

## **Final Agency Determination: FAD-258**

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**Subject:** Request dated January 6, 2016, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 and succeeding crop years 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. part 400, subpart X.

### **Background:**

Referenced policy related to the request

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

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

(a) If you and we fail to agree on any determination made by us except those specified in section 20(d) or (e), the disagreement may be resolved through mediation in accordance with section 20(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 20(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

(1) All disputes involving determinations made by us, except those specified in section 20(d) or (e), are subject to mediation or arbitration. However, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any

policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.

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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 require that a policyholder initiate arbitration proceedings within one year of the date the company denied the claim or issued the adverse determination, regardless of whether the parties engage in mediation during that one-year time period. More specifically, a policyholder's decision to mediate a disputed claim or determination does not extend the one year limitations period established by section 20(b)(1) of the Basic Provisions. For example, if a company issued an adverse determination on January 1, 2014, the policyholder was required to commence arbitration no later than January 1, 2015, regardless of whether the parties mediate the dispute during that 12-month period. Moreover, if the policyholder fails to commence arbitration within the one-year period, the policyholder waives the right to arbitration and judicial review.

### **Final Agency Determination**

FCIC agrees with the requestor's interpretation. Section 20(b)(1) makes it clear that even if mediation is elected, the initiation of arbitration proceedings must occur within one year of the date the approved insurance provider denies the claim or renders the determination with which the policyholder disagrees. FCIC also agrees that failure to initiate arbitration within the period prescribed by section 20(b)(1)

precludes the policyholder from seeking judicial review.

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:** March 1, 2016