

## **Final Agency Determination: FAD-305**

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**Subject:** A joint request dated June 23, 2021, resubmitted to the Risk Management Agency (RMA) on July 16, 2021, requesting a Final Agency Determination for the 2020 crop year regarding the interpretation of the preamble and section 22 of the Common Crop Insurance Policy (CCIP) Basic Provisions, published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, subpart X.

### **Background:**

The CCIP Basic Provisions states, in relevant part:

#### **22. Other Insurance.**

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(b) Other Insurance Against Fire – If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, and you have not excluded coverage for fire from this policy, we will be liable for loss due to fire caused by a naturally occurring event only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to such other insurance; or

(2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

(c) For the purpose of section 22(b), the amount of loss from fire will be the difference between the total value of the insured crop before the fire and the total value of the insured crop after the fire. This amount will be determined in accordance with the provisions in section 35.

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## Interpretation Submitted

First requestor's interpretation:

The first requestor states that section 22 neither precludes nor limits an Approved Insurance Provider's (AIP) obligation to indemnify a policyholder for loss to the insured crop by fire during the insurance period when: (i) the policyholder had another fire insurance policy; and (ii) the policyholder's amount of coverage under the CCIP Basic Provisions for loss from fire does not exceed the indemnity paid or payable under such other insurance. When this is the case, the AIP is obligated to indemnify the policyholder in full for the contracted amount under the CCIP Basic Provisions without regard to its other fire insurance policy.

The first requestor believes objective insurance and policy interpretation principals support this conclusion:

- It is the four corners interpretation of the policy.
  - The policyholder's expectation when paying insurance premium coverage is to receive the four corners interpretation of the insurance policy in case of fire.
  - Under the insurance doctrine of "reasonable expectations," the coverage provided by an insurance policy should be determined in accordance with what layperson would reasonably understand as the scope of coverage.
- An "or" separates the two indemnity options.
- Omitted language
  - If the CCIP Basic Provisions limited:
    - Expressly disallow a policyholder to get another fire coverage policy;
      - There is no such language.
    - The CCIP Basic Provisions would expressly limit recovery to only the amount that makes the policyholder whole; or
      - There is no such language.
    - The CCIP Basic Provisions would condition recovery based on any given number of "if and only if" clauses.
      - There is no such language.

The first requestor concludes, thus, when the policyholder's amount of coverage due under the CCIP Basic Provisions for loss from fire is determined to not exceed the indemnity paid or payable under such other insurance, the plain language and

interpretation of the CCIP Basic Provisions requires an AIP to indemnify a policyholder pursuant to the policyholder's CCIP Basic Provisions without regard to the policyholder's other fire coverage policy.

### **Second requestor's interpretation:**

The second requestor believes section 22(b) expressly limits an insurance company's liability for fire damage if the policyholder has both: (1) other insurance against damage to the insured crop by fire and (2) did not elect to exclude fire coverage from their coverage. In the event of damage to the insured crop by fire during the insurance period, any indemnity due under the policy will not exceed "[t]he amount of indemnity determined pursuant to this policy without regard to such other insurance." Moreover, if a fire loss is paid or payable under "other insurance" that is not authorized under the Act, the indemnity may be limited, and the amount will be the "smaller of" of the following:

- (1) The amount of indemnity determined pursuant to this policy without regard to such other insurance; or
- (2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

The second requestor continues, of the two amounts that must be compared, the first, "the amount of indemnity determined pursuant to this policy without regard to such other insurance" is simply the indemnity that would otherwise be due if the policyholder had no other insurance. The second figure in the comparison is an amount that reflects the total value of the loss from fire less the indemnity paid or payable under the other insurance.

The second requestor states, as it relates to section 22(b)(2), the valuation of "loss from fire" is not an arbitrary amount; it is defined with specificity by the CCIP Basic Provisions. In this regard, section 22(c) of the CCIP Basic Provisions states "the amount of loss from fire will be the difference between the total value of the insured crop before the fire and the total value of the insured crop after the fire. This amount will be determined in accordance with the provisions in section 35."

The amount from section 22(b)(2) is calculated by establishing the loss from fire determined in accordance with the provisions in section 35 and then subtracting "the indemnity paid or payable under such other insurance."

The second requestor continues, accordingly, the “smaller of” indemnity restriction imposed by section 22(b) of the CCIP Basic Provisions establishes that any indemnity due under the policy will be the smaller of the amounts calculated in sections 22(b)(1) and 22(b)(2). Furthermore, consideration for the “indemnity paid or payable under such other insurance” may directly reduce the insurance company’s liability for fire damage. The sum of the indemnity paid or payable under such other insurance and the indemnity cannot exceed the total amount of loss from fire determined in accordance with the provisions in section 35. If the indemnity paid under the other insurance exceeds the amount of loss from fire determined in accordance with the provisions in section 35, the policy will have no liability and no indemnity will be due.

The second requestor states under section 22(b) of the CCIP Basic Provisions, the liability under the policy is limited to the smaller of: (i) the amount of indemnity determined pursuant to this policy without regard to such other insurance; or (ii) the amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

The second requestor provides, in sum, while section 22(b) does not preclude fire coverage through other insurance, the CCIP Basic Provisions expressly limit the indemnity due under the policy when fire coverage is not excluded from coverage and the policyholder receives a fire loss indemnity from the other insurance.

### **Final Agency Determination**

FCIC agrees with the second requestor. If the insured has other fire insurance and fire coverage under the CCIP Basic Provisions, the AIP will be liable only for the smaller of the amount of indemnity computed for loss due to fire, or by which the loss from fire exceeds the indemnity paid or payable under the other insurance. The amount of loss from fire is the difference between the total value of the production of the insured crop on the unit involved before and after the fire.

In accordance with 7 C.F.R. § 400.766(b)(2), this Final Agency Determination is binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. Any appeal of this decision must be in accordance with 7 C.F.R. § 400.766(b)(5).

***Date of Issue:*** September 2, 2021