

§614.8

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

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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