

Federal Crop Insurance Corporation, USDA

§ 400.94

(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

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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.

§ 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 or determination regarding good farming practices. 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 timely file the request for administrative review.

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§ 400.96 Judicial review.

(a) With respect to adverse determinations:

(1) 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.

(2) 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.

(3) 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 paragraphs (a) and (b) of this section. Nothing in this section can be construed to create privity of contract between the Agency and a participant.

(b) With respect to determinations regarding good farming practices, participants are not required to exhaust their administrative remedies before bringing suit against FCIC in a United States district court. Any determination by the Agency, or reviewing authority, regarding good farming practices shall not be reversed or modified as the result of judicial review unless the determination is found to be arbitrary or capricious.

§ 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.