

[Final Agency Determination: FAD-265](#)

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Subject: Request dated June 6, 2016, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 and succeeding crop years regarding the interpretation of section 17(e)(1) 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: Section 17 of the Basic Provisions states, in relevant part:

17. Prevented Planting.

e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double cropped acreage in accordance with section 17(f)(4). The eligible acres for each insured crop will be determined as follows:

(i) If you have planted any crop in the county for which prevented planting insurance was available (you will be considered to have planted if your APH database contains actual planted acres) or have received a prevented planting insurance guarantee in any one or more of the four most recent crop years, and the insured crop is not required to be contracted with a processor to be insured:

A) The number of eligible acres will be the maximum number of acres certified for APH purposes, or insured acres reported, for the crop in any one of the four most recent crop years (not including reported prevented planting acreage that was planted to a second crop unless you meet the double cropping requirements in section 17(f)(4)).

(ii) If you have not planted any crop in the county for which prevented planting insurance was available (you will be considered to have planted if your APH database contains actual planted acres) or have not received a prevented planting insurance guarantee in all of the four most recent crop years, and the insured crop is not required to be contracted with a processor to be insured:

(A) The number of eligible acres will be:

(1) The number of acres specified on your intended acreage report, which must be submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us; or

(2) The number of acres specified on your intended acreage report, which must be submitted to us within 10 days of the time you acquire the acreage and that is accepted by us, if, on the sales closing date, you do not have any acreage in a county and you subsequently acquire acreage through a method described in section 17(f)(12) in time to plant it using good farming practices.

Interpretation Submitted

The requestor asks that FCIC interpret how the “[I]f you have planted any crop in the county for which prevented planting insurance was available ... or have received a prevented planting insurance guarantee in any one or more of the four most recent crop years” language contained in section 17(e)(1)(i) and the “[I]f you have not

planted any crop in the county for which prevented planting insurance was available ... or have not received a prevented planting insurance guarantee in all of the four most recent crop years” language contained in section 17(e)(1)(ii) affect a policyholder's eligible acres determination.

The requestor seeks an interpretation because sections 17(e)(1)(i) and 17(e)(1)(ii) appear to set different standards for when a policyholder can use an intended acreage report. For example, a new insured may have planted a crop for which prevented planting insurance was available during the previous four crop years, but opted not to insure the crop. Can that policyholder qualify eligible acres using an intended acreage report because section 17(e)(1)(ii) allows the use of an intended acreage report if the policyholder has not planted a crop for which prevented planting insurance is available or has not received a prevented planting insurance guarantee in all of the four most recent crop years. Here, the new insured might interpret the “or have not received a prevented planting insurance guarantee in all of the four most recent crop years” language of section 17(e)(1)(ii) to allow the use of an intended acreage report in situations where the insured planted a crop for which prevented planting insurance was available, but did not receive a prevented planting guarantee.

The requestor interprets section 17(e)(1)(i) to apply when the policyholder previously planted any crop in the county for which prevented planting insurance was available or has received a prevented planting insurance payment in the county in any of the previous four crop years. Simply, if the policyholder has planted a crop for which prevented planting insurance is available (whether the policyholder chose to insure the crop or not) or has received a prevented planting payment in any of the four previous crop years, eligible acres are determined in accordance with section 17(e)(1)(i).

In contrast, section 17(e)(1)(ii) applies when the policyholder has not planted any crop in the county for which prevented planting insurance was available and has not received a prevented planting insurance payment in any of the four most recent crop years. The requestor further interprets section 17(e)(1)(ii) to apply when the policyholder planted crops in the county during the prior four crop years, but only if prevented planting insurance was not available for that crop.

Accordingly, if the policyholder, in any one or all of the prior four crop years, has either planted a crop for which prevented planting insurance is available (whether

the policyholder chooses to insure the crop or not) or received a prevented planting payment, eligible acres are determined in accordance with section 17(e)(1)(i). A policyholder can only qualify eligible acres under section 17(e)(1)(ii) if the policyholder in all of the prior four crop years has both not planted a crop for which prevented planting insurance is available and not received a prevented planting payment. Simply, section 17(e)(1)(ii) is not available for a policyholder who has planted a crop in any of the prior four crop years, for which prevented planting insurance was available, but has not received a prevented planting insurance payment in any of the prior four crop years.

Final Agency Determination

The Federal Crop Insurance Corporation (FCIC) agrees in part with the requestor's interpretation. FCIC agrees that if the policyholder has planted a crop for which prevented planting insurance is available or has received a prevented planting payment in any of the four previous crop years, eligible acres are determined in accordance with section 17(e)(1)(i). The crop does not have to have been insured. It just must be a crop for which prevented planting insurance was available.

FCIC agrees a policyholder can only qualify eligible acres under section 17(e)(1)(ii) if the policyholder in all of the prior four crop years has both not planted a crop for which prevented planting insurance is available and not received a prevented planting payment. Section 17(e)(1)(ii) is not available for a policyholder who has planted a crop in any of the prior four crop years, for which prevented planting insurance was available, but has not received a prevented planting insurance payment in any of the prior four crop years.

Sections 17(e)(1)(i) and 17(e)(1)(ii) are distinguished not by whether the policyholder received a prevented planting payment but rather whether they have planted a crop for which prevented planting insurance was available or received a prevented planting guarantee.

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: August 16, 2016