

Final Agency Determination: FAD-255

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Subject: Request dated November 26, 2014, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2011 crop year regarding the interpretation of section 20(a)(1)(i) of the Common Crop Insurance Policy 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 20(a)(1)(i) of the Basic Provisions states:

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.

(i) Any interpretation by FCIC will be binding in any mediation or arbitration.

Interpretation Submitted

The requestor interprets section 20(a)(1)(i) of the Basic Provisions to mean FCIC may issue an interpretation of a policy or procedure upon request for such an interpretation, by way of a FAD, an Interpretation of Procedure, or any other means through which FCIC chooses at the time to deliver its interpretations of policy or procedure; and whatever the form, any such interpretation by FCIC shall be binding on the parties in any mediation or arbitration. The phrase “any interpretation” means that, regardless of how FCIC chooses to deliver an interpretation (be it in a FAD, Interpretation of Procedure, authorized witness testimony, or some other means through which FCIC purposefully delivers it), the arbitrator of any dispute between the parties is bound by that interpretation. If the arbitrator disregards that interpretation from FCIC, the award is nullified.

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FCIC agrees with the requestor’s interpretation. Consistent with FAD-196 published on RMA’s website on November 13, 2013, section 506(r) of the Federal Crop Insurance Act, 7 C.F.R. part 400, subpart X and Manager’s Bulletin No. MGR-05-018 make it clear that FCIC is responsible for making interpretations of policy and procedure. If there is a dispute over any policy provision or procedure, the parties are required to seek an interpretation from FCIC in accordance with section 20(a)(1)(i) of the Basic Provisions. Section 20(a)(i) references 7 C.F.R. part 400, subpart X and any other procedures established by FCIC. Such procedures include Manager’s Bulletin MGR-05-018 and the regulations published at 7 C.F.R part 1, subpart H, regarding witness testimony. Any interpretation provided by FCIC, in writing or orally, will be binding in any mediation or arbitration. Subsequently, the failure to obtain the required interpretation from FCIC or if an arbitrator disregards an interpretation provided by FCIC, the award is nullified.

It is noted the requestor asked that FCIC’s response provide that its interpretation of policy terms applicable in crop years 2003-2007 and 2010 is the same to the extent that the terms applicable in those years are the same as the terms which are the subject of this request. 7 C.F.R. part 400, subpart X states requesters may seek

interpretations of those provisions of the Act and the regulations promulgated thereunder that are in effect for the crop year in which the request is being made and the three previous crop years. To the extent the language in the provisions interpreted is identical to the language applicable for any other crop year; the same interpretation can be applied to such other crop year. It is the responsibility of the person seeking to use the published interpretation for a different crop year to ensure that the language of the provisions is identical. Even minor language changes can have an effect on the interpretation.

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 4, 2015