

(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.

§ 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 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