

## **Final Agency Determination: FAD-281**

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**Subject:** Two requests dated June 28, 2018, and July 17, 2018, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2015 crop year regarding the interpretation of section 3(g)(4) and section 14 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 3(g)(4) of the Basic Provisions states, in relevant part:

### **3. Insurance Guarantees, Coverage Levels, and Prices.**

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(g) It is your responsibility to accurately report all information that is used to determine your approved yield.

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(4) At any time we discover you have misreported any material information used to determine your approved yield or your approved yield is not correct, the following actions will be taken, as applicable:

- (i) We will correct your approved yield for the crop year such information is not correct, and all subsequent crop years;
- (ii) We will correct the unit structure, if necessary;
- (iii) Any overpaid or underpaid indemnity or premium must be repaid; and

(iv) You will be subject to the provisions regarding misreporting contained in section 6(g)(1), unless the incorrect information was the result of our error or the error of someone from USDA.

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#### **14. Section 14 Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage.**

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Our Duties:

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(i) We recognize and apply the loss adjustment procedures established or approved by the Federal Crop Insurance Corporation.

#### **Interpretations Submitted**

Two interpretations were submitted in this FAD request:

##### First requestor's interpretation:

The first requester interprets sections 3(g)(4) and 14(i) of the Basic Provisions, along with Para. 1262 of the 2014 Crop Insurance Handbook (CIH), as creating a duty on the part of the Approved Insurance Provider (AIP) to correct claims that the AIP discovers were incorrectly adjusted. This correction may be made "[a]t any time," including a subsequent crop year. The first requester believes that the policy provisions and procedures also impose a duty on the AIP to repay an underpaid indemnity or to refund an overpaid premium.

First requestor believes FCIC addressed a similar issue in FAD-140 and provides the following excerpts from that FAD:

Any time there has been a non-compliance with approved policy and procedure, the situation must be corrected to comply with approved policy and procedure.

Since incorrect application of approved policy or procedure must be corrected, this means the AIP may issue a new summary of coverage to the policyholder and base premiums charged and any loss payments on the corrected

information.

The first requestor believes that FAD-140 interpreted the policy as placing a duty on the AIP to correct errors when non-compliance with approved policy and procedure occurred and that this also encompasses correction of erroneous claims adjustment.

Second requestor's interpretation:

The second requestor interprets Section 3(g)(4) of the Basic Provisions as providing the requirements for an AIP to correct policy information when an insured misstates information used to calculate the insured's approved yield. Additionally, that this policy provision does not discuss an insurer's obligation, or ability, to correct an error made in the adjustment of a claim.

The second requestor believes there is a process employed by AIPs to correct errors made in the adjustment of claims. If the insured wishes to avoid arbitration, it has one year within which to bring the error to the attention of the AIP and to request an AIP to change any determination made. If the error is not willingly and voluntarily corrected, the insured may initiate arbitration proceedings within one year of the determination being made. If the insured fails to do so, further claims are barred by the limitations provision in Section 20 of the Basic Provisions and must be dismissed by the arbitrator as untimely under the policy.

### **Final Agency Determination**

The Federal Crop Insurance Corporation (FCIC) agrees with second requestor and agrees in part with the first requestor. FCIC does not agree with first requestor that Section 3(g)(4) and 14(i) of the Basic Provisions along with Para. 1262 of the 2014 CIH creates a duty on part of the AIP to correct claims that the AIP discovers were incorrectly adjusted. Section 3(g)(4) of the Basic Provisions and Para. 1262 of the CIH are specific to an error in the insured's approved yield the AIP has identified and must be corrected. Section 3(g)(4) and CIH Para. 1262 do not address errors made in adjusting a claim.

However, that does not mean that the AIP does not have a duty to correct claims. The Federal crop insurance program uses taxpayer dollars and FCIC and AIPs have a duty to ensure those taxpayer dollars are paid in accordance with policy and procedures. As a result, FCIC agrees in part with the second requestor. If the AIP discovers a claim was not adjusted according to loss adjustment procedures

established or approved by FCIC the AIP is required to correct the claim. This obligation has been confirmed by the courts in *Old Republic Insurance Company v. FCIC*, 947 F.2d 269 (7th Circuit 1991).

However, regardless of when a claim was first paid or denied, if the AIP later revises the claim because it discovered that policy and procedures were not followed, then this becomes a new determination and the producer has one year to seek arbitration from the date of such determination if the producer does not agree with the changes. Arbitration must be sought within this deadline before any judicial review may be sought.

FCIC agrees with the first requestor that in FAD-140 AIPs must correct errors when non-compliance with approved policy and procedure have occurred. If the AIP determines a claim has not been adjusted according to loss adjustment procedures established or approved by FCIC the claim must be corrected.

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:** September 20, 2018