



United States
Department of
Agriculture

Farm and Foreign
Agricultural
Services

Risk
Management
Agency

1400 Independence
Avenue, SW
Stop 0801
Washington, DC
20250-0801

INFORMATIONAL MEMORANDUM NO.: IS-11-001

TO: All RMA Regional Offices
All RMA Risk Compliance Offices
All Approved Insurance Providers

FROM: Michael A. Alston /s/ *Michael A. Alston* 2/9/2011
Deputy Administrator
for Insurance Services

SUBJECT: Updated Procedures for Large Claim Reviews (LCR) and Additional
Guidance for Good Farming Practice (GFP) Decisions and
Determinations

The Risk Management Agency (RMA) recently published the Large Claim Handbook (FCIC-14040). The following procedural changes are effective immediately until the handbook and GFP procedures can be updated:

Notice of Appeal Requirements in LCR Determination Letters:

The following will replace “Your Right to Administrative Review, Mediation, or Appeal: (Required Section), Exhibit 7, Section A., in the Large Claim Handbook (FCIC-14040) (07-2010) until the handbook can be updated.

Your Right to Administrative Review, Mediation, or Appeal: (Required Section)

Section 20(j) of the Basic Provisions states:

“If FCIC elects to participate in the adjustment of your claim, or modifies, revises or corrects your claim, prior to payment, you may not bring arbitration, mediation or litigation action against us. You must request administrative review or appeal in accordance with section 20(e).”

In accordance with the preamble of your policy, the term “us” refers to the company providing insurance. Therefore, if you disagree with FCIC’s findings in this letter, you cannot seek redress from your insurance company. Your only recourse is to request an administrative review or appeal in accordance with section 20(e).



The Risk Management Agency Administrators
And Oversees All Programs Authorized Under
The Federal Crop Insurance Corporation
USDA is an Equal Opportunity Provider and Employer

Section 20(e) of the Basic Provisions states:

“Except as provided in section 20(d), if you disagree with any other determination made by FCIC, you may obtain administrative review in accordance with 7 CFR part 400, subpart J (administrative review) or appeal in accordance with 7 CFR part 11 (appeal). If you elect to bring suit after completion of any appeal, such suit must be filed against FCIC not later than one year after the date of the decision rendered in such appeal. Under no circumstances can you recover any attorney fees or other expenses, or any punitive, compensatory, or other damages from FCIC.”

If you do not agree with FCIC’s determination in this letter you have a right to: 1) **Request an administrative review** of the FCIC decision within 30 calendar days from receipt of this letter in accordance with 7 C.F.R. part 400, subpart J, by providing the required information to the RMA Deputy Administrator for Insurance Services at:

(Name of DAIS)
Deputy Administrator for Insurance Services
USDA/RMA/Insurance Services/STOP 0805
ATTN: LARGE CLAIM ADMINISTRATIVE REVIEW
1400 Independence Avenue SW
Washington, DC 20250-0805

2) **Request mediation** of the FCIC decision within 30 calendar days from receipt of this letter by writing to the [Regional Office] Director at:

(Name of RO Director)
(Regional Office Name)
(Address)
ATTN: **MEDIATION REQUEST**

Or,

3) **Request an appeal** within 30 calendar days from receipt of this letter, unless the appellant participated in an administrative review or mediation, the appellant will then have only the remaining time to further appeal in accordance with 7 C.F.R. part 11, by writing directly to the National Appeals Division (NAD) at the following address:

Regional Assistant Director
National Appeals Division
(Appropriate) Regional Office
(Appropriate Address)
(Appropriate Address)

Nothing herein precludes you from electing both an administrative review and mediation. However administrative review and mediation cannot occur at the same time. If you request both mediation and administrative review, the administrative review will be held in abeyance until the conclusion of mediation. Further, if you elect to utilize the administrative review and/or mediation you can still appeal to NAD within the days remaining from the original 30 days from the receipt of the administrative review or completion of the mediation, whichever is the later.

If you have any questions about any of the findings or your rights to, administrative review, mediation, or appeal, you may contact (Regional Office Contact Person's Name) of this office at (XXX) XXX-XXXX.

Sincerely,

Name

Regional Office Director

Enclosures (include number and what they are) **if applicable.**

cc: (Name of AIP Point of Contact)

cc: (Director Name), (Name of Compliance Office)

Controversial Claim Procedure:

In the event the policyholder does not agree with the determinations made during the LCR, the RMA Regional Office (RMA RO) must follow the Controversial Claim procedures outlined in Part 4, Section 1, paragraph 120(A) of the current Loss Adjustment Manual (LAM) Standards Handbook (FCIC-25010).

This procedure must be followed in order to document the policyholder's claim and to establish the date of interest accrual. The Common Crop Insurance Policy Basic Provisions, Section 26, Interest Limitations., states:

“We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form.”

...

Incomplete Good Farming Practice Decisions:

The Risk Management Services Division (RMSD) has noticed that Approved Insurance Providers (AIP) sometimes include incorrect appeal language or omit the appeal language from GFP decision letters they issue. If the RMA RO is made aware of this issue either through receiving a copy of the AIP's decision letter, or by other means, RMSD should be notified. RMSD will then request that the AIP re-issue the GFP decision letter with the proper appeal language.

In addition, RMSD has reviewed several Requests for Reconsideration where the GFP decisions were not properly developed by the AIP. On a few occasions, there was no documentation of Agricultural Expert opinion or Published Material to support denial of a claim due to the failure to follow a GFP. In other cases, there was no analysis of the actions taken by the policyholder compared against what actions Agricultural Experts or Published Material require. The AIP must analyze and discuss the impact to the insured crop because of the failure to take recommended actions. Without these analyses, a properly supported GFP determination may not be made by the RMA RO.

The authority under the Federal Crop Insurance Act, the Basic Provisions, and the Manager's Bulletins are to ensure that AIP GFP decisions are not subject to Arbitration. Because a provision of the policy may require irrigation, the application of pest or weed controls, and the failure to do so may render the acreage or loss uninsurable, this fact does not relieve the AIP from developing a GFP decision with the supporting analysis discussed above.

If the RMA RO or the AIP has a question as to whether or not a GFP decision or determination should be made on an issue, please consult with RMSD.

Disposal Date:

When incorporated into the Large Claims Handbook (FCIC-14040).