

§614.101

7 CFR Ch. VI (1-1-05 Edition)

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

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 applicable 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.

§ 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