

(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

§ 614.14

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,

7 CFR Ch. VI (1-1-08 Edition)

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.