

## **Final Agency Determination: FAD-249**

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**Subject:** Request dated October 23, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 crop year regarding the interpretation of the preamble and section 14(i) 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 and procedure in request:

The preamble of the Basic Provisions states, in relevant part:

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act (Act) (7 U.S.C. 1501 et seq.). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. We will use the procedures (handbooks, manuals, memoranda and bulletins), as issued by FCIC and published on RMA's Web site at [www.rma.usda.gov](http://www.rma.usda.gov) or a successor Web site, in the administration of this policy, including the adjustment of any loss or claim submitted hereunder. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, your claim will be settled in accordance with the provisions of this policy and FCIC will be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

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Section 14(i) of the Basic Provisions states:

**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.

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**Interpretation Submitted**

The requestor interprets the above-referenced policy provisions to mean that an approved insurance provider must service a Federal crop insurance policy, including the adjustment of claims arising thereunder, in accordance with the terms of the policy itself along with the procedural guidance promulgated by the FCIC. This is true regardless of what an insured, an agent, or any other participant in the Federal crop insurance program perceives to be an “industry standard” or an “industry practice.”

**Final Agency Determination**

FCIC agrees with the requestor’s interpretation. The preamble and section 14(i) of the Basic Provisions are codified in the Code of Federal Regulations and, therefore, have the force of law. Further, under section 506(l) of the Federal Crop Insurance Act, FCIC’s contracts preempt any state or local law in conflict. Therefore, FCIC’s policy and procedures take precedent over any “industry standard” or “industry practice.”

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:** December 2, 2015