

Part 302 – Meditation Policy and Procedure

302.0 Purpose

This national instruction provides clarification to State offices regarding official authority to represent the Natural Resources Conservation Service (NRCS) at mediation sessions and to sign successful mediation agreements.

302.1 Background

A. Mediation is governed by Title II of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Reorganization Act), 7 U.S.C. Section 6995 (Public Law 103-354), 7 U.S.C. Section 6991et seq., 7 CFR Section 614.11, and 7 CFR Part 11. Section 282 of the Reorganization Act expanded mediation programs and issues covered by mediation programs at the determinations and adverse program determinations (see 7 CFR sections 614.7(a)(2) and 614.9(a)(2), respectively).

B. NRCS must participate in mediation sessions when a timely request is made to the agency by a participant who has received a preliminary technical determination or an adverse program decision. A mediator in a State-certified mediation program, or qualified mediator if a State does not have a certified mediation program, will conduct the mediation session. Pursuant to 7 CFR Section 614.2, a qualified mediator is a mediator who is accredited under State law in those States that have a mediation program certified by USDA pursuant to 7 CFR Part 785 or, in those States do not have a mediation program certified by USDA, an individual who has attended a minimum of 40 hours of core mediator knowledge and skills training and to remain in a qualified mediator status, completes a minimum of 20 hours of additional training or education during each 2-year period. Such training or education must be approved by USDA, an accredited college or university, or one of the following organizations: State bar, a State mediation association, a State approved mediation program, or a society of dispute resolution professionals. A qualified mediator may be found through the local State bar association, law school, and county and district court systems.

C. Any request for mediation pauses the running of the 30-day period a participant may appeal to the National Appeal Division (NAD). Once mediation is concluded, a participant has the balance of days remaining from this 30-day period to appeal to NAD pursuant to 7 CFR Section 11.5(c)(1).

302.2 Procedures

A. National Headquarters (NHQ) has received inquiries concerning who in the State office has the authority to represent the agency at mediation sessions and who has the authority to sign a successful mediation agreement. State Conservationists (STCs), or their designee, have the authority to represent the agency at mediation sessions and to sign mediation agreements under the following guidelines and parameters:

- (1) All mediation agreements **must conform** to applicable Federal statutes, regulations, policies, and procedures.
- (2) STCs **may delegate** their mediation authority.
- (3) A mediation agreement regarding issues involving more than \$100,000 must be reviewed by the respective Regional Conservationist (RC) and by the Associate Chief **before** the STC may sign.
- (4) Any potentially precedent-setting case must be reviewed by the respective RC and by the Associate Chief before the STC may sign a mediation agreement. (**Note:** A precedent-setting

Title 440 – National Instruction

case is one that may affect policy interpretation or implementation or a case that may potentially affect NRCS participants and other stakeholders on a nationwide basis.)

B. The Farm Production and Conservation - Business Center (FPAC-BC) Appeals and Litigation Division is available to assist States on mediation cases upon request by the STC to the director.