

## **Final Agency Determination: FAD-261**

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**Subject:** Request dated April 21, 2016, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2013 crop year regarding the interpretation of section 20(a) and (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 and procedure 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.

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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;

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Additional guidance may be found in Manager's Bulletin 12-003.1 (MGR-12-003.1) which was issued by the RMA on October 4, 2012. MGR-12-003.1 states, in relevant part:

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2. If all parties elect not to have AAA arbitrate their dispute:

a. **Arbitration may be initiated by filing a copy of the demand with the AIP.** The demand shall clearly state a demand for arbitration and shall contain a statement of the nature of the dispute, including a short statement of the facts and identification of the policy provisions upon which the policyholder relies, the names and addresses of all parties, any claims and counterclaims, the amount involved, if any, the remedy sought, the hearing locale requested.

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### **Interpretation Submitted**

Section 20 of the Basic Provisions requires that the “initiation of the arbitration proceeding must occur within one year...” MGR-12-003.1 goes further to clarify this concept as it pertains to an arbitration filed outside of the AAA. Specifically, MGR-12-003.1 states that the “arbitration may be initiated by filing a copy of the demand with the approved insurance provider.”

The requestor interprets the above-referenced policy provision to mean for an arbitration sought to be filed by a policyholder outside of the administration of the AAA, the approved insurance provider must receive the Demand for Arbitration prior to the expiration of the one-year limitations period established by section 20 of the Basic Provisions. (This interpretation would be consistent with arbitrations filed with the AAA. The AAA does not consider a Demand for Arbitration to be “filed” until it is actually received by the AAA.)

### **Final Agency Determination**

The Federal Crop Insurance Corporation (FCIC) agrees in part with the requestor's interpretation. As stated in section 20(b)(1) the initiation of arbitration proceedings must occur within one year of the date the claim is denied or the approved insurance provider (AIP) renders a determination with which the insured disagrees. However, with respect to the arbitration filed outside of the AAA, MGR-12-003.1 states that the arbitration must be initiated by filing a copy of the demand with the AIP. However, MGR-12-003.1 does not define "filing" and because this is outside of the AAA, the AAA process and definitions do not apply. Therefore, the term "filing" means, the AIP must have either: (1) received such notice before the expiration of the one year time period; or (2) received a notice in an envelope that was postmarked within the one year time period.

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:** June 21, 2016