



This document is scheduled to be published in the Federal Register on 03/18/2015 and available online at <http://federalregister.gov/a/2015-06224>, and on [FDsys.gov](http://FDsys.gov)

Billing Code 3410-08-P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

Docket No. FCIC-14-0001

RIN 0563-AC45

General Administrative Regulations; Subpart X- Interpretations of Statutory Provisions, Policy Provisions, and Procedures

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise the General and Administrative Regulation Subpart X- Interpretations of Statutory and Regulatory Provisions, to incorporate interpretations of procedures previously issued and administered in accordance with Manager's Bulletin MGR-05-018 and to provide a mechanism for interpretations of policy provisions that are not codified in the Code of Federal Regulations. The intended effect of this action is to provide requestors with information on how to request a final agency determination or an interpretation of FCIC procedures within one administrative regulation, bring consistency and clarity to the processes used, and to clarify existing provisions.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business (insert date 30 days after publication in the Federal Register) and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-14-0001, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205.

All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823-4694 or by email at [rmaweb.content@rma.usda.gov](mailto:rmaweb.content@rma.usda.gov).

PRIVACY ACT: Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

**FOR FURTHER INFORMATION CONTACT:** Product Management, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, PO Box 419205, Kansas City, MO 64141–6205, telephone (816) 926– 7730.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the 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 the Office of Management and Budget (OMB) under control number 0563-0055.

**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), Public Law 104-4, 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 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 a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

## **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

## **Regulatory Flexibility Act**

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation does not require any more action on the part of the small entities than is required on the part of large entities. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on 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 proposed rule 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 laws to the extent such State and local laws are inconsistent herewith. Interpretations of statutory and regulatory provisions are matters of general applicability and, therefore, no administrative appeals process is available and judicial review may only be brought to challenge the interpretation after seeking a determination of appealability by the Director of the National Appeals Division in accordance with 7 CFR part 11. Interpretations of procedure or policy provisions not codified in the Code of Federal Regulations are administratively appealable and the 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 economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background:

FCIC proposes to revise the General and Administrative Regulations Subpart X- Interpretations of Statutory and Regulatory Provisions to provide requestors with information on how to request a final agency determination and an interpretation of procedures or policy provisions not codified in the Code of Federal Regulations within one administrative regulation. There are provisions in policies not codified in the Code of Federal Regulations that are identical to those in the Common Crop Insurance Basic Provisions (Basic Provisions) or Crop Provisions

codified in the Code of Federal Regulations. In such instances, the requestor sought an interpretation of the applicable provision in the Basic Provisions and that interpretation was applicable to all policies that contained an identical provision. Nothing in this rule changes this process. However, there are numerous policies with provisions that are not codified in the Code of Federal Regulations in any policy. For these policy provisions, this rule provides a mechanism to obtain an interpretation of such provision.

The rule will also clarify existing provisions, eliminate redundancies, remove or update obsolete references, simplify the regulation to address final agency determinations and interpretations of procedures or policy provisions not codified in the Code of Federal Regulations in the same regulation, simplify program administration, and improve clarity of the requestor and FCIC obligations. The proposed rule also incorporates the information formerly contained in Manager's Bulletin MGR-05-018 into subpart X for efficiency and ease of use. Manager's Bulletin MGR-05-018 currently provides criteria for requesting an interpretation of procedures when a requestor seeks an interpretation of the meaning or applicability of procedure used in administering the Federal crop insurance program. Accordingly, Manager's Bulletin MGR-05-018 will no longer be used upon issuance of the final rule to this proposed rule.

The proposed rule amends the language to be consistent where possible and revises the regulation in plain language for ease of readability by the requestor.

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

Administrative practice and procedure, crop insurance, reporting and recordkeeping requirements.

#### Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400 as follows:

## PART 400 – GENERAL ADMINISTRATIVE REGULATIONS

1. The authority citation for 7 CFR part 400 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(o).

2. Revise § Subpart X as follows:

### Subpart X- Interpretations of Statutory Provisions, Policy Provisions, and Procedures

Sec

400.765      Definitions.

400.766      Basis and Applicability.

400.767      Requestor Obligations.

400.768      FCIC Obligations.

#### § 400.765 Definitions.

*Act.* The Federal Crop Insurance Act, 7 U.S.C. 1501-1524.

*FCIC.* The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

*Final Agency Determination.* An interpretation of provisions of the Act, regulations, or any policy provision that is codified in the Federal Register.

*Participant.* Any applicant for Federal crop insurance, an insured, or a private insurance company with a reinsurance agreement with FCIC or their agent, loss adjuster, employee or contractor.

*Policy.* The agreement to insure an agricultural commodity reinsured by FCIC under the provisions of the Federal Crop Insurance Act which consists of the accepted application, the applicable Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity

Exchange Price Provisions, if applicable, other amendments, endorsements, or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV.

*Procedure.* All FCIC issued handbooks, manuals, memoranda, and bulletins for any crop insurance policy reinsured by FCIC.

*RMA.* The Risk Management Agency, an agency of the United States Department of Agriculture.

*You.* The requestor of a final agency determination or interpretation of procedure or policy provision not codified in the Code of Federal Regulations.

§ 400.766 Basis and Applicability.

(a) The regulations contained in this subpart prescribe the rules and criteria for obtaining a final agency determination or an interpretation of a procedure or policy provision not codified in the Code of Federal Regulations.

(1) FCIC will provide a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations, as applicable, for policy provisions or procedures that were in effect during the four most recent calendar years from the calendar year in which your request was submitted. For example, for a request received in the 2014 calendar year, FCIC will consider requests for the 2014, 2013, 2012, and 2011.

(2) If FCIC determines a request is outside the scope of crop years authorized in paragraph (a)(1) of this section, you will be notified within 30 days of the date of receipt by FCIC.

(3) If the policy provisions or procedures have changed for the time period you seek an interpretation you must submit a separate request for each policy provision or procedure by year. For example, if you seek an interpretation of section 6(b) of the Small Grains Crop Provisions

for the 2012 through 2015 crop years but the policy provisions were revised starting with the 2014 crop year. You must submit two requests, one for the 2012 and 2013 crop years and another for the 2014 and 2015 crop years.

(b) With respect to a Final Agency Determination:

(1) All final agency determinations issued by FCIC are binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. Unless appealed in accordance with paragraph (2), failure of the National Appeals Division, arbitrator, or mediator to adhere to the final agency determination provided under this subpart will result in the nullification of any award or agreement in arbitration or mediation.

(2) All final agency determinations are considered matters of generally applicable and are not appealable to the National Appeals Division.

(i) Before obtaining judicial review of any final agency determination, you must obtain an administrative final determination from the Director of the National Appeals Division on the issue of whether the final agency determination is a matter of general applicability.

(ii) Any appeal of a final agency determination must be in accordance with 7 C.F.R. § 400.766(c)(4).

(c) With respect to an interpretation of procedure or policy provision not codified in the Code of Federal Regulations:

(1) If either you or any other does not agree with the written interpretation of procedure or policy provision not codified in the Code of Federal Regulations provided by FCIC, a request for administrative review may be filed in accordance with 7 CFR, part 400, subpart J. If you seek an administrative review from FCIC, such request must be submitted in accordance with § 400.767(a).

- (2) FCIC will not accept requests for administrative review from the National Appeals Division, a mediator or arbitrator.
- (3) The RMA Office of the Deputy Administrator for Product Management will make a determination on the request for administrative review not later than 30 days after receipt of the request.
- (4) Regardless of whether you have sought administrative review, you may appeal an interpretation of procedure made by FCIC to the National Appeals Division in accordance with 7 CFR part 11.

**§ 400.767 Requestor Obligations.**

- (a) All requests for a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations submitted under this subpart must:
  - (1) Be submitted to the Deputy Administrator using the format provided on RMA's website at <http://www.rma.usda.gov/regs/533/section533.html> through one of the following methods:
    - (i) In writing by certified mail or overnight delivery, to the Deputy Administrator, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0801, Room 421, P.O. Box 419205, Kansas City, MO 64141-6205;
    - (ii) By facsimile at (816) 926-1803; or
    - (iii) By electronic mail at subpartx@rma.usda.gov;
  - (2) State whether you are seeking a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations;
  - (3) Identify and quote the specific provision in the Act, regulations, procedure, or policy provision for which you are requesting a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations;

(4) Contain no more than one request for an interpretation (You must make separate requests for each provision if more than one provision is at issue. For example, if there is a dispute with the interpretation of section 3 of the Loss Adjustment Manual, then one request for an interpretation is required. If there is a dispute with the interpretation of section 3 of the Loss Adjustment Manual and section 2 of the Macadamia Nut Loss Adjustment Standards Handbook, then two separate requests for an interpretation are required);

(5) State the crop, crop year(s), and plan of insurance applicable to the request;

(6) State the name, address, and telephone number of a contact person for the request; and

(7) Contain your detailed interpretation of the specific provision of the Act, regulations, procedure, or policy provision for which the request for interpretation is being requested.

(b) You may request a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations, as applicable, only if you have legally filed or formally initiated a judicial review, mediation, or arbitration.

(1) You must identify the type of proceeding (e.g. mediation, arbitration, or litigation) in which the interpretation will be used, and the date the proceeding is scheduled to begin, or the earliest possible date the proceeding would likely begin if a specific date has not been established;

(2) The name, address, telephone number, and if applicable, fax number, or e-mail address of a contact person for both parties to the proceeding;

(3) Requests must be submitted not later than 90 days before the date the mediation, arbitration or litigation proceeding in which the interpretation will be used is scheduled to begin.

(i) If the rules of the court, mediation, or arbitration require the interpretation prior to the date the proceeding begins, add 90 days to the number of days required prior to the proceeding. For

example, if a court requires the interpretation 20 days prior to the date the proceeding begins, you must submit the request 110 days before the proceeding is scheduled to begin.

(ii) Failure to timely submit a request for a final agency determination may result in:

(A) FCIC issuing a determination that no interpretation could be made because the request was not timely submitted; and

(B) Nullification of any agreement or award in accordance with the applicable Basic Provisions.

(iii) If during the mediation, arbitration, or litigation proceeding, an issue arises that requires a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations, the mediator, arbitrator, judge, or magistrate must promptly request a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations in accordance with § 400.767(a).

(4) FCIC at its sole discretion may authorize personnel to provide an oral or written interpretation, as appropriate; and

(5) Any decision or settlement resulting from such mediation, arbitration, or litigation proceeding before FCIC provides its interpretation may not be binding on the parties.

(c) If multiple parties are involved and have opposing interpretations a joint request for a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations including both requestor interpretations in one request is encouraged. If multiple insured persons are parties to the proceedings, and the request for a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations applies to all parties, one request may be submitted for all insured

persons instead of separate requests for each person. In this case, the information required in this section must be provided for each person.

**§ 400.768 FCIC Obligations.**

(a) FCIC reserves the right to not provide a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations for any request regarding, or that contains specific factual information to situations or cases, such as acts or failures to act of any participant under the terms of a policy, procedure, or any reinsurance agreement.

(1) Regardless of whether or not FCIC accepts a request, FCIC will not consider specific factual information to situations or cases in any final agency determination.

(2) FCIC will not consider any examples provided in your interpretation because those are fact specific and could be construed as a finding of fact by FCIC. If an example is required to illustrate an interpretation, FCIC will provide the example in the interpretation.

(b) If, in the sole judgment of FCIC, the request is unclear, ambiguous, or incomplete, FCIC will not provide a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations but notify you within 30 days of the date of receipt by FCIC that the request is unclear, ambiguous, or incomplete.

(c) If FCIC notifies you that a request is unclear, ambiguous or incomplete under § 400.768(b), the 90 day time period for FCIC to provide a response is stopped on the date FCIC notifies you. On the date FCIC receives a clear, complete, and unambiguous request, FCIC has the balance of the days remaining in the 90 day period to provide a response to you. For example, FCIC receives a request for a final agency determination on January 10. On February 10, FCIC notifies you the request is unclear. On March 10, FCIC receives a clarified request that

meets all requirements for FCIC to provide a final agency determination. FCIC has sixty days from March 10, the balance of the 90 day period, to provide a response.

(d) FCIC reserves the right to modify the request for a final agency determination into an interpretation of procedure or policy provision not codified in the Code of Federal Regulations as needed if the request pertains to procedures or uncodified policy provisions and contains the information required in § 400.767.

(e) FCIC will provide you a written final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations within 90 days of the date of receipt for a request that meets all requirements in § 400.767.

(f) If FCIC does not provide a response within 90 days of receipt of a request, you may assume your interpretation is correct for the applicable crop year. However, your interpretation shall not be considered generally applicable and shall not be binding on any other program participants. Additionally, in the case of a joint request for a final agency determination or an interpretation of procedure or policy provision not codified in the Code of Federal Regulations, if FCIC does not provide a response within 90 days, neither party may assume their interpretations are correct.

(g) FCIC will publish all final agency determinations as specially numbered documents on the RMA website because they are generally applicable to all program participants.

(h) FCIC will not publish any an interpretation of procedure or policy provision not codified in the Code of Federal Regulations because they are only applicable to the parties in the dispute. You are responsible for providing copies of the interpretation of procedure or policy provision not codified in the Code of Federal Regulations to all other parties involved in the proceeding.

(i) When issuing an interpretation, FCIC will not evaluate the insured, approved insurance provider, agent or loss adjuster as it relates to the performance of following FCIC policy provisions or procedures. Interpretations will not include any analysis of whether the insured, approved insurance provider, agent, or loss adjuster was in compliance with the policy provision or procedure in question.

Signed in Washington, D.C., on March 5, 2015.

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Brandon Willis  
Manager  
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[FR Doc. 2015-06224 Filed: 3/17/2015 08:45 am; Publication Date: 3/18/2015]