Final Agency Determination: FAD-268

View PDF

Subject: Request dated June 7, 2016, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2013 crop year regarding the interpretation of sections 6(a)(2), 6(d), and section 20 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:

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.
>
> *****

Section 6 of the Basic Provisions states, in relevant part:

6. Report of Acreage.

> (a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date contained in the Special Provisions, except as follows:

(1) If you insure multiple crops with us that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops with us that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

(3) Notwithstanding the provisions in sections 6(a)(1) and (2)

(i) If the Special Provisions designate separate planting periods for a crop, you must submit an acreage report for each planting period on or before the acreage reporting date contained in the Special Provisions for the planting period; and

(ii) If planting of the insured crop continues after the final planting date or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(A) The acreage reporting date contained in the Special Provisions;

(B) The date determined in accordance with sections (a)(1) or (2); or

(C) Five (5) days after the end of the late planting period for the insured crop, if applicable.

*****

(d) Regarding the ability to revise an acreage report you have submitted to us:

(1) For planted acreage, you cannot revise any information pertaining to the planted acreage after the acreage reporting date without our consent (Consent may only be provided when no cause of loss has occurred; our appraisal has determined that the insured crop will produce at least 90 percent of the yield used to determine your guarantee or the amount of insurance for the unit (including reported and unreported acreage), except

when there are unreported units (see section 6(f)); the information on the acreage report is clearly transposed; you provide adequate evidence that we or someone from USDA have committed an error regarding the information on your acreage report; or if expressly permitted by the policy);

*****

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.

*****

(ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.

*****

(b) Regardless of whether mediation is elected:

*****

(4) In any suit, 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, an interpretation must be obtained from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC. Such interpretation will be binding.

*****

(f) In any mediation, arbitration, appeal, administrative review, reconsideration or judicial process, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV, including the provisions of 7 CFR part 400, subpart P, are binding. Conflicts between this policy and any state or local laws will be resolved in accordance with section 31. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control

*****

(h) Except as provided in section 20(i), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of liability established or which should have been established under the policy, except for interest awarded in accordance with section 26.

*****

7 U.S.C. §1515 states, in relevant part

*****

(c) Reconciling producer information

(1) In general the Secretary shall develop and implement a coordinated plan for the Corporation and the Farm Service Agency to reconcile all relevant information received by the Corporation or the Farm Service Agency from a producer who obtains crop insurance coverage under this subchapter.

(2) Frequency beginning with the 2001 crop year, the Secretary shall require that the Corporation and the Farm Service Agency reconcile such producer-derived information on at least an annual basis in order to identify and address any discrepancies.

(3) Corrections

(A) In general in addition to the corrections permitted by the Corporation as of the day before February 7, 2014, the Corporation shall establish procedures that allow an agent or an approved insurance provider, subject to subparagraph (B)—

(i) within a reasonable amount of time following the applicable sales closing date, to correct errors in information that is provided by a producer for the purpose of obtaining coverage under any policy or plan of insurance made available under this subchapter to ensure that the eligibility information is correct and consistent with information reported by the producer for other programs administered by the Secretary;

(ii) within a reasonable amount of time following—

(I) the acreage reporting date, to reconcile errors in the information reported by the producer with correct information determined from any other program administered by the Secretary; or

(II) the date of any subsequent correction of data by the Farm Service Agency made as a result of the verification of information, to make conforming corrections; and

(iii) at any time, to correct electronic transmission errors that were made by an agent or approved insurance provider, or such errors made by the Farm Service Agency or any other agency of the Department of Agriculture in transmitting the information provided by the producer for purposes of other programs of the Department to the extent an agent or approved insurance provider relied upon the erroneous information for crop insurance purposes.

(B) Limitation in accordance with the procedures of the Corporation, correction to the information described in clauses (i) and (ii) of subparagraph (A) may only be made if the corrections do not allow the producer—

(i) to avoid ineligibility requirements for insurance or obtain a disproportionate benefit under the crop insurance program or any related program administered by the Secretary;

(ii) to obtain, enhance, or increase an insurance guarantee or indemnity if a cause of loss exists or has occurred before any correction has been made, or avoid premium owed if no loss is likely to occur; or

(iii) to avoid an obligation or requirement under any Federal or State law.

Interpretation Submitted

The requestor seeks interpretation of when a producer discovers "errors" made by the Farm Service Agency (FSA) and/or the approved insurance provider (AIP) one year after a claim is denied, is the one-year statute of limitation to challenge the denial "reopened" by the new information.

The requestor suggests that 7 U.S.C. §1515 states that its purpose it to “improve compliance with, and the integrity of, the Federal crop insurance program.” Under subpart (c) [Reconciling Producer Information], the Secretary is required to “require that the Corporation and the Farm Service Agency reconcile such producer-derived information on at least an annual basis in order to identify and address any discrepancies.” It also provides that “within a reasonable amount of time following ... (I) the acreage reporting date, to reconcile errors in the information reported by the producer with correct information determined from any other program administered by the Secretary; or (ii) the date of any subsequent correction of data by the Farm Service Agency made as a result of verification of information, to make conforming corrections; and, (iii) at any time, to correct electronic transmission errors that were made by an agent or approved insurance provider, or such errors made by the Farm Service Agency or any other agency of the Department of Agriculture in transmitting the information provided by the producer for purposes of other programs of the

Department to the extent an agent or approved insurance provider relied upon the erroneous information for crop insurance purposes." The section goes on to provide for limitations, including that "correction to the information ... may only be made if the corrections to not allow the producer...to obtain... an insurance ... indemnity if a cause of a loss exists or has occurred before any correction has been made..."

The requestor interprets that 7 U.S.C. §1515 to suggest that if a (prevented planting) claim was initially denied for other allegedly incorrect reasons, and subsequently (after confirmation of "correction" by FSA, the AIP reverses its "correction" of prevented planting information claiming it made a "mistake" for the first time in a subsequent second denial letter so as to provide a separate and entirely new basis for denial, the one-year time period to challenge denial of the claim should be reset. For purposes of clarity, this assumes that the claim is an outstanding claim subject to the purposes of 7 U.S.C §1515, which recognizes that errors may result between the FSA and the AIP, and the acreage reported was not changed so as to allow indemnity that would not have been covered but for the mistake correction (i.e. the acreage was not increased). Further, the requestor recognizes that prior FADs have concluded that clarification of prior reasons for denial are not "new" denials for purposes of reopening the Statute of Limitations but submits that the discovery of a "mistake" and reversal of the accepted correction negates the prior denial. In essence, there had been justifiable reliance on a particular set of facts relating to the file and the AIP changed the facts relation to the claim after the initial denial letter. The producer deserves the ability to access whether to challenge the claim denial based on a static set of facts. The AIP should not have the ability to change material facts after a claim has been denied in order to bolster its reasons for denying the claim. The requestor suggests that discovery of errors by FSA and/or the AIP not previously disclosed, particularly relating to changes made to material facts concerning the claim file after the initial denial letter, created an entirely new basis for disagreeing with the claim denial and in essence extended/reopened the Statute of Limitations in regard to the claim.

Final Agency Determination

FCIC agrees in part with the requestor's interpretation. Section 20 of the Basic Provisions contains the avenues for resolutions of disagreements of policy determinations between the policyholder and AIP. As provided in FAD-136, section 20(b)(1) of the Basic Provisions provides a one-year deadline for the policyholder to

begin arbitration proceedings if an AIP’s determination is disputed. The AIP's denial to reopen the claim does not constitute a new denial of loss. Therefore, a denial to reopen a claim cannot form the basis of a new determination or denial of loss for the purposes of the one-year provision. Furthermore, as provided by FAD-245, the AIP cannot waive or extend the limitations period. Since the Basic Provisions are codified in the Code of Federal Regulations, they have the force of law. The one-year time period must be strictly construed.

However, the AIP is required to correct errors when information is found to be incorrect in accordance with FCIC approved policy provisions and procedures. This correction may result in a one-year period for an insured to dispute issues solely related to that correction. For example, if a claim is denied, but later (after the one-year provision has expired) it is determined that there was an error in the share, production or acreage reported. The error is corrected and although the correction does not affect the claim, it may affect the amount of premium owed by the policyholder. The policyholder has the right to contest the change in acreage, production or share that impacts the amount of premium owed within one year of the correction. Although the policyholder has a right to dispute the correction made by the AIP, the policyholder does not have the right to dispute other issues related to the original denial of the claim or any issues not involved with the particular correction that were previously barred by the one-year provision.

It is noted that the requestor referenced 7 U.S.C §1515(c)(3)(a). This provision, as cited by the requestor, is not applicable to the issue at hand as 7 U.S.C §1515 addresses the ability of the policyholder to correct errors within a specific time frame and applies for the 2015 and succeeding crop years for all policies with a June 30, 2014, contract change date. The requested interpretation is for the 2013 crop year.

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 7, 2016