

Federal Crop Insurance Corporation, USDA

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§ 400.56 Administrative appeal exhaustion.

The insured may appeal the approved APH yield in accordance with the procedures contained in 7 CFR part 400, subpart J. Administrative remedies through the appeal process must be exhausted prior to any action for judicial review. The approved APH yield determined as a result of the appeal process will be the yield applicable to the crop year.

§ 400.57 [Reserved]

Subpart H—Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

AUTHORITY: 5 U.S.C. 1320, Pub. L. 96-511 (44 U.S.C., chapter 35).

SOURCE: 56 FR 49390, Sept. 30, 1991, unless otherwise noted.

§§ 400.65–400.66 [Reserved]

Subpart I [Reserved]

Subpart J—Appeal Procedure

AUTHORITY: 7 U.S.C. 1506(1), 1506(p)

SOURCE: 67 FR 13251, Mar. 22, 2002, unless otherwise noted.

§ 400.90 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Administrative review. A review within the Department of Agriculture of an adverse decision.

Adverse decision. A decision by an employee or Director of the Agency that is adverse to the participant. The term includes the denial of program benefits, written agreements, eligibility, etc. that results in the participant receiving less funds than the participant believes should have been paid or not receiving a benefit to which the participant believes he or she was entitled.

Agency. RMA or FCIC, including the RO, FAOB or any other division within the Agency with decision making authority.

Appellant. Any participant who requests an administrative review or me-

diation, or both, of an adverse decision of the Agency in accordance with this subpart. Unless otherwise specified in this subpart, the term “appellant” includes an authorized representative.

Authorized representative. Any person, whether or not an attorney, who has obtained a Privacy Act waiver and is authorized in writing by a participant to act for the participant in the administrative review, mediation, or appeal process.

Certified State. A State with a mediation program, approved by the Secretary, that meets the requirements of 7 CFR part 1946, subpart A, or a successor regulation.

FAOB. Financial and Accounting Operations Branch.

FCIC. The Federal Crop Insurance Corporation, a wholly owned Government corporation within USDA.

FSA. The Farm Service Agency, an agency within USDA, or its successor agency.

Good farming practices. For agricultural commodities insured under the terms contained in 7 CFR part 457 and all other crop insurance policies authorized under the Act, except as provided herein, means the good farming practices as defined at 7 CFR 457.8. For agricultural commodities insured under the terms contained in 7 CFR part 407, means the good farming practices as defined at 7 CFR 407.9.

Insured. An individual or entity that has applied for crop insurance or who holds a crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year.

Mediation. A process in which a trained, impartial, neutral third party (the mediator), meets with the disputing parties, facilitates discussions, and works with the parties to mutually resolve their disputes, narrow areas of disagreement, and improve communication.

NAD. The USDA National Appeals Division. See 7 CFR part 11.

Non-certified State. A State that is not approved by the Secretary of Agriculture to participate in the USDA Mediation Program under 7 CFR part 1946, subpart A, or its successor regulation.

Participant. An individual or entity that has applied for crop insurance or

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who holds a valid crop insurance policy that was in effect for the previous crop year and continues to be in effect for the current crop year. The term does not include individuals or entities whose claims arise under the programs excluded in the definition of participant published at 7 CFR 11.1.

Reinsured company. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance to participants.

Reviewing authority. A person assigned the responsibility by the Agency of making a decision on a request for administrative review by the participant in accordance with this subpart.

RMA. The Risk Management Agency, an agency within USDA, or its successor agency.

RO. The Regional Office established by the agency for the purpose of providing program and underwriting services for private insurance companies reinsured by FCIC under the Act and for FCIC insurance contracts delivered through FSA offices.

Secretary. The Secretary of Agriculture.

USDA. United States Department of Agriculture.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]

§ 400.91 Applicability.

(a) This subpart applies to:

(1) Adverse decisions made by personnel of the Agency with respect to:

(i) Contracts of insurance insured by FCIC; and

(ii) Contracts of insurance of private insurance companies and reinsured by FCIC under the provisions of the Act.

(2) Determinations of good farming practices made by personnel of the Agency or the reinsured company (see § 400.98).

(b) This subpart is not applicable to any decision:

(1) Made by the Agency with respect to any matter arising under the terms of the Standard Reinsurance Agreement with the reinsured company; or

(2) Made by any private insurance company with respect to any contract of insurance issued to any producer by the private insurance company and re-

insured by FCIC under the provisions of the Act, except for determinations of good farming practices specified in § 400.91(a)(2).

(c) With respect to matters identified in § 400.91(a)(1), participants may request an administrative review, mediation, or both, or appeal of adverse decisions by the Agency made with respect to:

(1) Denial of participation in the crop insurance program;

(2) Compliance with terms and conditions of insurance;

(3) Issuance of payments or other program benefits to a participant in the crop insurance program; and

(4) Issuance of payments or other benefits to an individual or entity who is not a participant in the crop insurance program.

(d) Only a participant may seek an administrative review and mediation under this subpart, as applicable.

(e) Notwithstanding any other provision, this subpart does not apply to any decision made by the Agency that is generally applicable to all similarly situated program participants. Such decisions are also not appealable to NAD. If the Agency determines that a decision is not appealable because it is a matter of general applicability, the participant must obtain a review by the Director of NAD in accordance with 7 CFR 11.6(a) of the Agency's determination that the decision is not appealable before the participant may file suit against the Agency.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]

§ 400.92 Appeals.

(a) Except for determinations of good farming practices, nothing in this subpart prohibits a participant from filing an appeal of an adverse decision directly with NAD in accordance with part 11 of this title without first requesting administrative review or mediation under this subpart.

(b) If the participant has timely requested administrative review or mediation, the participant may not participate in a NAD hearing until such administrative review or mediation is concluded. The time for appeal to NAD is suspended from the date of receipt of

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a request for administrative review or mediation until the conclusion of the administrative review or mediation. The participant will have only the remaining time to appeal to NAD after the conclusion of the administrative review or mediation.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.93 Administrative review.

(a) With respect to adverse decisions, an appellant may seek one administrative review or seek mediation under § 400.94.

(b) If the appellant seeks an administrative review, the appellant must file a written request for administrative review with the reviewing authority in accordance with § 400.95. The written request must state the basis upon which the appellant relies to show that:

- (1) The decision was not proper and not made in accordance with applicable program regulations and procedures; or
- (2) All material facts were not properly considered in such decision.

(c) The reviewing authority will issue a written decision that will not be subject to further administrative review by the Agency.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003; 74 FR 8704, Feb. 26, 2009]

§ 400.94 Mediation.

For adverse decisions only:

(a) Appellants have the right to seek mediation or other forms of alternative dispute resolution in addition to an administrative review under § 400.93.

(b) All requests for mediation under this subpart must be made after issuance of the adverse decision by the Agency and before the appellant has a NAD hearing on the adverse decision.

(c) An appellant who chooses mediation must request mediation not later than 30 calendar days from receipt of the written notice of the adverse decision. A request for mediation will be considered to have been "filed" when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(d) An appellant will have any balance of the days remaining in the 30-

day period to appeal to NAD if mediation is concluded without resolution. If a new adverse decision that raises new matters or relies on different grounds is issued as a result of mediation, the participant will have a new 30-day period for appeals to NAD.

(e) An appellant is responsible for contacting the Certified State Mediation Program in States where such mediation program exists. The State mediation program will make all arrangements for the mediation process. A list of Certified State Mediation Programs is available at <http://www.act.fcic.usda.gov>.

(f) An appellant is responsible for making all necessary contacts to arrange for mediation in non-certified States or in certified States that are not currently offering mediation on the subject in dispute. An appellant needing mediation in States without a certified mediation program may request mediation by contacting the RSO, which will provide the participant with a list of acceptable mediators.

(g) An appellant may only mediate an adverse decision once.

(h) If the dispute is not completely resolved in mediation, the adverse decision that was the subject of the mediation remains in effect and becomes the adverse decision that is appealable to NAD.

(i) If the adverse decision is modified as a result of the mediation process, the modified decision becomes the new adverse decision for appeal to NAD.

[67 FR 13251, Mar. 22, 2002, as amended at 74 FR 8704, Feb. 26, 2009]

§ 400.95 Time limitations for filing and responding to requests for administrative review.

(a) A request for administrative review must be filed within 30 days of receipt of written notice of the adverse decision. A request for an administrative review will be considered to have been "filed" when personally delivered in writing to the appropriate decision maker or when the properly addressed request, postage paid, is postmarked.

(b) Notwithstanding paragraph (a) of this section, an untimely request for administrative review may be accepted and acted upon if the participant can demonstrate a physical inability to

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timely file the request for administrative review.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.96 Judicial review.

Except as provided in § 400.98, with respect to adverse determinations:

(a) A participant must exhaust administrative remedies before seeking judicial review of an adverse decision. This requires the participant to appeal an Agency adverse decision to NAD in accordance with 7 CFR part 11 prior to seeking judicial review of the adverse decision.

(b) If the adverse decision involves a matter determined by the Agency to be not appealable, the appellant must request a determination of non-appealability from the Director of NAD, and appeal the adverse decision to NAD if the Director determines that it is appealable, prior to seeking judicial review.

(c) A participant with a contract of insurance reinsured by the Agency may bring suit against the Agency if the suit involves an adverse action in a United States district court after exhaustion of administrative remedies as provided in this section. Nothing in this section can be construed to create privity of contract between the Agency and a participant.

[67 FR 13251, Mar. 22, 2002, as amended at 68 FR 37720, June 25, 2003]

§ 400.97 Reservations of authority.

(a) Representatives of the Agency may correct all errors in entering data on program contracts and other program documents, and the results of computations or calculations made pursuant to the contract.

(b) Nothing contained in this subpart precludes the Secretary, the Manager of FCIC, or the Administrator of RMA, or a designee, from determining at any time any question arising under the programs within their respective authority or from reversing or modifying any adverse decision.

§ 400.98 Reconsideration process.

(a) This reconsideration process only applies to determinations of good farming practices under § 400.91(a)(2).

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(b) There is no appeal to NAD of determinations or reconsideration decisions regarding good farming practices.

(c) Only reconsideration is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(d) If the insured seeks reconsideration, the insured must file a written request for reconsideration to the following: USDA/RMA/Deputy Administrator for Insurance Services/Stop 0805, 1400 Independence Avenue SW., Washington, DC 20250–0801.

(1) A request for reconsideration must be filed within 30 days of receipt of written notice of the determination regarding good farming practices. A request for reconsideration will be considered to have been “filed” when personally delivered in writing to FCIC or when the properly addressed request, postage paid, is postmarked.

(2) Notwithstanding paragraph (d)(1) of this section, an untimely request for reconsideration may be accepted and acted upon if the insured can demonstrate a physical inability to timely file the request for reconsideration.

(3) The written request must state the basis upon which the insured relies to show that:

(i) The decision was not proper and not made in accordance with applicable program regulations and procedures; or

(ii) All material facts were not properly considered in such decision.

(e) With respect to determinations of good farming practices, the insured is not required to exhaust the administrative remedies in 7 CFR part 11 before bringing suit against FCIC in a United States district court. However, regardless of whether the Agency or the reinsured company makes the determination, the insured must seek reconsideration under § 400.98 before bringing suit against FCIC in a United States District Court. The insured cannot file suit against the reinsured company for determinations of good farming practices.

(f) Any reconsideration decision by the Agency regarding good farming practices shall not be reversed or modified as a result of judicial review unless

the reconsideration decision is found to be arbitrary or capricious.

[68 FR 37720, June 25, 2003]

Subpart K—Debt Management— Regulations for the 1986 and Succeeding Crop Years

AUTHORITY: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

SOURCE: 51 FR 17316, May 12, 1986, unless otherwise noted.

§ 400.115 Purpose.

This subpart sets forth procedures that will be followed, and the rights afforded to debtors, in connection with the reporting by the Federal Crop Insurance Corporation (FCIC) to credit reporting agencies of information with respect to current and delinquent debts owed to FCIC, and in connection with referral of delinquent debts to contract collection agencies.

§ 400.116 Definitions.

(a) *Credit reporting agency* means (1) a reporting agency as defined at 4 CFR 102.5(a), or (2) any entity which has entered into an agreement with USDA concerning the referral of credit information.

(b) *Collection agency* means a private debt collection contractor under Federal Supply Schedule contract with the General Services Administration (GSA) for professional debt collection services.

(c) *Comptroller* means the employee of FCIC filling that position or the person designated by the Comptroller to perform that function.

(d) *Debt and claim* are deemed synonymous and are used interchangeably herein. The debt or claim is an amount of money which has been determined by an appropriate agency official to be owed to FCIC by any individual, organization or entity, except another Federal agency; State, local or foreign government or agencies thereof; Indian tribal governments; or other public institutions.

The debt or claim may have arisen from overpayment, premium non-payment, interest, penalties, reclamations resulting from payments under good

faith reliance provisions, or other causes.

(e) *Delinquent debt* means (1) any debt owed to FCIC that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement, or notification of indebtedness, and (2) any overdue amount owed to FCIC by a debtor which is the subject of an installment payment agreement which the debtor has failed to satisfy under the terms of such agreement.

(f) *System of records* means a group of any records under the control of FCIC from which information is retrieved by the name of the individual by some identifying number, symbol, or other identification assigned to the individual.

(g) *Request for review* means that request submitted to FCIC by a debtor for a review of the facts resulting in the determination of indebtedness to FCIC. FCIC allows 45 days for such request and any request submitted within that period is considered a timely request.

§ 400.117 Determination of delinquency.

Prior to disclosing information about a debt to a credit reporting agency in accordance with this subpart, the FCIC claims official, designated as the Comptroller, FCIC, or the designee of the Comptroller who has jurisdiction over the claim, shall review the claim and determine that the claim is valid and overdue.

§ 400.118 Demand for payment.

The Comptroller who is responsible for carrying out the provisions of this subpart with respect to the debt shall send to the debtor appropriate written demands for payment in terms which inform the debtor of the consequences of failure to make payment, in accordance with guidelines established by the Manager, FCIC, the Federal Claims Collection Standards at 4 CFR 102.2, or the contract between the General Services Administration (GSA) and the collection agency.