

## [Final Agency Determination: FAD-267](#)

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**Subject:** Two requests dated June 16, 2016, and June 17, 2016, to the Risk Management Agency (RMA) requesting a Final Agency Determination (FAD) for the 2013 crop year regarding interpretation of the preamble of the Common Crop Insurance Policy (Basic Provisions), published at 7 C.F.R. § 457.8 and section 506(e) and (k) of the Federal Crop Insurance Act (Act), published at 7 U.S.C. § 1501. These requests are 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:

#### *Reinsured Policies*

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.

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AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is: (1) the Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Commodity Exchange Price Provisions, as applicable; (4) the Crop Provisions; and (5) these Basic Provisions, with (1) controlling (2), etc.

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Section 508(b)(9) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1508(b)(9)) states:

(A) CATASTROPHIC RISK PROTECTION PLANS.—In developing and carrying out the policies and procedures for a catastrophic risk protection plan under this subtitle, the Corporation shall, to the maximum extent practicable, minimize the paperwork required and the complexity and costs of procedures governing applications for, processing, and servicing of the plan for all parties involved.

(B) OTHER PLANS.—To the extent that the policies and procedures developed under subparagraph (A) may be applied to other plans of insurance offered under this subtitle without jeopardizing the actuarial soundness or integrity of the crop insurance program, the Corporation shall apply the policies and procedures to the other plans of insurance within a reasonable period of time (as determined by the Corporation) after the effective date of this paragraph.

Section 508(k) of the Act (7 U.S.C. § 1508(k)) states in relevant part:

(5) COST AND REGULATORY REDUCTION.—Consistent with section 118 of the Federal Crop Insurance Reform Act of 1994, and consistent with maintenance of program integrity, prevention of fraud and abuse, the need for program expansion, and improvement of quality of service to customers, the Board shall alter program procedures and administrative requirements in order to reduce the administrative and operating costs of approved insurance providers and

agents in an amount that corresponds to any reduction in the reimbursement rate required under paragraph (4) during the 5-year period beginning on the date of enactment of this paragraph.

Section 508(m) of the Act (7 U.S.C. § 1508(m)) states in relevant part:

(3) REVIEW OF CRITERIA AND PROCEDURES.—

(A) REVIEW.—The Corporation shall contract with a qualified person to review the quality loss adjustment procedures of the Corporation so that the procedures more accurately reflect local quality discounts that are applied to agricultural commodities insured under this subtitle.

(B) PROCEDURES.—Effective beginning not later than the 2004 reinsurance year, based on the review, the Corporation shall make adjustments in the procedures, taking into consideration the actuarial soundness of the adjustment and the prevention of fraud, waste, and abuse.

Section 515(b) of the Act (7 U.S.C. § 1515(b)) states in relevant part:

(b) NOTIFICATION OF COMPLIANCE PROBLEMS.—

(1) NOTIFICATION OF ERRORS, OMISSIONS, AND FAILURES.— The Corporation shall notify in writing an approved insurance provider of any error, omission, or failure to follow Corporation regulations or procedures for which the approved insurance provider may be responsible and which may result in a debt owed the Corporation.

### **Interpretation Submitted**

Two interpretations were submitted in this FAD request.

First requestor's interpretation:

The first requestor states that this request relates to the interplay between the Federal crop insurance policy which is codified in the Code of Federal Regulations and the underwriting procedures promulgated by FCIC for the administration of the Federal crop insurance program.

Furthermore, the first requestor states that specifically at issue here are FCIC's procedures and use of various handbooks and manuals in interpreting policies without first publishing them for comment in the Federal Register. The requestor believes that RMA has exceeded its authority and the aforementioned handbooks and manuals conflict and are subordinate to the Basic Provisions published at 7 C.F.R. § 457.8.

Additionally, the first requestor states that the Crop Insurance Handbook (CIH) calls for additional criteria which conflicts and contradicts the language of the policy and that the policy provisions published at 7 C.F.R. § 457.8 state that, in the event of conflict, the policy language controls.

#### Second requestor's interpretation:

The second requestor states that this request relates to FCIC's authority to issue procedures for the administration of the Federal crop insurance program. This request specifically involves FCIC's authority to issue such procedures in the form of its various handbooks and manuals without first publishing them for comment in the Federal Register and the Act has vested FCIC with such authority.

The second requestor states that the Act and attendant Federal regulations fully authorize FCIC to issue substantive procedural guidelines such as those promulgated in the CIH and the Loss Adjustment Manual (LAM) Standards Handbook and that these procedures do not have to first be published for comment in the Federal Register in order to become effective.

#### **Final Agency Determination**

FCIC agrees with the second requestor that FCIC has the authority to issue procedures to administer the policies it reinsures. Sections 508(b)(9), 508(k), 508(m), and 515(b) of the Act all specifically reference procedures and in many cases distinguishes them from the policy provisions. Further, when many of these provisions were enacted in 1994 and later, FCIC was already publishing its policies as regulations but not its procedures. Had Congress wanted FCIC to publish its procedures, it could have so required but did not. Therefore, FCIC agrees that FCIC-issued procedures, such as the CIH and LAM do not have to first be published for comment in the Federal Register in order to become effective.

FCIC agrees in part with the first requestor that if there is a conflict between any procedures and the policy, the terms of the policy controls. This is clearly stated in the preamble to the Basic Provisions. However, underwriting and loss adjustment procedures are necessary to ensure that all policyholders receive the same coverage and service by approved insurance providers, agents, and loss adjusters. These procedures cannot change the terms of the policy but they can provide guidance in their administration. For example, the Basic Provisions require the policyholder to provide a production report that must be supported by written verifiable records or the insured will receive an assigned yield. Section 13A(1)(a)4 of the CIH provides that for the production report to be acceptable it must be supported by written verifiable records and refers to section 14 for production evidence requirements. Section 14 of the CIH specifies what types of record are acceptable production evidence by crop and the requirements the record type must meet to support the insured's certification on the production report. These procedures do not modify the policy provisions, they provide guidance on what is meant by the provision and what may be necessary to comply.

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:** Aug 16, 2016