



United States
Department of
Agriculture

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Risk
Management
Agency

BULLETIN NO: MGR-05-018

1400 Independence
Avenue, SW
Stop 0801
Washington, DC
20250-0801

TO: All Reinsured Companies
All Risk Management Agency Field Offices
All Other Interested Parties

FROM: Ross J. Davidson, Jr. /s/ *Ross J. Davidson, Jr.*
Administrator

SUBJECT: Requesting a Written Interpretation of FCIC Procedures Under Section 20
of the Common Crop Insurance Policy Basic Provisions

BACKGROUND:

Section 20 of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), on the Risk Management Agency Website at: <http://www.rma.usda.gov/> under "Crop Policies," requires the Federal Crop Insurance Corporation (FCIC) to provide interpretations of policy provisions and procedures (handbooks, manuals, memoranda, and bulletins) when any dispute in mediation, arbitration, or litigation requires interpretation of a policy provision or procedure. This includes determinations regarding applicability of a specific policy provision or procedure as well as the meaning of the provision or procedure.

Regulations published at 7 CFR part 400, subpart X, provide the procedures for requesting written interpretations of the Federal Crop Insurance Act and regulations such as the Basic Provisions and various Crop Provisions. However, written interpretations of FCIC issued procedures are not covered by subpart X.

ACTION:

Effective for crop policies with a contract change date on or after August 31, 2004, requests for written interpretation of procedures used to settle disputes in mediation, arbitration, or litigation must be submitted and administered in accordance with the attached procedure. Insured producers or approved insurance providers may request an interpretation of any FCIC issued procedure used in the administration of any crop insurance policy reinsured by FCIC. Requests for oral interpretations of the Act, regulations, or procedures during arbitration or other legal proceeding will continue to be made in accordance with section IV.R.2 of the Standard Reinsurance Agreement and 7 CFR part 400, subpart K.



The Risk Management Agency Administers
And Oversees All Programs Authorized Under
The Federal Crop Insurance Corporation

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DISPOSAL DATE:

This Manager Bulletin will remain in effect until the referenced procedures are rescinded or superseded.

RULES AND CRITERIA FOR OBTAINING AN AGENCY INTERPRETATION OF PROCEDURES

The Common Crop Insurance Policy Basic Provisions (Basic Provisions) state that an interpretation of procedure (i.e., procedural handbooks or manuals, or memoranda or bulletins that contain procedures) must be obtained from FCIC in any mediation, arbitration, or litigation where such procedure is at issue. The Basic Provisions also specify that interpretations from FCIC will be binding in any such legal proceeding. This bulletin provides the rules and criteria that must be followed to obtain the required interpretation from FCIC, and is applicable for the 2005 and subsequent crop years for crop policies with a contract change date on or after August 31, 2004, unless it is rescinded or superseded.

Section 1. Applicability:

- (A) Producers with a crop insurance policy in force, or an approved insurance provider with a reinsurance agreement with FCIC, may request interpretations only of procedures related to:
 - (1) Whether a specific procedure is applicable to the situation;
 - (2) How a procedure is applicable to the situation; or
 - (3) The meaning of the procedure.
- (B) Requests for interpretations of procedures will only be provided when mediation, arbitration, or litigation has been legally filed or formally initiated. Interpretations of procedures will not be provided for prospective mediation, arbitration, or litigation.

Section 2. Timing and Addresses Applicable to Requests for Interpretations of Procedure:

All requests for an interpretation must be submitted, and will be considered, in accordance with the following (time periods used herein are expressed in calendar days):

- (A) Requests for written interpretations must be submitted in writing to the attention of the RMA Deputy Administrator for Research and Development or a designee or successor, via any of the following three means:
 - (1) Certified mail, and addressed to the person stated above, Risk Management Agency, U.S. Department of Agriculture, Stop 0801, 6501 Beacon Drive, Kansas City, MO 64133-4676;
 - (2) Facsimile to facsimile phone number (816) 926-1803; or

- (3) E-mail to RMA at: RMA InterpretationofProcedures@rma.usda.gov.
- (B) Requests must be submitted not later than 90 days before the date the mediation, arbitration or litigation proceeding (e.g. hearing on a motion, evidentiary hearing or trial) in which the interpretation will be used is scheduled to begin.
 - (1) If the rules of the court, mediation or arbitration require the interpretation prior to the date the proceeding begins, the number of days prior to the proceeding must be added to the 90 days. For example, if a court requires the interpretation 20 days prior to the date the proceeding begins, the request must be submitted 110 days before the proceeding is scheduled to begin.
 - (2) Failure to timely submit a request for an interpretation may result in:
 - (a) RMA issuing a determination that no interpretation could be rendered because it was not timely submitted; and
 - (b) Nullification of any agreement or award in accordance with section 20 of the Basic Provisions.
 - (3) If during the mediation, arbitration, or litigation proceeding, an issue arises that requires an interpretation of procedures, the mediator, arbitrator, judge, or magistrate must promptly request such an interpretation in accordance with section 2(A):
 - (a) RMA will authorize personnel to provide an oral or written interpretation, as appropriate; and
 - (b) Any decision or settlement resulting from such mediation, arbitration or litigation proceeding before RMA provides its interpretation may not be binding on the parties.

Section 3. Information Required in the Request and Requestor Obligations:

- (A) A request for each interpretation of a procedure must include the following:
 - (1) The identification of the type of legal action (e.g. mediation, arbitration, or litigation) in which the interpretation will be used and the date any proceeding within the action is scheduled to begin (if a specific date for the legal proceeding to begin has not yet been determined, identify the

earliest possible date such legal proceeding would likely begin);

- (2) The name, address, telephone number, and fax number or e-mail address of a contact person, acting on behalf of the requestor and the same information with respect to persons appearing on behalf of other parties to the legal action;
 - (3) With respect to the policy, identification of the plan of insurance or coverage type (e.g. multiple peril crop insurance, Group Risk Protection, dollar plan, etc.), the state and county where the policy involved in the dispute is written, the name and the applicable social security number or employer identification number of the insured, the insurance provider and the policy number;
 - (4) Identification of the applicable crop and crop year for which the interpretation is sought;
 - (5) The citation of the procedure from the handbook, manual, memoranda, or bulletin for which an interpretation is requested (e.g. section 4A(2)(b) of the Crop Insurance Handbook, paragraph (4)(a) of Bulletin No. MGR-04-008.1, etc.) and a quotation of such procedure;
 - (6) A detailed description of the requestor's interpretation of the procedure; and
 - (7) If the interpretation requested is to determine if a procedure is applicable or how it is applicable, all material information needed to determine whether a procedure is applicable to the dispute, including all relevant facts, and the requestor's interpretation and reasoning regarding applicability of the procedure or how the procedure is applicable.
- (B) The requestor is responsible for providing all other parties involved in the legal action copies of the interpretation.
- (C) A request may be made for multiple insured persons provided the legal actions filed or formally initiated involve the same procedure for all such persons. In this case, the information required in section 3(A) must be provided for each person.
- (D) Each request for an interpretation of a procedure must contain no more than one request for an agency interpretation. If more than one provision of the procedures is at issue, separate requests must be made for each provision.

Section 4. FCIC Obligations:

- (A) Requests for interpretations of procedure will be reviewed by the Deputy Administrator for Research and Development in consultation with Office of General Counsel (OGC).
- (B) If, in the sole judgment of the Deputy Administrator, the request for the interpretation of a procedure is unclear, ambiguous, incomplete or otherwise does not include all the information needed to make an interpretation, the requestor will be notified, by facsimile or e-mail, within 30 days of the date the request is received by RMA that the request is rejected and the basis for the rejection.
 - (1) The requestor will have 15 days from the date stated on the notification provided in section 4.(B) to address the basis for rejection.
 - (2) Failure to timely address the basis for rejection will result in a determination that no interpretation could be rendered and any agreement or award in such proceeding is nullified in accordance with section 20 of the Basic Provisions. However, if sufficient time remains to submit a new request in accordance with section 2, a new request can be initiated.
- (C) If all the requirements of this procedure have been met, an interpretation of the procedure will be provided in writing to the requestor on behalf of FCIC within 90 days of the date the request is initially submitted as specified in section 2.
- (D) If RMA agrees with the interpretation provided by the requestor, it will provide a response indicating agreement by the time frame specified in section 4.(C). However, if RMA fails to provide an interpretation of a procedure by the 90 day deadline, the requestor's interpretation will be considered as the interpretation from FCIC for the purposes of section 20 of the Basic Provisions with respect to the subject legal proceeding only. It will not be applicable to any other legal proceeding or to any other producer or approved insurance provider, unless the request is made for multiple insured persons as specified in section 3.(C).
- (E) FCIC will not interpret any specific factual situation or case, such as the actions of any insured, approved insurance provider, agent or loss adjuster under the procedures. Interpretations of a procedure will not include any analysis of whether the insured, approved insurance provider, agent or loss adjuster was in conformance with such procedure.

Section 5. Requests for Reconsideration:

- (A) If the requestor or the other party to the legal proceeding does not agree with the written interpretation provided by RMA, requests for reconsideration may be submitted in accordance with 7 CFR, Part 400, subpart J. If a requestor seeks RMA reconsideration, such request will be submitted in the manner specified in section 2(A).
- (B) Requests for reconsideration will not be accepted from the mediator or arbitrator.
- (C) The RMA Deputy Administrator for Research and Development, in consultation with OGC, will render a determination on the request for reconsideration not later than 30 days after receipt of the request for reconsideration.

Section 6. Appeals of FCIC Interpretations:

Producers and approved insurance providers may appeal interpretations or determinations to the U.S. Department of Agriculture's National Appeals Division in accordance with 7 CFR part 11.