Final Agency Determination: FAD-245

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Subject: Request dated September 4, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2012 crop year regarding the interpretation of section 20(b) of the Common Crop Insurance Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, subpart X.

Background:

Referenced policy and procedure in request:

The preamble of the Basic Provisions states, in relevant part:

> This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act (Act) (7 U.S.C. 1501 et seq.). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. We will use the procedures (handbooks, manuals, memoranda and bulletins), as issued by FCIC and published on RMA's Web site at www.rma.usda.gov or a successor Web site, in the administration of this policy, including the adjustment of any loss or claim submitted hereunder.

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Section 20(b) of the Basic Provisions states, in relevant part:

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.

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(b) Regardless of whether mediation is elected:

(1) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

(2) If you fail to initiate arbitration in accordance with section 20(b)(1) and complete the process, you will not be able to resolve the dispute through judicial review;

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Interpretation Submitted

The requestor interprets Section 20(b)(1) of the Basic Provisions to establish an absolute deadline or limitations period within which an arbitration proceeding must be either filed with the American Arbitration Association or demanded pursuant to RMA Bulletin MGR-12-003.1. The requestor believes that the one year limitation for filing arbitration is unequivocal and must be adhered to strictly. The requestor further interprets Section 20(b)(1) to mean that the one year limitations period begins to run on the date that the Approved Insurance Provider (AIP) denies a claim, or otherwise makes a determination that the policyholder is challenging or seeking a review of in the arbitration. The requestor believes that the date the AIP notifies the policyholder of the amount of an indemnity payment or a determination that no indemnity payment is due, constitutes the date of the denial of a claim or determination. In other words, it is the date of denial or determination itself that is being challenged that triggers the running of the limitations.

The requestor further interprets this provision in conjunction with the non-waiver provisions in the preamble of the Basic Provisions to mean that once a denial or determination has been made, any subsequent decision to not re-open or reconsider a previous denial or determination does not start the limitations period to commence again. The requestor believes that a policyholder’s objections to, or request for a reconsideration of a denial or determination, would have no effect on the running of the limitations period unless the objection or reconsideration results in a new and different determination that modifies or changes the original denial or determination. The requestor further believes that the intentions regarding the one

year limitations is to apply a consistent bench mark for the period in which arbitrations can be filed. To allow an objection or reconsideration request by the policyholder to start the running of the limitations period again, would clearly be inconsistent with the intentions and purposes of such a time bar. It has been stated that “allowing insurance company representatives under federally reinsured programs to inadvertently extend limitations period by answering claimant’s inquiries or by considering new information would contravene a strong public policy to encourage an insurance company to reconsider its original denial when confronted with potential new facts. If insurance companies were saddled with the situation that whenever they reconsidered an earlier decision it would inaugurate a new limitations period, companies would be reluctant to offer policyholders a luxury of a second evaluation.” *Wagner v. FEMA, 847 F.2d 515 (9th Cir. 1988). Also, see Godbold v. Federal Crop Insurance Corporation*, 365 F. Supp. 836 (N.D. Miss. 1973), where the court found that the limitations is not extended by claimant’s meeting with the insurer to obtain reconsideration of the original denial. Taken to its extreme, a policyholder could object to or request reconsideration multiple times and thereby extend the limitations deadline indefinitely every time the AIP responds or refuses to reconsider or change the initial determination.

The requestor also interprets the non-waiver provision to preclude an AIP from waiving the limitations period by any language or information contained in correspondence to the policyholder refusing to reconsider or modify the original denial, including any language suggesting that a policyholder has any additional time in which to challenge a claim or determination. As there is no formal policy procedure or process in the Basic Provisions for requesting a reconsideration, the requester believes that the starting line for the running of the limitations period cannot arbitrarily be moved by actions or inactions taken by the policyholder or the AIP that do not change, correct, or modify in any way the original denial or determination being complained of. The requestor further interprets these provisions to mean that an AIPs refusal to re-open a denial or determination or reconsider same does not constitute a denial in and of itself and thereby extend the limitations period.

Final Agency Determination

FCIC agrees with the requestor’s interpretation. There is no ambiguity in the policy. Its plain meaning is that the insured has one year from the date of denial of the

claim or receives any other determination with which the insured disagrees to file for arbitration. This is consistent with FAD-151 published on RMA's website, which states, "The one year date starts from the date the policyholder receives a determination **to which the policyholder disagrees.**" Any further discussion, meeting, or correspondence that may occur regarding the determination to which the policyholder disagrees is not a determination for the purposes of section 20(b) of the Basic Provisions that starts the one-year time period for arbitration. FCIC also agrees that the AIP cannot waive or extend the limitations period. Since the Basic Provisions are codified in the Code of Federal Regulations, they have the force of law. The one year time period must be strictly construed.

In accordance with 7 C.F.R. § 400.765(c), 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. § 400.768(g).

Date of Issue: November 19, 2015