current regulation, this rule provides for reconsideration of a preliminary technical determination in conjunction with the field review. In addition, this rule establishes a two tiered review process. Specifically, under this rule, the designated conservationist conducts the field visit, supplements the agency record, and makes his or her reconsideration decision within 15 days of the field visit. If the reconsideration decision is favorable to the participant, then the designated conservationist issues the reconsideration as the final technical determination. If the reconsideration decision is still adverse to the participant, the designated conservationist forwards the reconsideration decision and the agency record to the State Conservationist for an independent review and final determination, unless the participant waives in writing further informal appeal. In cases of waiver, the designated conservationist issues the reconsideration decision as the final technical determination. Otherwise, the State Conservationist's reconsideration decision becomes the final agency technical determination upon receipt by the participant. This rule making does not set forth a specified time frame for the State Conservationist's decision in order to provide needed flexibility for any additional information gathering that may be necessary. However, it is the agency's intention that the State Conservationist's decision will be made as soon as practicable. This is in keeping with agency's commitment to ensuring an effective and efficient informal appeals process.

NRCS believes adding reconsideration to the field review process will improve the accuracy of technical determinations and sufficiency of the administrative record upon which the technical decision is based. Both the agency and the participant benefit from this change because it fosters the best possible technical decisions in accordance with law and policy and offers the participant a meaningful opportunity for appeal at the NRCS State level. These changes to the current appeal rule also ensure that the participant has the option of obtaining an impartial review of an adverse preliminary technical determination within the agency by an authority other than the original decision maker. A decision issued on reconsideration constitutes a final technical determination in accordance with the regulation at § 614.8, and as such, starts the running of time for any subsequent appeal to the FSA county committee pursuant to 7 CFR part 780,

if applicable, or NAD under 7 CFR part 11.

Hearing: The hearing appeal option is available for adverse program decisions, much like reconsideration is available for technical determinations. A hearing provides an informal opportunity for a participant to present testimony and/or documentary evidence before the appropriate State Conservationist to show why an adverse NRCS program decision is erroneous and why it should be reversed or how it should be modified. In this rulemaking, several changes have been made to the hearing process. First, language has been added to clarify that the Federal Rules of Evidence do not apply to these hearings. Second, this rule provides that only verbatim transcripts may serve as official transcripts of an NRCS hearing. And, lastly, this rule does not include the right of appeal to NAD which was included at § 614.204(c) in the current regulation since the participant will likely forgo that option by appealing to the State Conservationist. In lieu of an NRCS hearing, a participant may appeal a program decision to the FSA county committee pursuant to 7 CFR part 780, if it is a conservation program under Title XII of the Food Security Act of 1985, as amended, (Title XII) or to NAD pursuant to 7 CFR part 11.

FSA county committee appeals: Pursuant to 7 U.S.C. 6995 and 7 CFR part 780, a participant may seek an optional informal review by an FSA county committee of an NRCS final technical determination or program decision made under Title XII. A participant may also choose to forgo the FSA county committee appeal option and appeal directly to NAD under 7 CFR part 11.

This rule, at § 614.10, changes the current regulation by adding the FSA county committee appeal option for Title XII program decisions. In addition, the actions of the State Conservationist on remand from the FSA county committee have been changed from permissive to mandatory in this rule making to ensure uniformity.

Program Decisions and Technical Determinations

This section provides a general overview of technical determinations and program decisions, which are part of NRCS's program implementation and administration responsibilities.

Preliminary and final technical determinations are those determinations by an NRCS official that relates to the condition of the natural resources and cultural practices based on science and the best professional judgment of natural resource professionals concerning soils, water, air, plants, and animals.

A program decision is a decision reached by an NRCS official based on applicable regulations and program policy. Program decisions may relate to eligibility for program benefits, compatible use authorizations, compliance with program requirements, and other actions. Program decisions may be based on previously issued technical determinations, such as those program decisions issued by NRCS with regard to program eligibility, contract status, or practice installation. A program decision may also be issued solely for the purpose of program administration, such as a response to a request for equitable relief.

Non-Appealable Decisions and Determinations

Not all adverse decisions or determinations that affect program participants are appealable under this part. Section 614.4 provides a list of the types of decisions that are not appealable. Any notice transmitting an NRCS program decision or technical determination that is determined not to be appealable will provide the reason the decision or determination is not appealable.

For example, program decisions or technical determinations made pursuant to statutory provisions or regulations that are not dependent upon a unique set of facts are generally not appealable. Thus, a decision is not appealable if it is based upon general program policy, a statutory or regulatory requirement that is applicable to all similarly situated participants, or technical standards and equations. In addition, decisions of the NRCS Chief or State Conservationists on equitable relief made under the regulations implementing section 1613 of the Farm Security and Rural Investment Act of 2002, 7 U.S.C. 7996, are discretionary decisions that do not afford participants any rights of appeal within NRCS or any right to judicial review.

This rulemaking includes a new provision, § 614.13, which affords the participant the opportunity to seek the review of the State Conservationist of an NRCS decision denying an appeal based upon appealability. Section 614.13 also informs the participant of the right to seek an appealability review from NAD.

Section-by-Section Analysis

NRCS is making significant changes to the organization and substance of the existing informal appeals regulation in order to address statutory changes and comments received since the 1995 rule making, as well as to improve the informal appeals process. The following text describes the changes made to each section of the rule.

Section 614.1 General

This section retains the same designation and remains substantially the same in content. This section explains the scope and purpose of the agency's informal appeal regulation.

Section 614.2 Definitions

This section remains the same in designation, but adds several new definitions and removes a few definitions that appear in the existing appeal procedures. Specifically, definitions have been added for the terms ''agency'', ''agency record'', ''appeal'', ''final technical determination'', ''hearing'', ''mediator'', ''participant'', ''program decision'', ''qualified mediator'', ''reconsideration'', and ''verbatim transcript.'' The definitions for ''adverse technical determination'' and ''decision'' have not been included in this rule.

The definitions for ''final technical determination'', ''reconsideration'' and ''program decision'' are added to provide precision and clarity in the use of those terms. The term ''agency record'' is defined in order to help improve the agency's decision making and documentation process. The term ''participant'' is broadly defined in this rulemaking to mean any individual or entity who has applied for, or whose right to participate in, a program or receive a payment or benefit in accordance with any program covered by this regulation has been affected by an adverse NRCS decision. The term ''participant'' does not include individuals or entities whose disputes arise under the items excluded in the definition of a participant set out in the NAD regulations at 7 CFR part 11. The broadening of the definition of ''participant'' removes the need to also use the term ''landowner'' as was done in the existing appeal regulation.

The term ''qualified mediator'' is provided by this rule so that there is a clear direction regarding the qualifications required in order to mediate an NRCS dispute.

The term ''verbatim transcript'' is added as part of agency's new policy providing that only verbatim transcripts constitute an official record of a hearing and that recordings are prohibited. This policy change ensures a uniform, accurate, and fair means of documenting NRCS hearings. In addition, this policy parallels NAD's policy.

The definition of ''adverse technical determination'' contained in the

existing appeal regulation is not included here because the meaning of the term has been adequately covered in the appealability section. The general term ''decision'' is not included here because the types of NRCS decisions are more precisely defined in this rule as noted above.

Section 614.3 Applicability of Appeal Procedures

This section sets forth the types of decision that are appealable. Section 614.3 addresses the applicability of the informal appeal process contained in sections 614.3, 614.100 and 614.200 of the current appeal regulation. The effect of this change is to streamline the regulation by reorganizing the informal appeals procedures based upon whether a technical determination or a program decision is being appealed.

In addition, since promulgation of the 1995 rule, new programs have been authorized under Title XII and some programs have been repealed. Consequently, this section amends the current regulation by updating the listing of programs to which these informal appeals apply.

Comments have been received on this section concerning FSA review of adverse NRCS technical determinations made under Title XII program authorities being limited to technical determinations. The commenters argued that all decisions, not just technical determinations, made for those programs authorized under Title XII may be appealed under 7 CFR part 780. NRCS agrees with these comments. 7 U.S.C. 6932(d) provides that the ''[u]ntil such time as an adverse decision described in this paragraph is referred to the National Appeals Division for consideration, the [Consolidated] Farm Service Agency shall have initial jurisdiction over any administrative appeal resulting from an adverse decision made under title XII of the Food Security Act of 1985 (16 U.S.C. § 3801 *et seq.*).'' Therefore, in this rulemaking, NRCS has changed the scope of the FSA county committee review to encompass all technical determinations and program decisions made under Title XII.

Section 614.4 Decisions Not Subject To Appeal

This section has been renumbered so that it follows directly after the section dealing with applicability. NRCS has expanded this section in order to provide additional clarification as to those decisions that are not subject to appeal. For example, this section adds new language which provides that the correction of errors on contract and other program documents by NRCS and the results of computations or calculations made by NRCS pursuant to the contract or agreement are not appealable.

Section 614.5 Reservation of Authority

This section remains the same in content. However, the number designation has been changed from § 614.4 so that the two sections addressing applicability in this rulemaking appear sequentially. Under this section, the Chief of NRCS, either as the head of the agency or as the Executive Vice President of CCC, and the Secretary reserve the authority to determine, at any time, any question arising under programs within their respective authority or from reversing or modifying any program decision or technical determination made by NRCS or CCC.

Section 614.6 Agency Records and Decision Notices

This section is new. It sets forth the agency's policy that all decisions under this part are based upon an agency record. The agency record is an administrative record comprised of all the documentation, including reports, maps, photographs, correspondence, etc., that the decision-maker relied upon when making his or her decision. In determining which documents are included in the agency record, the decision-maker will err on the side of inclusiveness. The agency is responsible for compiling the agency record and maintaining it. A copy of the agency record is available to the participant upon request. The completeness of the agency record, as well as the consideration of all relevant facts, is critical to an effective appeal process. Consequently, development of the agency record is being emphasized in this rulemaking.

This section also sets forth agency policy on decision notices, including content, deadlines, and methods of delivery. Specifically, NRCS policy requires that an adverse program decision or technical determination must: (1) Be in writing, (2) set forth its factual basis, and (3) explain its application of relevant statue, regulations, and policy. NRCS must send written notice of its decision to the participant via certified mail, return receipt requested, or hand delivery within 10 working days of rendering a technical determination or program decision. In this regard, this section conforms to section 6994 of the 1994 Act, which requires that the Secretary provide written notice of an adverse decision and notice of appeal rights no later than 10 working days after the decision is made.

Section 614.7 Preliminary Technical Determinations

This section was designated as Subpart B, Section 614.101—Notice of Preliminary Technical Determinations in the current appeal regulation. As described earlier in this preamble, two substantive changes are being made to this section. One change is that the field review appeal option is now combined with a reconsideration determination by either the designated conservationist or the State Conservationist. The other change is that the participant now has the option of waiving in writing the appeal process for the purpose of immediately implementing any actions required by NRCS.

In addition, in the current regulation, preliminary technical determinations include only those initial written technical determinations provided to a USDA program participant for the programs authorized under Title XII. However, NRCS also makes technical determinations for non-Title XII conservation programs. Consequently, NRCS is amending the regulation so that all technical determinations issued by the agency, regardless of statutory authority, will be issued first as a preliminary technical determination with appeal rights as set forth in this section. NRCS is making this change, in part, by eliminating the subpart structure which was organized around Title XII and non-Title XII decisions.

Comments have been received concerning whether waiting 30 days for a preliminary technical determination to become final prior to being able to appeal to the FSA county committee or to NAD is timely program administration. Given the technical nature of these types of agency decisions, the agency's experience is that issuing the technical decision as preliminary and then affording an adequate informal appeal process at the agency level where such expertise resides is essential to effective program administration. Consequently, the agency is making no significant changes to the regulation as a result of these comments. However, for those participants who want a final technical determination so that they may begin required actions as determined by NRCS (*e.g.*, wetland restoration), NRCS is providing at § 614.7(d) a new option to waive appeal.

Section 614.8 Final Technical Determinations

This section was designated in the current regulation as § 614.103—Final

Determinations. This section sets forth when technical determinations become final and the appeals procedures available. The content of this section remains similar to the current regulation. However, changes are being made to address finality for reconsideration appeals, to remove subsection (b), and to set forth the available appeal options.

Concern has been raised that participants should be advised of the basis for the technical determination (or program decision), as well as the procedure to be utilized to pursue review or appeal at the time of the notification of the preliminary technical determination.

NRCS notes that this type of requirement was generally addressed at § 614.103(b) in the current regulation. However, NRCS agrees with this concern and, as previously discussed, has included guidance in this rulemaking at § 614.7 ''Agency records and decision notices.'' In addition, NRCS has included further guidance regarding notification as part of the NRCS Appeals and Mediation policy document, Conservation Programs Manual, Part 510, Appeals and Mediation, (440–V–CPM).

Section 614.9 Program Decisions

This section sets forth the informal appeals procedures available for program decisions which were originally contained in subpart C of the current regulation. Program decisions are decisions issued for conservation programs administered by NRCS which relate to the administration of a conservation program. Unlike technical determinations, program decisions are issued as 'final decisions' meaning they may be appealed directly to NAD or the FSA county committee, if the program decision is made under a Title XII program.

The informal appeals options provided in this section are similar to those provided in the current regulation with three exceptions. First, language is included that addresses appeal to the FSA county committee for Title XII decisions. Second, § 614.203(b)(3) in the current regulation, which provided that the State Conservationist has up to 30 days to render a final decision if no mediated settlement has been reached, is not included in this rule making. This is consistent with the structure of informal appeal options set forth for technical determinations and makes sense given that the informal appeal options for an adverse program decisions are in the alternative, that is, participants choose either mediation or a hearing. Third, this section now provides a clear deadline within which the State Conservationist must render his or her opinion after the hearing.

Section 614.10 Appeals Before the Farm Service Agency County Committee

This section was designated as subpart B, § 614.104, Appeals of technical determinations, in the current regulation. The agency is changing the title of this section to ''Appeals before the Farm Service Agency county committee'' because both program and technical appeals may be appealed to the FSA county committee. Likewise, this section provides that technical determinations and program decisions made under Title XII may be appealed to the FSA county committee.

NRCS is also clarifying the appeal options available to participants for those programs authorized under Title XII. NRCS had initially interpreted 7 U.S.C. 6932 as mandating an informal appeal hearing before the county or area FSA committee of all Title XII conservation program technical determinations before a determination could be appealed to NAD. This rule corrects that misinterpretation by providing that appeal of Title XII decisions to the FSA county committees by the participant is optional and that a participant may appeal directly to NAD once a decision is final.

Finally, in contrast to the current regulation, this section makes mandatory the steps a State Conservationist takes if the FSA county committee requests the State Conservationist's review. This change is being made to ensure completeness of the agency record and uniformity in the appeals process.

Section 614.11 Mediation

This section encompasses those sections designated as § 614.102—Mediation of preliminary technical determinations and § 614.203—Mediation of adverse final decisions in the current regulation by setting forth agency policy regarding mediation for both preliminary technical decisions and program decisions. In addition to the organizational change, new policy is added to address the requirements for mediation in good faith, confidentiality, and mediator impartiality.

NRCS has removed the reference to ''qualified members of a local conservation district'' as a source of mediators because of its ambiguity. The new language provides that, in those states without a certified State Mediation Program, qualified mediators will be provided, when available, through a request by the participant to NRCS.

Section 614.12 Transcripts

This new section is added to provide uniform policy regarding how participants may obtain official transcripts of hearings before the State Conservationist under § 614.9. Only official transcripts will become a part of the agency record. This provision is similar to NAD's policy regarding transcripts as set forth in 7 CFR part 11.

Section 614.13 Appealability Review

This section of the rule is new and provides the participant with the option of seeking review by the appropriate State Conservationist of a decision to deny an appeal based upon appealability. The participant may choose to forgo this informal review option and seek the review of NAD under 7 CFR part 11.

Section 614.14 Computation of Time

This is a new section added to address computation of deadlines under this rule as part of the agency's efforts to clarify and improve the informal appeals process.

Section 614.15 Implementation of Final Agency Decisions

This is a new provision addressing implementation of final USDA decisions. This provision is similar to the decision implementation requirement set forth in the NAD rules of appeal. An NRCS decision must be implemented within 30 days after the agency decision becomes a final USDA decision. A program decision or technical determination becomes a final USDA decision when a participant allows the time to request appeal to expire without appealing the decision. Implementation of a final USDA decision must be initiated by the agency within the required period, but does not necessarily have to be completed within the 30 day period. For example, additional time may be required to obtain updated financial or other information relating to eligibility or feasibility, to obtain a new appraisal, or to reassess the wetland features on a tract of farmland.

Whether the final decision is implemented by NRCS may depend upon the availability of funds. If funds are not available, a final decision on appeal will not cause a payment to be issued immediately to a participant, notwithstanding a successful appeal. However, in such circumstances, the appeal is still an effective resolution of the issues related to the participant's compliance with the appealed program requirements. If funds later become available, and a participant's

circumstances remain unchanged, NRCS may make payment.

Section 614.16 Participation of Third Parties in NRCS Proceedings

This is a new section which parallels a similar provision in the NAD appeal regulations. This section provides that NRCS may invite third parties whose interests may be affected in the informal appeals process to join as a party to the appeal.

Section 614.17 Judicial Review

This section is new and was added to address when an NRCS participant can bring action in a court of competent jurisdiction against NRCS for disputes covered by this part. This section parallels the provision for judicial review contained in the NAD regulations at 7 CFR part 11.

List of Subjects in 7 CFR Part 614

Administrative practice and procedure, Agriculture, Agriculture commodities, Alternative Dispute Resolution, Appeal, Conservation programs, Contracts, Decisions, Determinations, Easements, Farmers, Farmland, Mediation, Soil conservation.

■ Accordingly, the regulations found at 7 CFR part 614 are revised in their entirety as follows:

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).

§ 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:

(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.

(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 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 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, 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 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.

Signed in Washington, DC, on May 8, 2006.

Bruce I. Knight,

Chief, Natural Resources Conservation Service, and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 06–4572 Filed 5–15–06; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO–14–A75, et al.; DA–06–06]

Milk in the Northeast and Other Marketing Areas; Order Amending Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; re-interpretation.

SUMMARY: This final rule amends the current ten Federal milk marketing orders issued under the Agricultural Marketing Agreement Act of 1937 (AMAA) to reflect a re-interpretation of the Milk Regulatory Equity Act of 2005, that was signed into law on April 11, 2006. Each order is amended to change the ''April 11, 2006'' in § 1___.7 to ''May 1, 2006.''

7 CFR parts	Marketing area	AO Nos.
1001 ...	Northeast	AO–14–A75
1005 ...	Appalachian	AO–388–A19
1006 ...	Florida	AO–356–A40
1007 ...	Southeast	AO–366–A48
1030 ...	Upper Midwest	AO–361–A41
1032 ...	Central	AO–313–A50
1033 ...	Mideast	AO–166–A74
1124 ...	Pacific Northwest ..	AO–368–A36
1126 ...	Southwest	AO–231–A69
1131 ...	Arizona	AO–271–A41

DATES: *Effective Date:* May 1, 2006.

FOR FURTHER INFORMATION CONTACT: Gino M. Tosi, Associate Deputy Administrator for Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Stop 0231–Room 2971–S, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule re-interprets the provisions of the Milk Regulatory Equity Act of 2005 (Pub. L. 109–215, 120 Stat. 328), that amended the Agricultural Marketing Agreement Act of 1937 (AMAA).

Due to the ambiguity of the legislative language and the Congressional intent as reflected in the floor debate and elsewhere, the Department has determined that the Federal milk marketing orders should be amended to reflect the complete removal of Nevada from any marketing area.

Prior documents in this proceeding:

Final Rule: Issued April 25, 2006; Published May 1, 2006 (71 FR 25495).