Final Agency Determination: FAD-227

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Subject: Two requests dated November 25, 2014, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2011 and 2012 crop years regarding the interpretation of section 2(e) 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:

Section 1 of the Basic Provisions states, in relevant part:

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> *Claim for indemnity*. A claim made on our form that contains the information necessary to pay the indemnity, as specified in the applicable FCIC issued procedures, and complies with the requirements in section 14.

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> *Delinquent debt.* Has the same meaning as the term defined in 7 CFR part 400, subpart U.

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Section 2(e) of the Basic Provisions states, in relevant part:

> **2. Life of Policy, Cancellation, and Termination.**
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> *****
>
> (e) Any amount due to us for any policy authorized under the Act will be offset from any indemnity or prevented planting payment due you for this or any other crop insured with us under the authority of the Act.

(1) Even if your claim has not yet been paid, you must still pay the premium and administrative fee on or before the termination date for you to remain eligible for insurance.

(2) If we offset any amount due us from an indemnity or prevented planting payment owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date that you submit the claim for indemnity in accordance with section 14(e) (Your Duties).

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Subpart U – Ineligibility for Programs Under the Federal Crop Insurance Act states, in relevant part:

7 C.F.R. § 400.677 Definitions:

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Delinquent debt. Any debt owed to FCIC or the insurance provider, that arises under any program administered under the authority of the Act, that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement or notification of indebtedness, or any overdue debt owed to FCIC or the insurance provider which is the subject of a scheduled installment payment agreement which the debtor has failed to satisfy under the terms of such agreement. Such debt may include any accrued interest, penalty, and administrative charges for which demand for repayment has been made, or unpaid premium including any accrued interest, penalty and administrative charges (7 CFR 400.116). A delinquent debt does not include debts discharged in bankruptcy and other debts which are legally barred from collection.

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Interpretation Submitted

Two interpretations were submitted in this FAD request.

First requestor’s interpretation:

The first requestor states section 2(f) of the Basic Provisions states: "A delinquent debt for any policy will make you ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 2(f)(2)." The term "delinquent debt" includes "any overdue debt owed to ... the insurance provider which is the subject of a scheduled installment payment agreement which the debtor has failed to satisfy under the terms of such agreement." The requestor believes section 2(f)(l) of the Basic Provisions sets forth the effective date and consequences of ineligibility, while section 2(f)(2) prescribes the effective date and consequences of termination. If the policyholder has entered into a written payment agreement and fails to make any scheduled payment, ineligibility and termination will be effective on the termination date for the crop year prior to the crop year in which the scheduled payment is due in accordance with the Basic Provisions sections 2(f)(l)(i)(C) and 2(f)(2)(i)(D). The first requestor also states, additionally, if a policyholder is ineligible and his or her policy has been terminated, the policyholder "will not receive any indemnity, prevented planting payment or replanting payment" in accordance with section 2(f)(1)(ii) of the Basic Provisions. "Once the policy is terminated, it cannot be reinstated for the current crop year unless the termination was in error. Failure to timely pay because of illness, bad weather, or other such extenuating circumstances is not grounds for reinstatement in the current year." as provided for in the section 2(f)(2)(iii) of the Basic Provisions.

The second requestor provides that in FAD-156, posted on RMA’s website on April 12, 2012, FCIC interpreted section 2(f) of the Basic Provisions to provide that a policyholder who enters into a written payment agreement becomes ineligible if the policyholder fails to submit a scheduled payment by its due date. FCIC also concluded that a timely payment is one that is delivered to the Approved Insurance Provider (AIP) or postmarked by the due date and stated: "[I]f the payment is not postmarked or received by the due date, the AIP is required to submit electronic records to the [Ineligible Tracking System] certifying to RMA the policyholder's delinquent debt and cancellation of insurance policy. All payment agreements where a payment is postmarked and received after the scheduled payment date, albeit only one or two days late, will be rendered null and void and the policyholder must be reported to ITS for a period of ineligibility retroactive to the specified policy termination date."

The first requestor believes section 2(e) of the Basic Provisions appears to create an alternative means for satisfying a scheduled installment under a written payment agreement. That is, a delinquent debt, which includes a payment obligation existing under a written payment agreement, may be satisfied through offset of "an indemnity or prevented planting payment owed to" the policyholder. Section 2(e)(2) provides that "the date of payment for the purpose of determining whether you have a delinquent debt will be the date that you submit the claim for indemnity in accordance with section 14(e) (Your Duties)." Based on this language, the first requestor believes that a debt existing under a written payment agreement is not delinquent if: (1) a payable claim for indemnity is submitted by the payment due date; and (2) the payable indemnity meets or exceeds the amount of the scheduled payment.

The first requestor states although section 2(e) of the Basic Provisions seemingly provides that a scheduled installment payment can be satisfied through the submission of a payable claim for indemnity, the "date of payment" with respect to the offset indemnity must clearly occur on or before the payment due date in order for the policyholder to retain eligibility. Section 2(e) of the Basic Provisions defines this "date of payment" as "the date that you submit the claim for indemnity in accordance with section 14(e) (Your Duties)." The policy defines "claim for indemnity" as "[a] claim made on our form that contains the information necessary to pay the indemnity as specified in the applicable FCIC procedures, and complies with the requirements in section 14 of the Basic Provisions. Additionally, section 14(e)(l) of the Basic Provisions requires a policyholder to "submit a claim declaring the amount of your loss."

Based on the requirements in section 14(e) and the definition of "claim for indemnity" found in section 1 of the Basic Provisions, the first requestor believes that the claim submission date specified in section 2(e)(2) of the Basic Provisions is the latest date on which the policyholder submits all information needed to calculate the amount of any indemnity. Conversely, the submission of a notice of loss, damage, or prevented planting, which merely notifies the AIP of a potential claim but does not contain sufficient information to determine the amount of the claim, is not "the date that you submit the claim for indemnity" for purposes of section 2(e)(2). This interpretation is consistent with FAD-29, posted on RMA’s website on June 4, 2004. In FAD-29, FCIC determined that "a 'properly completed claim' is a document or series of documents that meet all requirements of section 14(c) [of the 01-BR

policy], contain all information needed to calculate the exact dollar amount of the indemnity, and include all additional information requested or required under section 14 of the Basic Provisions."

The first requestor states, in summary, section 2(e) of the Basic Provisions appears to allow a policyholder to satisfy an installment due under a written payment agreement through the submission of a payable claim if the indemnity amount is at least equal to the scheduled installment amount. However, the policyholder must submit to the AIP all information and documentation necessary to determine the amount of indemnity on or by the payment due date. The submission of a notice of damage or loss to a crop by the payment due date is not sufficient to retain eligibility or forestall policy termination.

Second requestor's interpretation:

The second requestor provides section 2(e) of the Basic Provisions states: "Any amount due to us for any policy authorized under the Act will be offset from any indemnity or prevented planting payment due you for this or any other crop insured with us under the authority of the Act." Section 2(f) of the Basic Provisions states: "A delinquent debt for any policy will make you ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 2(f)(2)." However, section 2(e)(2) of the Basic Provisions then goes on to provide: "If we offset any amount due us from an indemnity or prevented planting payment owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date that you submit the claim for indemnity in accordance with section 14(e) (Your Duties)."

When a policyholder submits to the AIP the notice of loss that was the date the policyholder submitted the claim for indemnity in accordance with section 14(e) of the Basic Provisions. After the policyholder's submitted the notice of loss, they had completed all that they could in submitting the claim and the only thing remaining for the policyholder to do was to "[c]ooperate with us in the investigation or settlement of the claim." in accordance with section 14(e)(4)(ii) of the Basic Provisions. That is to say the policyholder was required to cooperate with the AIP in performing its duties under the crop insurance policies involved.

The second requestor believes the wording used in another section of the Basic Provisions strongly supports the second requestor's position that the submission of a

claim is not the same thing as providing all information and documentation necessary to determine the amount of indemnity. Section 14(e)(2) of the Basic Provisions provides as follows: "Failure to timely submit a claim or provide the required information necessary to determine the amount of the claim will result in no indemnity, prevented planting payment or replant payment…" (Emphasis added). The second requestor believes the use of the disjunctive "or" in this section indicates that the submission of a claim is not the same thing as providing the required information necessary to determine the amount of the claim.

Furthermore, the second requestor asserts that the first requestor's reliance on the following FADs is misplaced in this determination because such FADs are distinguishable from the matters and issues involved in this case for the following reasons:

1. FAD-156 does not address section 2(e)(2) of the Basic Provisions or its effect on section 2(f) of the Basic Provisions.

2. In FAD-029, the issue being addressed is when the policyholder becomes entitled to have interest accrue on the claim. As set forth in FAD-029, such issue turns on the interpretation of section 26(b) of the Basic Provisions and the meaning of "properly completed claim." FAD-156 does not address section 2(e)(2) of the Basic Provisions or the meaning of "the date that you submit the claim for indemnity" contained therein.

The second requestor provides, in summary and the example, when the policyholder submitted a notice of loss to the AIP, that date became the date of payment for the purpose of determining whether the policyholder had any delinquent debt pursuant to section 2(e)(2) of the Basic Provisions. On that date, the policyholder had no delinquent debt under any policy and had no delinquent debt under their written payment agreement with the AIP. Therefore, the AIP's cancellation of policyholder's 2012 policy was in error and policyholders are entitled to their claims for those crop losses.

Final Agency Determination

FCIC agrees, in part, with the first requestor's interpretation. Submitting a notice of damage or loss for a crop by the due date for a written payment agreement is not sufficient to maintain eligibility or forestall policy termination. As stated in section

2(e)(2) of the Basic Provisions “If we offset any amount due us from an indemnity or prevented planting payment owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date that you submit the claim for indemnity in accordance with section 14(e) (Your Duties).” (Emphasis added). A notice of loss is not the same as a claim for indemnity. A notice of loss is made where there is evidence that damage has occurred. At that point, there is no knowledge of whether an indemnity is payable or not. The claim for indemnity occurs after the extent of damage is determined and the amount of indemnity owed established. This means the date the claim for indemnity is filed is considered the date of payment. Therefore, for the purposes of offset under section 2(e)(2) of the Basic Provisions, the date the claim for indemnity was submitted is the date used to determine whether or not a delinquent debt exists.

Section 2(f)(l) of the Basic Provisions sets forth the effective date and consequences of ineligibility, while section 2(f)(2) prescribes the effective date and consequences of termination. If the policyholder has entered into a written payment agreement and fails to make any scheduled payment, ineligibility and termination will be effective on the termination date for the crop year prior to the crop year in which the scheduled payment is due in accordance with the Basic Provisions sections 2(f)(l)(i)(C) and 2(f)(2)(i)(D). Even though a policyholder may have filed a notice of loss, if the claim for indemnity has not been filed, the policyholder is still obligated to pay the delinquent amount due by the date specified in the written payment agreement to maintain eligibility. Only after the delinquent debt is satisfied is the policyholder eligible for a federally reinsured policy.

Additionally, section 2(e)(3)(ii) of the Basic Provisions requires the parties of a written payment agreement make all payments in accordance with the terms of the written payment agreement in order to maintain eligibility. The written payment agreement is executed to maintain eligibility when the insured does not pay the total amount due by the termination date. To the extent that a claim for indemnity does not cover the whole amount of the debt, the policyholder must continue to make all payments timely under the terms of the agreement.

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: February 25, 2015