

§ 400.95

§ 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 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

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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).

(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.