

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

Farm Service Agency

7 CFR Part 780

Appeal Procedure Regulation

AGENCIES: Federal Crop Insurance Corporation and Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) and the Farm Service Agency (FSA) propose to amend general administrative regulations and appeal procedure regulations. The intended effect of the rule is to establish procedures for program participant appeals of adverse decisions made by the Risk Management Agency (RMA).

DATES: Written comments and opinions on this proposed rule will be accepted until close of business November 29, 1999, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to Nancy Kreitzer, Appeals, Litigation and Legal Liaison Staff, Federal Crop Insurance Corporation, United States Department of Agriculture, 1400 Independence Avenue, S.W., Stop 0807, Washington, D.C. 20250-0807.

FOR FURTHER INFORMATION CONTACT: Nancy Kreitzer, Director, Appeals, Litigation and Legal Liaison Staff, Federal Crop Insurance Corporation, at the address listed above, telephone (202) 690-1683.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

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

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 sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. This action does not increase the burden on any entity because this action merely clarifies and establishes provisions for producers to use in filing appeals of adverse decisions. The effect on small entities is the same as that for large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

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 proposed rule has been reviewed under the provisions of Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought against FCIC.

Environmental Evaluation

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

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

Background

The Federal Agriculture Improvement and Reform Act of 1996 (1996 Act) amended the Department of Agriculture Reorganization Act of 1994 (Reorganization Act) by creating an Office of Risk Management. The Secretary implemented this provision with Secretary's Memorandum 1010-2 issued on May 3, 1996, which established the Risk Management Agency (RMA). Among the functions of RMA is the administration of the crop insurance programs for FCIC, a function formerly assigned to the Farm Service Agency (FSA).

This proposed rule would amend FCIC and FSA informal appeal regulations to reflect the establishment of RMA and the reorganization of crop insurance functions. It does not reflect any response to comments received on the prior interim final rule for 7 CFR part 400, subpart J, or 7 CFR part 780 promulgated on December 29, 1995 (60 FR 67298).

List of Subjects in 7 CFR Parts 400 and 780

Administrative practice and procedure, Claims, Crop insurance, Fraud, Reporting and recordkeeping requirements.

Proposed Rule

For the reasons stated in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400, subpart J, and the Farm Service Agency proposes to amend 7 CFR part 780 as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

1. Revise 7 CFR part 400, subpart J, to read as follows:

Subpart J—Appeal Procedure

Sec.

- 400.90 Definitions.
- 400.91 Applicability.
- 400.92 Appeals.
- 400.93 Administrative review.
- 400.94 Mediation.
- 400.95 Time limitations for filing and responding to requests for administrative review.
- 400.96 Judicial review.
- 400.97 Reservations of authority.

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

§ 400.90 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501–1521).

Administrative review. A subsequent consideration of a prior decision by the same reviewing authority. A participant cannot request an administrative review of an adverse decision that resulted from a previous request for administrative review.

Adverse decision. See the definition in 7 CFR part 11.

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 appeal process.

Certified State. A State with a mediation program, approved by the Secretary of Agriculture, 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.

FSA. The Farm Service Agency, an agency of USDA, or a successor agency.

FOSD. The Fiscal Operations and Systems Division established by the Agency for the purpose of making determinations of indebtedness of persons who are insured under contracts of insurance issued under the Act.

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 resolve their disputes, narrow areas of disagreement, and improve communication.

NAD. The USDA National Appeals Division.

Non-certified State. A State that has either not applied for or has not been approved by the Secretary of Agriculture to participate in the USDA Mediation Program under 7 CFR part 1946, subpart A, or a successor regulation.

Participant. See the definition in 7 CFR part 11.

RSO. The Regional Service Offices 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.

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 requested by the participant in accordance with this subpart.

RMA. The Risk Management Agency, an agency of USDA, or a successor agency.

Secretary. The Secretary of Agriculture.

USDA. United States Department of Agriculture.

§ 400.91 Applicability.

(a) This subpart applies to adverse decisions made by personnel of the Agency with respect to:

(1) Contracts of insurance insured by FCIC; and

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

(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), participants may request an administrative review, mediation or appeal of adverse decisions by the Agency made with respect to:

(1) Denial of participation in a program;

(2) Compliance with program requirements;

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

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

(d) Only a participant may seek an administrative review or mediation under this subpart.

§ 400.92 Appeals.

Nothing in this subpart prohibits a participant from filing an appeal of an adverse decision directly with NAD in accordance with the provisions of part 11 of this title without requesting administrative review or mediation under this subpart. However, if the participant has timely requested administrative review or mediation, the participant may not appeal to NAD until the adverse decision on such administrative review or mediation. 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.

§ 400.93 Administrative review.

(a) An appellant may seek one administrative review of an adverse decision or seek mediation under § 400.94, but not both. If the appellant elects to seek administrative review, appellant must file a written request for administrative review with the reviewing authority that issued the adverse decision 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.

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

§ 400.94 Mediation.

(a) Appellants have the right to seek mediation, instead of a administrative review under § 400.93, involving any adverse decision.

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

(c) An appellant who chooses mediation must request mediation not later than 30 calendar days after the date written notice of the adverse decision is mailed or otherwise made known to the appellant.

(d) An appellant will have the balance of days remaining in the 30-day period to appeal to NAD if mediation is concluded without resolution unless a new adverse decision is issued as a result of mediation. Such new adverse decisions results in 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.

(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 specific Agency issues.

(g) An appellant needing mediation in States without a certified mediation program can request mediation by contacting the RSO, which will provide the participant with a list of acceptable mediators.

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

(i) If the dispute is not resolved in mediation,

(1) The adverse decision that was the subject of the mediation remains in effect and becomes the adverse decision that is appealable to NAD or

(2) The adverse decision which may be modified as a result of the mediation process becomes the new adverse decision for appeals to NAD.

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

(a) A request for administrative review of a adverse decision must be filed within 30 days after the date written notice of the decision that is the subject of the request is mailed or otherwise made available to the appellant. 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. An adverse decision will become non-reviewable by the Agency unless a request for administrative review is timely filed.

(b) A request for administrative review may be accepted and acted upon even though it is not filed within the time prescribed in § 400.95(a) if, in the judgment of the appropriate reviewing authority, the circumstances warrant such action.

§ 400.96 Judicial Review.

(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.

(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 prior to seeking judicial review.

(c) A participant with a contract of insurance reinsured by the Agency may bring suit against the Agency in a Federal 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.

§ 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.

PART 780—APPEAL REGULATIONS

2. The authority citation for 7 CFR part 780 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 714b and 714c; 16 U.S.C. 590h.

3. Amend § 780.1 to remove the definition of "Regional Service Office" and the terms "FCIC" and "the FCIC Regional Service Office" in the definitions of "agency" and "final decision."

4. In § 780.2:

a. Revise paragraphs (a)(1)(iii) and (iv) to read as set forth below:

b. Amend paragraph (a)(2) to remove the initials "FCIC" wherever they appear.

c. Remove paragraph (a)(3).

§ 780.2 Applicability.

(a) * * *

(1) * * *

(iii) Decisions made by personnel of FSA with respect to contracts of insurance insured by FCIC and the noninsured crop disaster assistance program;

(iv) Decisions made by personnel of FSA with respect to contracts of insurance provided by private insurance carriers and reinsured by FCIC under the provisions of the Federal Crop Insurance Act; and

* * * * *

5. Amend § 780.7(b), (c) and (e), to remove the phrase "or the Regional Service Office" wherever it may appear.

6. Amend § 780.11 to remove the words "FCIC" and "the Manager of FCIC" wherever they may appear.

Signed in Washington, D.C., September 11, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

Keith Kelly,

Administrator, Farm Service Agency.

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DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service****9 CFR Part 130**

[Docket No. 97-058-1]

RIN 0579-AA87

Import/Export User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to change our user fees for import- and export-related services that we provide for animals, animal products, birds, germ plasm, organisms, and vectors. We propose increases for fiscal years 2000 through 2004 for standard annual increases in expenses. We have determined that the fees must be adjusted annually to reflect the anticipated cost of providing these services each year. By publishing the annual user fee changes in advance, users can incorporate the fees into their budget planning. The user fees pay for the actual cost of providing these services. We also propose to make some editorial changes to make the regulations easier to read and eliminate duplication.