



## **Final Agency Determination: FAD-290**

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**Subject:** Request dated July 9, 2019, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2016 crop year regarding the interpretation of section 10(a) of the Common Crop Insurance Policy, 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 related to the request:

The Basic Provisions state, in relevant part:

#### 1. Definitions.

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Insured - The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

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Insured Crop - The crop in the county for which coverage is available under your policy as shown on the application accepted by us.

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Person - An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. "Person" does not include the United States Government or any agency

thereof.

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Substantial Beneficial Interest (SBI) - An interest held by any person of at least 10 percent in you (e.g., there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you. The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership. However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not for the purposes of reporting in section 2). The spouse of any individual applicant or individual insured will be presumed to have a substantial beneficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under the applicable State dissolution of marriage laws. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person.

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2. (b) With respect to your application for insurance:

- (1) You must include your social security number (SSN) if you are an individual (if you are an individual applicant operating as a business, you may provide an employer identification number (EIN) but you must also provide your SSN); or
- (2) You must include your EIN if you are a person other than an individual;

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10. Share Insured.

(a) Insurance will attach:

- (1) Only if the person completing the application has a share in the insured crop; and

(2) Only to that person's share, except that insurance may attach to another person's share of the insured crop if the other person has a share of the crop and:

(i) The application clearly states the insurance is requested for a person other than an individual (e.g., a partnership or a joint venture); or

(ii) The application clearly states you as landlord will insure your tenant's share, or you as tenant will insure your landlord's share. If you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share, you must provide evidence of the other party's approval (lease, power of attorney, etc.) and such evidence will be retained by us:

(A) You also must clearly set forth the percentage shares of each person on the acreage report; and

(B) For each landlord or tenant, you must report the landlord's or tenant's social security number, employer identification number, or other identification number we assigned for the purposes of this policy, as applicable.

(b) With respect to your share:

(1) We will consider to be included in your share under your policy, any acreage or interest reported by or for:

(i) Your spouse, unless such spouse can prove he/she has a separate farming operation, which includes, but is not limited to, separate land (transfers of acreage from one spouse to another is not considered separate land), separate capital, separate inputs, separate accounting, and separate maintenance of proceeds; or

(ii) Your child who resides in your household or any other member of your household, unless such child or other member of the household can demonstrate such person has a separate share in the crop (Children who do not reside in your household are not included in your share);

## **Interpretation Submitted**

First Requester's Interpretation:

The first requestor's states that RMA policy provisions provide that Federal crop insurance coverage may attach only to the insurable interest or share actually held by the named applicant using his/her/its own SSN or EIN, as appropriate. Coverage cannot, and does not, extend to any SBI holder in the named applicant or to any other person with a common ownership interest with the named applicant.

The Agreement to Insure section of the Basic Provisions states, "In return for the payment of premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy." The terms "you" and "your" are defined as "the named insured shown on the accepted application." The terms "we," "us," and "our" are defined as "the insurance company providing insurance." See Basic Provisions, Preamble.

The first requester maintains that it is against this backdrop that RMA establishes the share or interest that may be insured under a policy of Federally reinsured crop insurance. In particular, Section 10(a) of the Basic Provisions states in relevant part, "Insurance will attach: (1) Only if the person completing the application has a share in the insured crop; and (2) Only to that person's share...".

The first requester believes that its interpretation is also consistent with Section 2 of the Basic Provisions. Specifically, Section 2(b) of the Basic Provisions classifies an applicant for Federal crop insurance as either an "individual" or a "person other than an individual." Among other things, the distinction affects the disclosure of the tax identification number under which the applicant must apply for coverage. According to Section 2(b)(1), an "individual" must apply using his or her SSN. On the other hand, Section 2(b)(2) requires that a "person other than an individual" apply under an EIN. Importantly, an individual cannot apply for or be extended coverage on behalf of an entity assigned an EIN, nor may an entity assigned an EIN apply for or be extended coverage on behalf of an individual with an SSN. Moreover, one entity assigned a particular EIN may not apply for or be afforded coverage on behalf of a separate entity with a different EIN.

The first requestor believes their interpretation is supported by FAD-204. FAD-204 determined there is no exception for the usage of the parent corporation's EIN by its subsidiary business:

FCIC agrees with the first requestor that the identification number provided on an application must be the identification number established for the person

named on the policy. Therefore, if the named insured has established an employer identification number (EIN) for the entity, then the insured entity must use its own EIN on its application. Section 2(b)(I) of the Basic Provisions provides that "insurance will not be provided" under the policy if an identification number is provided that does not belong to the applicant.

FCIC disagrees with the second requester that there is exception for the usage of the parent corporation's EIN by its subsidiary when the subsidiary is disregarded. First, the rules of the Federal crop insurance program are separate and distinct from the rules of the Internal Revenue Service related to taxes. To participate in the Federal crop insurance program, the insured is required to comply with the requirements of section 2 of the Basic Provisions. Throughout, section 2 references "you" and "your" as it relates to the providing of EINs. The preamble to the Basic Provisions is clear that "you" and "your" refers to the named insured. Therefore, the EIN of the named insured and the identification numbers of the persons with a substantial beneficial interest in the named insured must be included for insurance to be provided. Further, allowing an insured entity that actually has the insurable interest in the crop to use the EIN of a parent corporation that may not actually have a share in the crop could circumvent ineligibility determinations. Therefore, a subsidiary corporation must provide its assigned EIN for crop insurance purposes.

The first requester's interpretation of the relevant RMA policy and procedural provisions is that Federal crop insurance coverage may attach only to the insurable interest or share actually held by the named applicant using his/her/its own SSN or EIN, as appropriate. Coverage cannot, and does not, extend to any SBI holder in the named applicant or to any other person with a common ownership interest with the named applicant. As such, a Federal crop insurance application of a corporate entity under its own EIN cannot act to extend coverage to an SBI holder of the named corporate applicant or to any other person or entity who may share a common ownership interest with the named corporate applicant.

#### Second Requestor's Interpretation:

The second requester's interpretation is that an insurable interest in the property may include an individual or company who has 100 percent of the risk in the crop and 100 percent ownership of the entity which is the named insured. The second requester believes that one can have an insurable interest in the crop even though

not specifically named in the policy, if that individual or entity owns 100 percent of the crop and has 100 percent of the risk in the crop.

### **Final Agency Determination**

FCIC agrees with the first requestor that Federal crop insurance coverage may attach only to the insurable interest or share actually held by the named applicant using his/her/its own SSN or EIN, as appropriate. Coverage does not extend to any SBI in the named applicant or to any other person with a common ownership interest with the named applicant. Although a person may have an interest in the crop, the Federal crop insurance policy only covers the interest in the crop held by the named insured, unless the exceptions in Section 10(a)(2) of the Basic Provisions is met. These exceptions allow insurance to attach to another person's share of the insured crop if the other person has a share of the crop and: the application clearly states the insurance is requested for a person other than an individual (e.g., a partnership or a joint venture); or the application clearly states the applicant as landlord will insure the tenant's share, or the applicant as tenant will insure the landlord's share. Further, FCIC agrees with the first requester that insurance will attach only if the person completing the application has a share in the crop in accordance with Section 10 of the Basic Provisions. A person's share insured under a policy is considered to include any acreage or interest reported by or for their spouse, unless the spouse can prove he/she has a separate farming operation, or their child who resides in the insured's household or any other member of their household.

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 16, 2019