POLICY ALERT

Date: May 29, 2008
Reference: # TEXCAP 2008-8

To: Texas Commodity Assistance Program (TEXCAP) Contractors

Subject: Late Claim – One Time Exception Policy

Effective Date: Immediately

Purpose

This Policy Alert REPLACES:
- The current process for handling claims that are postmarked or received by the Food and Nutrition Division (FND) later than 60 days after the last day of the claim month for compliance with U.S. Department of Agriculture (USDA) claim filing regulations; and
- TEXCAP Handbook, Sections:
  - 4423, Late Claims;
  - 4424, Good Cause; and
  - 4425, One-Time Exception.

Implementation

Immediately

Procedure

Claims postmarked or received by FND later than 60 days after the last day of the claim month (i.e. late claim) will only be paid if funds are available and will be processed in the following manner:

Corrective Action Plan (CAP)

The submission of a late claim is a program noncompliance; therefore, the contractor must submit an approvable CAP that includes the:
- Reason for submitting a late claim;
- Actions to be taken to avoid repetition of the situation linked to the late claim submission;
- Actions to be taken to avoid any future late claim submission from the same or other causes; and
- Signature of an Authorized Representative designated to act on the organization’s behalf per Form H4508, Certificate of Authority.

Once the contractor has submitted an approvable CAP, FND will determine if the contractor is eligible for the one-time exception payment provision.

Note: FND will accept as proof of submission a postmark affixed by the U.S. Postal Service or equivalent documentation from a private postal service showing when the item was mailed. We will not accept as proof of submission a postmark affixed by a postage meter.

This Policy Remains in Effect Until Further Notice

continued
One-Time Exception

A one-time exception may only be used once within a 36-month time period for each USDA program that the contractor administers. A one-time exception granted to a TEXCAP sponsor does not eliminate the sponsor from consideration for a one-time exception for another program claim.

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<tr>
<th>If the contractor has …</th>
<th>Then the contractor may …</th>
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<tbody>
<tr>
<td>Not used their one-time exception provision within the 36-month time period,</td>
<td>Choose or request to use their one-time exception payment or receive no payment for the late claim. If the contractor submits several claim months at the same time, then the contractor may choose the claim month for which to apply the one-time exception.</td>
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<tr>
<td>Already used their one-time exception provision within the 36-month time period,</td>
<td>Request a good cause exception.</td>
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Requesting a Good Cause Exception

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<tr>
<th>If the contractor …</th>
<th>Then …</th>
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<td>Requests a good cause exception,</td>
<td>FND will consider each request on a case-by-case basis. The contractor must demonstrate that the noncompliance occurred due to circumstances beyond the contractor’s control (i.e. Good Cause).</td>
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<tr>
<th>If FND …</th>
<th>Then FND will …</th>
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<tr>
<td>Approves the contractor’s request for a good cause exception,</td>
<td>Forward the request for a good cause exception to USDA for further approval.</td>
</tr>
<tr>
<td>Does not approve the contractor’s request for a good cause exception,</td>
<td>Deny payment of the late claim.</td>
</tr>
</tbody>
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| Does not request a good cause exception, | FND will deny payment of the late claim. |
Examples of good cause beyond a contractor’s control may include, but are not limited to:
- A catastrophic incident such as a tornado, flood, fire; or
- A life-threatening injury or illness to the person responsible for submitting the claim.

**Note:** Catastrophic incidences, life-threatening injuries or illnesses do not automatically entitle the contractor to be granted a good cause exception. The responsibility is upon the contractor to demonstrate how the catastrophic incident, life-threatening injury or illness caused a situation that made submitting the claim within 60 days unreasonable/impossible.

Examples of reasons that would **not** be considered good cause beyond the control of the contractor include, but are not limited to:
- Absence of personnel on the 60th day, for reasons other than a life-threatening injury or illness;
- A malfunction of power or equipment at the contractor’s facility; or
- Failure to get the claim in the mail in time to get it postmarked on the 60th day.

If USDA determines that a contractor’s request for a good cause exception does not demonstrate that the noncompliance occurred due to good cause, payment of the late claim will be denied. Contractors cannot appeal USDA’s denial of a claim.

If you have any questions please contact your Commodity Distribution Specialist.