

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 RSO, FOSD or any other division within the Agency with decision making authority.

Appellant. Any participant who appeals or requests mediation 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.

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

FOSD. The Fiscal Operations and Systems Division established by the Agency for the purpose of making determinations of indebtedness for policies insured by FCIC and for determining ineligibility for policies both insured and reinsured by FCIC.

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

Good farming practices. The farming practices used in the area where the crop is produced, including sustainable farming practices, that are determined by FCIC to be necessary for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance and to be compatible with the agronomic and weather conditions in the area or, for crops grown under an organic practice, the farming practices recommended by a private organization or government agency that certifies organic products and is accredited in accordance with the requirements of the Federal Organic Food Production Act of 1990.

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 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.

RSO. The Regional Service 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.

§ 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.

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(2) Determinations of good farming practices made by personnel of the Agency.

(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 reinsured by FCIC under the provisions of the Act.

(c) With respect to matters identified in §400.91(a)(1), participants may request an administrative review, mediation, 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 or mediation under this subpart, as applicable.

§ 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 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.

(c) There is no appeal to NAD of determinations regarding good farming practices.

§ 400.93 Administrative review.

(a) With respect to adverse decisions, an appellant may seek one administrative review or seek mediation under §400.94, but not both. Only an administrative review is available for determinations of good farming practices. Mediation is not available for determinations of good farming practices.

(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.

§ 400.94 Mediation.

For adverse decisions only:

(a) Appellants have the right to seek mediation or other forms of alternative dispute resolution instead of 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