

## [Final Agency Determination: FAD-229](#)

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**Subject:** Request dated March 2, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2013 crop year regarding the interpretation of section 15(b) 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. § 400, subpart X.

### **Background:**

Section 15(b) of the Basic Provisions states, in relevant part:

#### 15. Production Included in Determining an Indemnity and Payment Reductions.

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.

(b) Appraised production will be used to calculate your claim if you are not going to harvest your acreage. Such appraisals may be conducted after the end of the insurance period. If you harvest the crop after the crop has been appraised

(1) You must provide us with the amount of harvested production (If you fail to provide verifiable records of harvested production, no indemnity will be paid and you will be required to return any previously paid indemnity for the unit that was based on an appraised amount of production); and

(2) If the harvested production exceeds the appraised production, claims will be adjusted using the harvested production, and you will be required to repay any overpaid indemnity; or

(3) If the harvested production is less than the appraised production, and:

(i) You harvest after the end of the insurance period, your appraised production will be used to adjust the loss unless you can prove that no additional causes of loss or deterioration of the crop occurred after the end of the insurance period; or

(ii) You harvest before the end of the insurance period, your harvested production will be used to adjust the loss.

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### **Interpretation Submitted**

The requestor interprets section 15(b) of the Basic Provisions to only apply when the policyholder notifies the Approved Insurance Provider (AIP) that they do not intend to harvest the crop in issue. Accordingly, the requestor further interprets section 15(b) of the Basic Provisions to not apply when the policyholder has already harvested the crop before they submit a notice of loss to the AIP. The requestor believes while section 15(b) provides the circumstances under which an AIP will use appraised production to calculate a claim after the policyholder notified the AIP of their intent not to harvest, the provision does not represent the only circumstances under which the AIP may use appraised production.

### **Final Agency Determination**

FCIC disagrees with the requestor that section 15(b) of the Basic Provisions only applies when the policyholder provides a notification to the AIP that they do not intend to harvest. Section 15(b) simply states appraised production will be used to calculate any claim if the policyholder is not going to harvest the acreage. Further, section 15(b) specifically provides for the process that applies if the policyholder provides notice that they will not be harvesting the crop and later harvests the crop. It states that the appraised production may still be used in certain circumstances.

FCIC agrees that if the policyholder complied with the required notice of loss provisions in the policy and was not required to provide notice of the loss prior to completion of harvest that no appraisal can be done on acreage already harvested and that section 15(b) does not apply.

FCIC agrees that use of appraised production is not limited to only those cases where the policyholder notified the AIP they will not be harvesting the crop. The

2014 Loss Adjustment Manual provides additional uses for appraised production that include, but are not limited to pre-harvest inspections as a quality assurance/control function, determining production to count when no insured cause of loss has prevented timely harvest of the crop, establishing production to count when the policyholder does not provide records of production acceptable to the AIP, and when the policyholder fails to report all units of insurable acreage.

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:** April 10, 2015