

Part 510 – Appeals and Mediations  
Subpart B – Preliminary and Final Technical Determinations

**KS510.10 General Information**

A. General Information

Conservation Reserve Program (CRP) appeal policy can be found in Farm Service Agency (FSA) Handbooks 2-CRP, Part 18, and 1-APP (Program Appeals, Mediation, and Litigation).

The Natural Resources Conservation Service (NRCS) will NOT make preliminary technical determinations for CRP:

- (1) All NRCS technical determinations for CRP will be final decisions.
- (2) The NRCS will NOT notify producers of CRP technical determinations and will NOT notify producers of mediation and appeal rights for CRP.
- (3) All adverse decisions for CRP will be made by the FSA. All notifications of decisions and mediations/appeal rights will be issued by the FSA.
- (4) The NRCS will make a field visit for CRP appeals after notification by FSA that an appeal has been received on an NRCS technical determination.
- (5) The NRCS will be present at appeal hearings and to assist the FSA with appeals when the FSA decisions are based on technical determinations made by the NRCS.
- (6) The NRCS field personnel will not perform field visits to verify the accuracy of the FSA automated CRP determinations on land eligibility and/or offer approval/disapproval. The NRCS field personnel will not participate in appeals of these FSA automated determinations. Any questions from the FSA regarding automated determinations will be forwarded to the assistant state conservationist for field operations (ASTC-FO).
- (7) Matters that are applicable to all producers are non appealable (7 Code of Federal Regulations [CFR] 614.5). Non appealable issues include published soil surveys, soil boundary lines, soil mapunit symbols, soil factors, and soil interpretative legends.

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**KS510.10 General Information**

B. Preliminary and Final Technical Determinations

(i) Preliminary technical determinations:

The preliminary technical determination will be contained in the case file documentation and notice letter (see Section KS510.11A).

Prior to producer notice of adverse preliminary technical determination, the supervisory district conservationist (SDC) is responsible for requesting program and technical assistance from the ASTC-FO. At the ASTCs-FO discretion, that assistance may involve area and/or state specialists. The goal of that assistance is to assure:

- The accuracy of the status review determination
- The case file documentation is accurate and complete
- The status review determination is based on conditions that existed at the time of the status review
- The findings and decisions from the ASTCs-FO assistance are documented in a report to the state conservationist (STC)

In the event of disagreement between the DC and ASTC-FO on the accuracy of the status review determination, the STC will make the determination.

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**KS510.11 Preliminary Technical Determinations, 7 CFR 614.7**

A. Preliminary Technical Determination Authority

Preliminary technical determination letter (see Subpart G, Section KS510.66, Kansas Exhibit 6) will include the technical content information.

C. Reconsideration with a Field Visit, 7 CFR 614.7(a)(1)

(4) If no evidence is found during the field visit that the preliminary technical determination is incorrect, inform the participant in writing of the review and finding along with appeal rights. (See Subpart G, Section KS510.64, Kansas Exhibit 4A)

E. Correcting NRCS Preliminary Technical Determination Errors

(iii) If evidence is obtained during the field visit that the preliminary technical determination is incorrect, and is no longer adverse to the participant, a corrected technical determination will be provided as a final technical determination. (See Subpart G, Section KS510.63, Kansas Exhibit 3.)

**KS510.33 Responsibilities and Roles**

(a) Delegation of Authority

The assistant state conservationist for field operations (ASTC-FO) or the assistant state conservationist for programs will have the authority to enter into mediation agreements.

**KS510.63 Kansas Exhibit 3, Sample Letter – Correcting a Technical Determination or Technical Decision**

<PUT ON OFFICIAL LETTERHEAD>

<Date>

**CERTIFIED-RETURN RECEIPT REQUESTED**

<Participant Name>

<Address>

<City>,<State> <Zip>

Dear <Participant Name>:

At your request, we reviewed the preliminary technical determination of <enter preliminary determination> completed on your farm number <XXX>, tract number <XXX>. On <date>, we made a field visit to your tract. Based on the findings of this field visit, our preliminary technical determination has been reconsidered and modified to the following:

<enter revised technical determination>

Since this reconsideration was completed at your request, and the preliminary technical determination has been revised as a result of this review, it is now a final technical determination.

This final technical determination becomes final 30 calendar days after your receipt of this letter. If you disagree with this determination and wish to appeal it, you may appeal to either the:

1. The Farm Service Agency (FSA) county committee (COC) at the address below.  
(for Title XII conservation programs)

<enter COC address>

2. The Natural Resources Conservation Service (NRCS) state conservationist at the address below.

Natural Resources Conservation Service  
Attn: State Conservationist  
760 South Broadway  
Salina, Kansas 67401-4604  
Telephone: 785-823-4565  
Fax: 785-823-4540

**KS510.63 Kansas Exhibit 3, Sample Letter (Continued)**

<Participant Name>

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Or:

3. Appeal to the National Appeals Division (NAD). A written request, including the basis for your appeal and a copy of this letter, must be sent to the following.

Patricia A. Leslie, Assistant Director  
National Appeals Division  
Western Regional Office  
755 Parfet, Suite 494  
Lakewood, Colorado 80215-5506  
Telephone: 800-541-0483  
Fax: 303-236-2857

The NAD hearing procedure requires that the burden of proof is on the appellant to prove the agency decision is wrong. Appellants are expected to provide evidence to support their position.

In the event that you pursue an appeal with the state conservationist, FSA, COC, or NAD, I will provide them a copy of your administrative record. The administrative record contains all the materials and information maintained by the NRCS relating to your appeal, as well as the NRCS program decision reached in your case.

Please contact me if you have any questions.

Sincerely,

<NAME>

District Conservationist

cc:

<Assistant State Conservationist for Field Operations>

<Supervisory District Conservationist (if applicable)>

440 –Conservation Programs Manual

Part 510 – Appeals and Mediations  
Subpart G – Exhibits

**KS510.64 Kansas Exhibit 4A, Sample Letter – No changes to Technical Determination or Technical Decision**

<PUT ON OFFICIAL LETTERHEAD>

<Date>

**CERTIFIED-RETURN RECEIPT REQUESTED**

<Participant Name>

<Address>

<City>,<State> <Zip>

Dear <Participant Name>:

At your request, we reviewed the preliminary technical determination completed on your farm. On <date>, we made a field visit to your tract and determined that the preliminary technical determination was made correctly.

Your request for reconsideration and the agency record have been forwarded to the state conservationist (STC) for a final technical determination. The STC will issue a final technical determination to you after reviewing the information.

If you do not wish further review by the STC, you may request a waiver of further appeal, in writing, to the STC at the address below:

Natural Resources Conservation Service  
Attn: State Conservationist  
760 South Broadway  
Salina, Kansas 67401-4604

Please contact me if you have any questions.

Sincerely,

<NAME>

District Conservationist

cc:

<Assistant State Conservationist for Field Operations>

<Supervisory District Conservationist (if applicable)>

**KS510.64 Kansas Exhibit 4B, Sample Letter – No Changes Made to a  
Non-Title XII Technical Determination After Requested Field Visit**

<PUT ON OFFICIAL LETTERHEAD>

<Date>

**CERTIFIED-RETURN RECEIPT REQUESTED**

<Participant Name>

<Address>

<City>,<State> <Zip>

Dear <Participant Name>:

At your request, we reviewed the final technical determination completed on your farm. On <date>, we made a field visit to your tract and determined that the final technical determination was made correctly. The following information supports our findings that:

**<enter corrected final technical determination, reasons for changes that were made to the determination, and any other considerations given in making the determination>**

If you still disagree with the final technical determination, you may request any of the following:

1. Request an appeal, including the basis for your appeal, to the Natural Resources Conservation Service state conservationist:

Natural Resources Conservation Service  
Attn: State Conservationist  
760 South Broadway  
Salina, Kansas 67401-4604  
Telephone: 785-823-4565  
Fax: 785-823-4540

2. Request mediation by directly contacting the Kansas Agricultural Mediation Service:

Char Henton  
Kansas Agricultural Mediation Service  
2A Edwards Hall, Kansas State University  
Manhattan, Kansas 66506-4806  
Telephone: 1-800-321-3276

**KS510.64 Kansas Exhibit 4B, Sample Letter (Continue)**

<Participant Name>

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3. Request an appeal, including the basis for your appeal, to the National Appeals Division (NAD):

Patricia A. Leslie, Assistant Director  
National Appeals Division  
Western Regional Office  
755 Parfet, Suite 494  
Lakewood, Colorado 80215-5506  
Telephone: 1-800-541-0483  
Fax: 303-236-2857

The NAD hearing procedure requires that the burden of proof is on the appellant to prove the agency decision is wrong. Appellants are expected to provide evidence to support their position.

You have 30 calendar days from the date of this letter to make any requests as outlined above.

Please contact me if you have any questions.

Sincerely,

<NAME>

District Conservationist

cc:

Char Henton, Kansas Agricultural Mediation Service, Kansas State University,  
Manhattan, Kansas

<Assistant State Conservationist for Field Operations>

<Supervisory District Conservationist (if applicable)>

<CD Chairperson>

**KS510.66 Kansas Exhibit 6, Sample Letter – Preliminary Technical  
Determination Made After January 16, 1996**

<PUT ON OFFICIAL LETTERHEAD>

<Date>

**CERTIFIED-RETURN RECEIPT REQUESTED**

<Participant Name>

<Address>

<City>,<State> <Zip>

Dear <Participant Name>:

This letter is to inform you that the Natural Resources Conservation Service (NRCS) has made a preliminary determination that:

<enter preliminary technical determination; reason for the determination (statutory, regulatory, and/or policy basis); and any other considerations given in making the determination>

<if the client is being notified of an official NRCS Wetland Determination, NRCS will include the following statement.>

“This determination/delineation may not be valid for identifying the extent of the U.S. Army Corps of Engineers (COE) Clean Water Act jurisdiction for this site. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the local office of the COE prior to starting the work.”

Project Manager  
Kanopolis Satellite Office  
107 Riverside Drive  
Marquette, Kansas 67474  
Telephone: (785) 546-2130  
Fax: (785) 546-2050

Project Manager  
Kansas City Regulatory Office  
601 East 12th Street  
Kansas City, Missouri 64106  
Telephone: (816) 389-3657  
Fax: (816) 426-2321

Project Manager  
Kansas State Regulatory Office  
2710 NE Shady Creek Access Road  
El Dorado, Kansas 67042  
Telephone: (316) 322-8247  
Fax: (316) 322-8259

**KS510.66 Kansas Exhibit 6, Sample Letter (Continued)**

<Participant Name>

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Under the appeals and mediation process, your preliminary technical determination will become final 30 calendar days after the date you receive this letter, unless you exercise **one** of the following options:

1. Request a field visit for reconsideration by this office. This request should be made to the NRCS office, in person or letterform, at the above address. The request should include the basis for which you believe the determination is incorrect or adverse and any other information you feel is relevant. A field visit will be conducted with you to review the basis for the preliminary technical determination, address your concerns about the determination, and allow you a chance to provide additional information to help the NRCS better understand the issues involved.

If the decision is still adverse after this field visit is made, I will forward the reconsideration decision and agency record to the state conservationist for an independent review and final technical determination. If you do not wish to have an independent review at that time, you can waive the right to further appeal by making that request to me in writing.

2. Request mediation. Mediation is a process in which a trained, impartial third party, helps look at the issues, identifies and considers options, and determines if a solution can be developed with all parties. Mediation is private, confidential, and informal. The mediator has no decision-making authority and cannot decide what is right or make the involved parties take any action. If mediation is successful, the mediator will help us reach an agreement and document that solution in writing. Participants in mediation may be required to pay fees established by the mediation service. If you have questions regarding mediation, contact the Kansas Agricultural Mediation Service at (800) 321-3276.

If you choose mediation, you must send a written request, along with a copy of this letter to the following address:

Natural Resources Conservation Service  
Attn: State Conservationist  
760 South Broadway  
Salina, Kansas 67401-4604

**KS510.66 Kansas Exhibit 6, Sample Letter (Continued)**

<Participant Name>

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3. In order to address the resource concern on the ground immediately, you may request that a preliminary technical determination become final immediately by sending your request for waiver of your appeal rights, along with a copy of this letter, to the state conservationist at the following address:

Natural Resources Conservation Service  
Attn: State Conservationist  
760 South Broadway  
Salina, Kansas 67401-4604

In summary, your preliminary technical determination becomes final:

1. after 30 calendar days, if you take no action, or
2. after you receive a final determination letter, if a field visit and/or mediation is requested.

If you do not agree with the final technical determination, you will have 30 calendar days after the date you receive your final technical determination to appeal to the Farm Service Agency County Committee (COC) or to the National Appeals Division (NAD).

Please contact me if you have any questions.

Sincerely,

<NAME>

District Conservationist

cc:

Char Henton, Kansas Agricultural Mediation Service, KSU, Manhattan, Kansas

<Assistant State Conservationist for Field Operations>

<Supervisory District Conservationist (if applicable)>

<CD Chairperson>

**KS510.67 Exhibit 7, Sample Letter – Field Visit Acknowledgement Letter**

**<PUT ON OFFICIAL LETTERHEAD>**

**<Date>**

**CERTIFIED-RETURN RECEIPT REQUESTED**

**<Participant Name>**

**<Address>**

**<City>,<State> <Zip>**

Dear **<Participant Name>**:

This letter is to acknowledge your request for a field visit and reconsideration of the **<specify the determination to be reviewed> <insert preliminary or final> <insert determination of decision>** regarding **<be specific as to the farm, tract, program, etc.>**.

**<Identify the reviewing authority>** will review your request on **<insert date and time>** at your farm, as agreed upon earlier. You, your authorized representative, or both are invited to be present during the field review and may submit any additional information in support of your request to participate in **<insert program name>**.

If you are unable to participate in the field review, you may submit any information to the Natural Resources Conservation Service (NRCS) at the above specific address prior to the time and date of the field visit. **<Reviewing authority>** will consider all information gathered or presented during the field preview and will arrive at the agency's final technical determination based on all applicable **<program>** procedures.

The final determination will be sent to you as soon as possible following the field review. If you have any questions regarding this matter, you may contact **<insert name of contact person>** at **<insert telephone number>**.

Sincerely,

**<NAME>**

District Conservationist

cc:

**<Assistant State Conservationist for Field Operations>**

**<Supervisory District Conservationist (if applicable)>**

**KS510.68 Kansas Exhibit 8, Sample Letter – Title XII program Decision**

<PUT ON OFFICIAL LETTERHEAD>

<Date>

**CERTIFIED-RETURN RECEIPT REQUESTED**

<Participant Name>

<Address>

<City>,<State> <Zip>

Dear <Participant Name>:

This letter is to inform you that the Natural Resources Conservation Service (NRCS) has made a program decision that:

**<enter program decision; reasons for the decision (statutory, regulatory, and/or policy basis); and state evidence and any other considerations given in making the decision>**

If you disagree with this program decision, you may request **one** of the following within 30 calendar days of the receipt of this letter:

1. Request an informal hearing with the NRCS state conservationist. A written request outlining the basis for your appeal, and a copy of this letter, must be sent to the following:

Natural Resources Conservation Service  
Attn: State Conservationist  
760 South Broadway  
Salina, Kansas 67401-4604

2. Request mediation. Mediation is a process in which a trained, impartial third party, helps look at the issues, identifies and considers options, and determines if a solution can be developed with all parties. Mediation is private, confidential, and informal. The mediator has no decision-making authority and cannot decide what is right or make the involved parties take any action. If mediation is successful, the mediator will help us reach an agreement and document that solution in writing. Participants in mediation may be required to pay fees established by the mediation service. If you have questions regarding mediation, contact the Kansas Agricultural Mediation Service at (800) 321-3276.

**KS510.68 Kansas Exhibit 8, Sample Letter (Continued)**

<Participant Name>

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If you choose mediation, you must send a written request, including a copy of this letter, to the following address:

Natural Resources Conservation Service  
Attn: State Conservationist  
760 South Broadway  
Salina, Kansas 67401-4604

3. Appeal to the Farm Service Agency (FSA) County Committee (COC) at the address below.

<enter COC address>

4. Request an appeal to the National Appeals Division (NAD). A written request, including the basis for your appeal, must be sent to the following:

Patricia A. Leslie, Assistant Director  
National Appeals Division  
Western Regional Office  
755 Parfet, Suite 494  
Lakewood, Colorado 80215-5506  
Telephone: 1-800-541-0483  
Fax: 303-236-2857

The NAD hearing procedure allows that the burden of proof is on the appellant to prove the agency decision is wrong. Appellants are expected to provide evidence to support their position.

In the event that you pursue an appeal with the state conservationist or NAD, I will provide them a copy of your administrative record. The administrative record contains all the materials and information maintained by the NRCS relating to your appeal, as well as the NRCS program decision reached in your case.

**KS510.68 Kansas Exhibit 8, Sample Letter (Continued)**

**<Participant Name>**

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Please contact me if you have any questions.

Sincerely,

**<NAME>**

District Conservationist

cc:

**<Assistant State Conservationist for Field Operations>**

**<Supervisory District Conservationist (if applicable)>**

**<FSA CED>**

**<FSA COC Chairperson>**