

# Rules and Regulations

Federal Register

Vol. 74, No. 37

Thursday, February 26, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

RIN 0563-AC18

#### General Administrative Regulations; Appeal Procedure

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) is amending the General Administrative Regulation, Appeal Procedure. This final rule incorporates a requirement mandated by the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) that allows producers to use both mediation and the informal administrative appeal process in their appeals of decisions by FCIC and making minor non-substantive changes for clarity.

**DATES:** *Effective Date:* This rule is effective February 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Simpson, Director, Risk Management Agency Appeals, Litigation, and Legal Liaison Staff, 1400 Independence Avenue, SW., Stop 0806, Washington, DC 20250, telephone (202) 720-0642.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is non-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

##### Paperwork Reduction Act of 1995

This rule does not constitute a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

##### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

##### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of section 202 and 205 of the UMRA.

##### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

##### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. All producers will have access to the same appeals process regardless of the size of their farming operation. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have a significant impact on a substantial number of small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

##### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

##### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372,

which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

##### Executive Order 12988

This provision has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

##### Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

##### Background

Pursuant to 7 CFR part 400, subpart J, any producer (individual or entity) who has applied for, or whose rights to participate in or receive a payment or benefit under the Federal crop insurance program, may contest an adverse decision rendered by the Risk Management Agency on behalf of FCIC. Prior to the enactment of the 2008 Farm Bill, a producer who disagreed with an adverse decision by RMA had three avenues in which to contest RMA's adverse decision—administrative review, mediation or appeal directly to the National Appeals Division (NAD). The participant could seek an administrative review or mediation, but not both. If the participant disagreed with an administrative review or mediation determination, the participant could appeal that determination to NAD.

Section 12032 of the 2008 Farm Bill allows a participant to choose both administrative review and mediation. However, a participant is not required to use both administrative review and mediation. Section 12032 merely provides the participant with an

additional opportunity at the administrative level to resolve adverse decisions. If the participant disagrees with an administrative review and/or mediation determination, the participant can appeal that determination to NAD. The provisions have been modified to allow these changes to the appeal procedure.

The rule is also being revised to add the provisions regarding matters of general applicability and their appealability to NAD that were erroneously removed from this subpart when it was last revised. Congress, in 7 U.S.C. 6992(d) expressly states that decisions must be adverse to the individual to be appealable to NAD and that matters of general applicability are not subject to appeal.

Good cause is shown to make this rule effective upon publication at the Office of the Federal Register. Good cause exists when notice and comment and 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

FCIC is merely making ministerial changes to the policy that are mandated by the 2008 Farm Bill. There is no discretion given to FCIC in the terms contained in this rule or their implementation.

For the reasons stated above, good cause exists to make these policy changes effective upon publication at the Office of the Federal Register.

#### List of Subject in 7 CFR Part 400

General Administrative Regulations.

#### Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 400 subpart J as follows:

#### PART 400—GENERAL ADMINISTRATIVE REGULATIONS

■ 1. The authority citation for 7 CFR part 400 is revised to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(o).

■ 2. Amend § 400.90 as follows:

■ A. Amend the definition of “Agency” by removing “RSO” and adding in its place “RO” and by removing “FOSD” and adding in its place “FAOB”;

■ B. In the definition of “Appellant” revise the first sentence;

■ C. Remove the definition of “FOSD”;

■ D. Add a definition of the term “FAOB”;

■ E. Remove the definition of “RSO”; and

■ F. Add a definition of “RO”.

The additions and revisions read as follows:

#### § 400.90 Definitions.

\* \* \* \* \*

*Appellant.* Any participant who requests an administrative review or mediation, or both, of an adverse decision of the Agency in accordance with this subpart. \* \* \*

\* \* \* \* \*

*FAOB.* Financial and Accounting Operations Branch.

\* \* \* \* \*

*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.

\* \* \* \* \*

■ 3. Amend § 400.91 as follows:

■ A. Amend paragraph (c) introductory text by adding the phrase “or both,” after “mediation,”;

■ B. Amend paragraph (d) by removing the word “or” and adding in its place the word “and”;

■ C. Add new paragraph (e) to read as follows:

#### § 400.91 Applicability.

\* \* \* \* \*

(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.

#### § 400.93 [Amended]

■ 4. Amend paragraph (a) in § 400.93 by removing the phrase “, but not both”.

#### § 400.94 [Amended]

■ 5. Amend paragraph (a) of § 400.94 by removing the phrase “instead of” and adding in its place the phrase “in addition to”.

Signed in Washington, DC on February 19, 2009.

**William J. Murphy,**

*Acting Manager, Federal Crop Insurance Corporation.*

[FR Doc. E9–4114 Filed 2–25–09; 8:45 am]

**BILLING CODE 3410–08–P**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

RIN 0563–AC20

#### General Administrative Regulations; Submissions of Policies, Provisions of Policies, Rates of Premium and Premium Reduction Plans

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) amends General Administrative Regulations, Subpart V—Submission of Policies, Provisions of Policies, Rates of Premium and Premium Reduction Plans to remove provisions that allow approved insurance providers (AIP) to offer premium reduction plans. The authority for such premium reductions has been eliminated in the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill).

**DATES:** *Effective Date:* This rule is effective February 25, 2009.

**FOR FURTHER INFORMATION CONTACT:** Leiann Nelson, Economist, Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility—Mail Stop 0812, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be non-significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

##### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0064.

##### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.