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§ 613.4 Special production of plant materials.

NRCS can produce plant materials in the quantity required to do a specific conservation job if this production will serve the public welfare and only if the plant materials are not available commercially. This function will be performed only until the plant materials are available commercially. Specific production of plant materials by NRCS requires the approval of the Chief.

§ 613.5 Plant materials centers.

(a) The National Plant Materials Center. The National Plant Materials Center at Beltsville, Maryland, serves as the central facility for assembling, increasing, and determining the characteristics of plant materials from foreign and domestic sources. Plant materials with potential value for conservation and related uses are distributed to other plant materials centers.

(b) Other Plant Materials Centers. There are 23 other plant materials centers. Each serves several major land resource areas. Seventeen of these other centers are operated by NRCS, and six by cooperating agencies, as follows:

(1) Operated by NRCS:

Tucson, Arizona
Lockeford, California
Brooksville, Florida
Americus, Georgia
Molokai, Hawaii
Aberdeen, Idaho
Manhattan, Kansas
Quicksand, Kentucky
East Lansing, Michigan
Coffeerville, Mississippi
Elsberry, Missouri
Bridger, Montana
Cape May Courthouse, New Jersey
Big Flats, New York
Corvallis, Oregon
Knox City, Texas
Pullman, Washington

(2) Operated by cooperating agencies with financial and technical assistance from NRCS:

Los Lunas, New Mexico (New Mexico State University)
Bismarck, North Dakota (North Dakota Association of Soil Conservation Districts)
Meeker, Colorado (White River and Douglas Creek Soil Conservation Districts with partial funding from NRCS)

(3) Operated by cooperating agencies with technical assistance from NRCS:

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Palmer, Alaska (State of Alaska)
Kingsville, Texas (Caesar Kleberg Wildlife Research Institute, Texas Agricultural and Industrial University, and South Texas Association of Conservation Districts)
Nacogdoches, Texas (Stephen F. Austin University and the East Texas Association of Conservation Districts)

PART 614—APPEAL PROCEDURES

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Subpart A—General Provisions

§ 614.1 Purpose and scope.

This part sets forth the informal procedures under which a landowner or program participant may appeal adverse technical determinations or decisions made by officials of the Natural Resources Conservation Service (NRCS) or its successor agency.

§ 614.2 Definitions.

Adverse technical determination or decision includes, in addition to the definition of adverse decision in 7 CFR part

11, an NRCS technical determination or decision that affects the legal substantive status of the land, though it may not necessarily be adverse.

Chief means the Chief of NRCS. For the purposes of this part, the term “Chief” includes an official of NRCS national headquarters designated by the Chief to act for the Chief in making decisions under this part.

Conservation district means any district or unit of State or local government formed under State law or territorial 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 conservation district, soil and water conservation district, natural resource district, land conservation committee, or a similar name.

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)).

Decision means a conclusion reached by an NRCS official based on applicable regulations and program instructions which relates to eligibility for program benefits, including a technical determination used as a basis for the decision.

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.

Mediation means a process in which a neutral third party, the mediator, meets with the disputing parties (e.g., the landowner or program participant and the agency), facilitates discussions, and works with the parties to resolve their disputes, narrow areas of disagreement, and improve communications and relationships. A mediator has no authority to render a decision or determination.

Preliminary technical determination means the initial written technical determination provided to a client which will become final after 30 days unless the client takes action in accordance with § 614.101 to stay the preliminary

technical determination from becoming final.

State Conservationist means the NRCS official in charge of NRCS operations within a State, as set forth in part 600 of this chapter.

Technical determination means a conclusion concerning the status and condition of the natural resources and cultural practices based on science and best professional judgment of natural resource professionals concerning the soils, water, air, plants, and animals.

Refer to 7 CFR 11.1 for other definitions applicable to appeals of adverse technical determinations and decisions covered by this part.

§ 614.3 Applicability.

(a) Appeals of adverse technical determinations and adverse decisions covered by this part are also governed by National Appeals Division (NAD) regulations at 7 CFR part 11.

(b) Decisions which are subject to this part include any decision under one or more NRCS programs; and technical determinations or decisions that affect the status of the land even though they may not affect the landowner’s or program participant’s eligibility for USDA program benefits.

(c) The failure of an official of NRCS to issue a technical determination or decision is subject to this part.

(d) Complaints involving discrimination in program delivery will be handled under the existing USDA civil rights rules and regulations.

(e) Appeals on contractual issues that are subject to the jurisdiction of the Agriculture Board of Contract Appeals are not appealable under the procedures within this part.

§ 614.4 Reservation of authority.

Nothing contained in the regulations of this part shall preclude the Secretary of Agriculture or the Chief from determining at any time any question arising under the programs to which the regulations of this part apply, or from reversing or modifying in writing, with sufficient reason given therefore, any technical determination or decision made by an NRCS official.

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§ 614.5 Decisions not subject to appeal.

The following are examples of decisions which are not appealable:

- (a) General program requirements that apply to all participants;
- (b) Science-based formulas and criteria;
- (c) Procedural decisions relating to administration of the programs; and
- (d) Denials of assistance due to lack of funds or authority.

Subpart B—Appeals of Technical Determinations Related to the Conservation Title (Title XII) of the Food Security Act of 1985, as Amended

§ 614.100 Applicability.

The provisions of this subpart set forth the procedures under which a landowner or program participant may seek mediation of a preliminary technical determination or appeal from technical determinations made by NRCS officials on or after January 16, 1996 regarding technical determinations within the following programs:

- (1) Highly Erodible Land Conservation;
- (2) Wetland Conservation, including wetland technical determinations made by NRCS officials not related to a request for USDA program benefits;
- (3) Conservation Reserve Program;
- (4) Wetlands Reserve Program;
- (5) Agricultural Water Quality Incentives Program; and
- (6) Environmental Easement Program.

§ 614.101 Notice of preliminary technical determinations.

(a) All preliminary technical determinations related to programs provided for in § 614.100 shall be in writing and shall inform the landowner or program participant of the following:

(1) The preliminary technical determination will become final after 30 days if the landowner or program participant does not arrange with the designated conservationist for either or both of the following options:

(i) A field visit to the site to gather additional information and to discuss the facts concerning the preliminary technical determination, together

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with, at the option of the conservation district, a district representative; and

(ii) Mediation.

(2) Once the technical determination is final, the landowner or program participant may appeal the technical determination to the FSA county or area committee pursuant to 7 CFR part 780. Landowners or program participants wishing to appeal must exhaust any available appeal procedures through the FSA county committee prior to appealing to NAD. Judicial review is available only as specified in 7 CFR part 11.

(b) The document containing the preliminary technical determination shall be mailed or hand delivered to the landowner or program participant.

§ 614.102 Mediation of preliminary technical determinations.

(a)(1) Any dispute with respect to a preliminary technical determination related to the programs provided in § 614.100 shall, at the request of the landowner or program participant, be mediated:

(i) Through certified individuals in those States where a State mediation program certified by the United States Department of Agriculture (USDA) has been established. Conservation district officials in certified State Mediation Program States may become certified by the State and utilized for mediation, if they choose to participate.

(ii) In States with no certified mediation program in effect, through mediation by a qualified representative of a local conservation district, if a local conservation district chooses to participate. Upon mutual agreement of the parties, other individuals may serve as mediators.

(2) Upon receiving a request for mediation, NRCS shall notify other USDA and Federal agencies, as appropriate.

(b) The parties shall have not more than 30 days to reach an agreement following a mediation session. The mediator shall notify the designated conservationist in writing at the end of this period whether the parties reached an agreement. Any agreement reached during, or as a result of, the mediation process shall conform to the statutory, regulatory, and manual provisions governing the program.

§ 614.103 Final determinations.

(a) Preliminary technical determinations shall become final:

(1) 30 days after receipt by the landowner or program participant of the notice of a preliminary technical determination issued pursuant to § 614.101, unless a field visit or mediation is requested;

(2) After the earlier of 30 days after the field visit provided for under § 614.101(a) or receipt by the landowner or program participant of a final determination from the designated conservationist; or

(3) 30 days after a mediation session if a mutual agreement has not been reached by the parties.

(b) The final technical determination shall set forth the decision, the basis for the decision, including all factors, technical criteria, and facts relied upon in making the decision, and shall inform the landowner or program participant of the procedure for requesting and pursuing further review.

§ 614.104 Appeals of technical determinations.

(a) Technical determinations related to the programs in § 614.100 may only be appealed, pursuant to the provisions of 7 CFR part 780, to the FSA county committee with jurisdiction.

(b) In cases where a field visit has not already been completed in accordance with § 614.101(a), a field visit shall be completed by the designated conservationist before the FSA county committee considers the appeal.

(c) If 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 may:

(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; and

(3) Conduct a field visit to review and obtain additional information and to discuss the facts concerning the technical determination. The State Conservationist shall provide the applica-

ble FSA county committee with a written technical determination, including all factors, technical criteria, and facts relied upon in making the technical determination.

(d) Any landowner or program participant who is adversely affected by a decision of the FSA county committee may appeal to NAD in accordance with 7 CFR part 11.

Subpart C—Appeals of Decisions Related to Conservation Programs (non-Title XII)

§ 614.200 Applicability.

The provisions of this subpart set forth the procedures under which a landowner or program participant may seek an informal hearing on adverse decisions made by NRCS officials (exclusive of those decisions that are appealable to the USDA Board of Contract Appeals) after January 16, 1996 in the following program areas:

- (1) Great Plains Conservation Program;
- (2) Rural Abandoned Mine Program;
- (3) Emergency Watershed Projects;
- (4) Rural Clean Water Program;
- (5) Colorado River Basin Salinity Control Program;
- (6) Forestry Incentive Program;
- (7) Water Bank Program;
- (8) Flood Prevention and Watershed Protection Programs;
- (9) Any other program which subsequently incorporates these procedures through reference to this subpart within the program regulations.

§ 614.201 Notice of final decisions.

(a) All final decisions related to programs provided for in § 614.200 that are made by the designated conservationist shall be in writing and shall inform the landowner or program participant of their right to request any or all of the following:

- (1) An informal hearing before NRCS;
- (2) Mediation; or
- (3) A hearing before NAD in accordance with 7 CFR part 11.

(b) The document containing the decision shall be mailed or hand delivered to the landowner or program participant.

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§ 614.202 Time frames for filing requests for informal hearings.

(a) A request for an informal hearing before NRCS shall be filed within 30 days after written notice of the final decision, which is the subject of the request, is mailed or otherwise made available to the landowner or program participant. A request for an informal hearing shall be considered “filed” when personally delivered in writing to the appropriate reviewing authority or when the properly addressed request, postage paid, is postmarked.

(b) A request for appeal may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) of this section if, in the judgment of the reviewing authority with whom such request is filed, the circumstances warrant such action.

§ 614.203 Mediation of adverse final decisions.

(a) Any dispute with respect to an adverse final decision related to the programs provided in § 614.200 shall, at the request of the landowner or program, be mediated:

(1) Through certified individual in those States where a State Mediation Program has been established. Conservation district officials in certified State Mediation Program States may become certified by the State and utilized for mediation, if they choose to participate.

(2) In States where no certified mediation program is in effect, through mediation by a qualified representative of a local conservation district, if a local

conservation district chooses to participate. Upon mutual agreement of the parties, other individuals may serve as mediators.

(b)(1) The parties shall have not more than 30 days to reach an agreement following a mediation session. The mediator shall notify the designated conservationist in writing at the end of this period whether the parties reached an agreement.

(2) Any agreement reached during, or as a result of, the mediation process shall conform to the statutory, regulatory, and manual provisions governing the program.

(3) If the parties fail to reach an agreement within the specified period, the designated conservationist shall have up to 30 days after the conclusion of mediation to issue a final decision.

§ 614.204 Appeals of adverse final decisions.

(a) Any landowner or program participant, who is adversely affected by a decision made by a designated conservationist related to the programs in § 614.200, may appeal the decision to the State Conservationist in the applicable State for an informal hearing or to NAD in accordance with 7 CFR part 11.

(b) The State Conservationist may designate a NRCS official to gather information and conduct the informal hearing before making a decision.

(c) Any landowner or program participant who is adversely affected by a decision of the State Conservationist may appeal to NAD in accordance with 7 CFR part 11.