



United States
Department of
Agriculture

Risk
Management
Agency

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INFORMATIONAL MEMORANDUM NO.: IS-09-003

TO: All Approved Insurance Providers
All Risk Management Agency Field Offices
All Other Interested Parties

FROM: William J. Murphy
Acting Administrator

March 5, 2009

SUBJECT: Optional Amendment to the Standard Reinsurance Agreement
Revising Loss Adjuster Licensing Requirements

BACKGROUND:

The Standard Reinsurance Agreement (SRA) between the Federal Crop Insurance Corporation (FCIC) and approved insurance providers (AIPs), effective for the 2005 and subsequent reinsurance years, requires that all loss adjusters be licensed by the State if the State requires the licensing of crop insurance loss adjusters. The Risk Management Agency (RMA), operating on behalf of FCIC, has observed that loss adjuster licensing requirements vary widely across States. Some States have no loss adjuster licensing requirements. More problematic are the many States which require that any person seeking a license to adjust losses obtain proficiency and pass tests in property and casualty loss adjusting methods even though the person will only be adjusting crop losses. Many of these proficiency requirements and tests are unrelated to crop losses. Given the highly specialized knowledge and methods needed for loss adjusting of crops, these general property and casualty requirements pose an unnecessary burden on crop loss adjusters and fail to achieve an important goal of the licensing requirement in the SRA—the demonstration of proficiency in crop insurance prior to engaging in the loss adjustment of insured crops.

RMA has been working closely with the National Association of Insurance Commissioners (NAIC) and its Crop Insurance Working Group to encourage more consistency in crop loss adjuster licensing requirements across States and to broadly elevate crop loss adjuster proficiency. To facilitate these efforts, it has been determined that an Amendment to the SRA is required that will allow RMA to require certification of loss adjuster proficiency through independent testing in States that either do not have loss adjuster requirements or have requirements that are unrelated to crop insurance. At the same time, the Amendment seeks to preserve State licensing of crop loss adjusters for States that have adopted loss adjustment licensing with requirements that are specific to crop insurance and encourage more States to adopt such crop insurance specific licensing. Optional Amendment No. 2 promotes these objectives over an appropriate transition period.



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

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On December 3, 2008, RMA circulated a draft version of an optional SRA amendment for industry review. From the resulting comments, RMA revised the amendment and now offers it as Amendment No. 2 to the SRA for 2010 and later reinsurance years. Further, many AIPs requested clarification on a number of issues. The following discussion addresses many of these issues.

DISCUSSION:

Amendment No. 2 specifically allows RMA to recognize a third-party testing program for loss adjuster proficiency in States that have no licensing requirements or in States in which requirements are not crop insurance specific. It was initially developed to address the specific problem in States that require loss adjuster license testing in property and casualty insurance areas other than crop insurance. Crop insurance is sufficiently unique to warrant crop insurance specific proficiency testing. However, RMA recognizes the valuable partnership it has fostered with State regulators in many aspects of insurance regulation and the fact that some States are making a good faith effort to better tailor their loss adjuster licensing requirements for crop insurance. Consequently, a general Federal pre-emption of all State loss adjuster licensing requirements was not desirable.

Although Amendment No. 2 was initially developed to address the specific problem for crop loss adjusters in States requiring general property and casualty testing, a number of other program benefits became apparent in discussions between RMA, State regulators, and the industry. These benefits include:

- Greater consistency of loss adjuster proficiency across all States;
- An increase of loss adjuster proficiency, especially in those States with no current licensing requirements;
- Greater awareness among State regulators regarding the uniqueness of crop loss adjusting;
- Elimination of unnecessary barriers for persons wishing to become new crop loss adjusters; and
- Improved Federal crop insurance program integrity with the addition of effective third party proficiency testing.

RMA received numerous comments reflecting some concerns or at least the need for additional clarification in response to the draft version of Amendment No. 2 that was circulated to the crop insurance industry. The following are some questions raised regarding Amendment No. 2 with RMA responses:

1. How does FCIC certification and State licensing requirements relate to each other?

Technically, Amendment No. 2 authorizes RMA to replace State licensing requirements with FCIC certification. However, as envisioned, FCIC certification will still depend heavily on State loss adjuster licensing requirements. To best understand how this will work, one should consider the various current States' loss adjuster licensing requirements in three broad categories: (a) those with crop insurance specific requirements; (b) those with requirements that are not crop insurance specific; and (c) those with no requirements. For group (a), those State requirements would continue to apply to all loss adjusters operating in the State. For group (b), those State requirements would continue to apply until the 2012 reinsurance year, at which time the completion of an RMA-approved proficiency testing program would be considered by RMA to be sufficient for a person to be authorized to perform Federal crop insurance loss adjusting, unless the State adopts a crop insurance specific license in the interim. For group (c), the completion of an RMA-approved proficiency testing program would be a new requirement for all loss adjusters beginning in the 2010 reinsurance year. RMA anticipates that, over time, the Amendment will encourage many States to adopt crop insurance specific loss adjuster licenses based on their own testing program or on an RMA-approved proficiency testing program.

2. How does the Amendment relate to private crop-hail loss adjusters? The Amendment and any RMA-approved loss adjuster proficiency testing program concerns only the loss adjustment of an eligible crop insurance contract under the SRA. Persons performing private crop-hail loss adjustment would not be subject to FCIC loss adjuster certification but would be solely subject to State licensing requirements. A loss adjuster who adjusts losses for both eligible crop insurance contracts under the SRA and private crop-hail policies would need to meet FCIC-certification requirements to adjust Federal crop insurance policy claims and any State licensing requirements to adjust private crop-hail policy claims.

3. How will RMA determine whether a State has a license which is crop insurance specific? A State will need to meet two criteria for its loss adjuster licensing requirement to be considered by RMA to be crop insurance specific: (a) the State recognizes crop insurance separately as a line of insurance for loss adjuster licensing purposes; and (b) more than half of the material or questions relating to loss adjustment procedures used for the State's licensing test is specific to crop insurance or, alternatively, the State accepts an FCIC-recognized crop insurance proficiency testing program as the basis for a loss adjuster license. Beginning with the 2010 reinsurance year, RMA anticipates notifying AIPs through Informational Memoranda regarding the initial list of States that meet these criteria and, thereafter, States that adopt crop insurance specific licenses according to these criteria.

4. *What purpose is served by requiring FCIC certification in States that currently have no loss adjuster licensing requirements?* Proficiency testing by a third party, as required by Amendment No. 2, will raise the general level of proficiency in States that have no licensing requirements and will improve program integrity. Further, having a proficiency testing program in place could provide those States with an incentive to adopt a crop insurance specific license based on RMA-approved proficiency testing.

5. *How does the loss adjuster training currently conducted by the AIPs relate to FCIC certification?* Training required under Appendix IV of the SRA would not change. FCIC certification, through either RMA-approved proficiency testing or State crop-specific license testing, will provide a third-party check on the training conducted by the AIPs to ensure that it is effective. Moreover, training by AIPs can consequently be tailored, within the limits of Appendix IV, to loss adjustment methods for specific areas and for specific crops serviced by the AIPs, whereas FCIC certification, including either a State or RMA-approved testing program, is expected to address more general crop loss adjusting principles and procedures.

6. *Why can't the amendment wait until the next SRA negotiation?* Three reasons: First, it is important to quickly shore up loss adjuster proficiency in those States that currently have no licensing requirement. Second, as a courtesy to the States, it is important to announce an official transition period for those States that have licensing requirements that are not crop insurance specific to take whatever rule-making or legislative steps necessary to adopt crop insurance specific programs if they choose. And third, it is important for RMA and the industry to take the necessary steps to protect the program from potential vulnerabilities when they are discovered.

7. *Why aren't penalties addressed more fully in the Amendment?* The Amendment was intended to specifically address problems with inconsistent and sometimes irrelevant testing by certain States in licensing loss adjusters. RMA believes that the sanction provisions contained in the SRA and in FCIC statutes and regulations are adequate to address any non-compliance with the provisions of the Amendment.

8. *How would the transmittal of certification data to FCIC operate, as referenced in the Amendment?* For States with licensing requirements for loss adjusters that are crop insurance specific and, prior to the 2012 reinsurance year, States with licensing requirements that are not crop insurance specific, FCIC certification would occur when the loss adjuster is notified by the State that he or she is licensed. For States with no crop insurance licensing requirements and, beginning with the 2012 reinsurance year, States with licensing requirements that are not crop insurance specific, RMA anticipates that AIPs would sponsor individuals to complete the loss adjuster proficiency testing program after the individual has completed the AIP training required by the SRA. The sponsoring AIP would then notify the third party operating an RMA-approved

proficiency test that the sponsored individual was eligible to take the test. After the sponsored individual completes the proficiency test, the AIP would be notified by the third party operating the RMA-approved proficiency testing program of whether the individual passed or failed the test. If the individual passed the test, FCIC certification would occur with this notification of passing and the AIP would simply have to ensure that all training records, including documentation regarding completion of the proficiency test, is available for review by RMA. If the individual failed the test, there would be no FCIC certification. Ultimately, RMA anticipates that all licensing and certification information, including licensing and training expiration dates, would be incorporated into the "Type 56" DAS record, or its successor.

9. Is the certification or proficiency test program AIP-specific? Can certification be transferred from one AIP to another? Any loss adjuster who passes an RMA-approved proficiency test program, and has met any State licensing requirements as provided in Amendment No. 2, would be eligible for certification by RMA for any AIP. Therefore, once certified, a loss adjuster could present verification of his or her certification to another AIP and, assuming the loss adjuster then comes under contract with or is employed by the AIP, would be certified to adjust losses.

10. What is meant by decertification and retesting in section (e) of the Amendment? RMA anticipates that some loss adjusters may become "decertified" through RMA compliance actions or by not completing the required annual AIP training specified in Appendix IV of the SRA. In such cases, the individual would be de-certified and required to again pass the RMA-approved proficiency test program and meet any State licensing requirements as provided in Amendment No. 2 before that individual could again be certified as a loss adjuster.

11. Why is the amendment silent on "traveling adjusters?" The Amendment limits its focus on State licensing issues and does not seek to address reciprocity problems. However, the Amendment does not add any new impediments to reciprocity across State boundaries. In certain cases, it may lead to increased AIP flexibility in assigning outside loss adjusters. Over time, RMA anticipates that the Amendment will lead to increased consistency in State loss adjuster licensing requirements and will, in turn, lead to increased reciprocity between States.

12. Does RMA plan on spending program funds to develop the loss adjuster proficiency test program or to outsource loss adjuster certification? RMA does not anticipate spending program funds either internally or through an outside contractor. RMA is currently developing approval criteria for approving loss adjuster proficiency test programs that RMA anticipates will be proposed by third parties and submitted to RMA. RMA would announce the approval of any third party with an acceptable loss adjuster proficiency test program through an informational memorandum.

13. *What happens if there is no loss adjuster proficiency test program available?* The Amendment provides for the event that RMA either does not approve a third-party proficiency testing program for purposes of FCIC certification or an RMA-approved proficiency testing program is not available in all States. In either event, a person's FCIC certification as a loss adjuster in a State where an RMA-approved proficiency program is not available would be determined solely by the person meeting the State's loss adjuster licensing requirements—i.e. effectively the status quo before the Amendment. However, RMA anticipates that such programs will be available for all States.

14. *Have the States approved this concept?* RMA and the industry have worked closely with NAIC. The NAIC Crop Insurance Working Group agrees with RMA and the industry that loss adjuster licensing by States should be more consistent and more crop insurance specific. It has been actively seeking to raise State regulators' awareness of this issue and supports the Amendment.

ACTION:

AIPs may sign and submit to RMA the attached Amendment No. 2 to the SRA prior to a deadline of March 31, 2009. If RMA receives a signed Amendment No. 2 from each AIP approved under the SRA for the 2009 reinsurance year prior to this deadline, then Amendment No. 2 will become effective as of July 1, 2009 for the SRA for the 2010 and subsequent reinsurance years. In the event that RMA has not received a signed Amendment No. 2 from all AIPs approved for the 2009 reinsurance year prior to this deadline then Amendment No. 2 will not become effective for the SRA for the 2010 and subsequent reinsurance years. A signed Amendment No. 2 may be sent to:

Director, Reinsurance Services Division
USDA/Risk Management Agency
1400 Independence Avenue SW
Room 6747-S, Stop 0804
Washington, DC 20250-0804

DISPOSAL:

This memorandum will remain in effect until superseded by procedures.

Attachment:

Optional Amendment No. 2 to the Standard Reinsurance Agreement effective July 1, 2009 for the 2010 and subsequent reinsurance years.

**AMENDMENT No. 2 TO THE STANDARD REINSURANCE AGREEMENT
EFFECTIVE JULY 1, 2009 FOR THE 2010 AND SUBSEQUENT
REINSURANCE YEARS**

Section II.A.6. of the Standard Reinsurance Agreement between the Federal Crop Insurance Corporation and the undersigned Company is hereby amended for the 2010 and subsequent reinsurance years to read as follows:

* * * * *

6. The Company shall ensure that all of its employees, agents, agency employees, loss adjusters and contractors that act on behalf of the Company with respect to the selling, servicing, and adjusting of eligible crop insurance contracts meet all the requirements contained herein in accordance with the procedures issued by FCIC.

- (a) All applicable employees, agents, agency employees, loss adjusters and contractors must be trained in accordance with Appendix IV. In addition, such training shall include curricula concerning the requirements under applicable Federal civil rights statutes, and methods to encourage participation of limited resource, women, minority, and under-served producers;
- (b) All employees, agents, and agency employees who are involved in the selling and servicing (except loss adjustment) of the eligible crop insurance contracts must be licensed in the State in which they are doing business if required by the State; and
- (c) All loss adjusters adjusting eligible crop insurance contracts must be certified by FCIC before they can conduct any loss adjustment. Certification of loss adjusters by FCIC may be obtained by:
 - (1) If any State in which the loss adjuster performs loss adjustment activities requires the loss adjuster to take a test which is directly related to crop insurance to obtain a license to adjust an eligible crop insurance contract, taking and passing the State test and obtaining the license required by the State;
 - (2) If any State in which the loss adjuster performs loss adjustment activities does not require the loss adjuster to obtain a license to adjust an eligible crop insurance contract (including those cases where the loss adjuster is a company employee and the State excludes company employees from licensing requirements), taking and completing with a passing grade a proficiency testing program developed, approved, and implemented under procedures issued by FCIC or, if such FCIC-approved proficiency testing program is not available in the State, completing the training required by the Company under section II.C. of Appendix IV; or

- (3) If any State in which the loss adjuster performs loss adjustment activities requires a test which is not crop insurance specific (as determined by FCIC) to obtain a license to adjust an eligible crop insurance contract:
- (i) For the 2010 through 2011 reinsurance years only, taking and passing the State test and obtaining the license required by the State; and
 - (ii) Beginning with the 2012 reinsurance year, taking and completing with a passing grade a proficiency testing program developed, approved, and implemented under procedures issued by FCIC in lieu of obtaining a license in such State, or, if such FCIC-approved proficiency testing program is not available in the State, taking and passing the State test and obtaining the license required by the State.
- (d) Loss adjusters must provide documentary proof showing that they have obtained the proper license or took and completed with a passing grade the applicable tests or testing program specified in paragraph (c) to each Company for which they expect to conduct loss adjustment before the Company permits them to conduct any loss adjustment activity. The Company must retain such documentary proof and provide written or electronic verification to FCIC, as directed by FCIC. The loss adjuster is considered certified by FCIC when the Company submits proper written or electronic verification to FCIC, as directed by FCIC.
- (e) Loss adjusters may be required to periodically retake the required FCIC-approved proficiency testing program referenced in subparagraph (c)(2) and (c)(3)(ii), as determined by FCIC. Any person who has been found in noncompliance with any loss adjustment policy, procedure, or training requirement approved by FCIC may be de-certified by FCIC. In such case, FCIC will provide written notification to the Company and the Company shall not permit that person to perform loss adjustment activities until he or she has received the training specified by FCIC, has retaken and completed with a passing grade the required proficiency testing program, and has been certified by FCIC.
- (f) Allowing a loss adjuster to conduct any loss adjustment activity on a policy before he or she is properly certified or after he or she has been de-certified may result in the loss of reinsurance for all policies upon which such activity occurred.

* * * * *

The undersigned acknowledges that the Company and its Board of Directors, if applicable, has authorized the Company to enter into this Amendment to the Standard Reinsurance Agreement beginning with the 2009 reinsurance year.

APPROVED AND ACCEPTED

for

FEDERAL CROP INSURANCE CORPORATION

THE COMPANY

Signature

Signature

Name

Name

Title

Title

Date

Date