

Final Agency Determination: FAD-241

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Subject: Two requests dated July 16, 2015, and July 25, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 and subsequent 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. § 400, subpart X.

Background:

Referenced policy and procedure in request:

Section 17(e)(1) of the Basic Provisions states:

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.

(B) The total number of acres listed on the intended acreage report may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report.

(C) If you acquire additional acreage after we accept your intended acreage report, the number of acres determined in section 17(e)(1)(ii)(A) may be increased in accordance with section 17(e)(1)(i)(B) and (C).

(D) Prevented planting coverage will not be provided for any acreage included on the intended acreage report or any increased amount of acreage determined in accordance with section 17(e)(1)(ii)(C) if a cause of loss that may prevent planting occurred before the acreage was acquired, as determined by us.

Interpretation Submitted

Two interpretations were submitted in this joint FAD request.

First requestor's interpretation:

The requestor interprets section 17(e)(1)(i) to limit eligible prevented planting acres to the maximum number of acres of the crop, for which a prevented planting payment is sought, that were planted in any one of the four most recent crop years. The requestor interprets 17(e)(1)(ii) to limit eligible acres to the number of acres submitted on the intended acreage report, if the policyholder did not plant any crop in any of the four most recent crop years. Section 17(e)(1)(i) applies when the policyholder previously has planted any crop in the county for which prevented planting insurance was available or has received a prevented planting insurance guarantee in at least one of the previous four crop years. Section 17(e)(1)(ii) applies when the policyholder has not planted any crop in the county for which prevented planting insurance was available or has not received a prevented planting insurance guarantee in any of the four most recent crop years. Simply, an intended acreage report can be used only if the policyholder did not plant a crop in any of the four most recent crop years.

Further, the requestor interprets the "planted any crop in the county" language in sections 17(e)(1)(i) and (ii) to apply to any crop that the policyholder planted, even crops that the policyholder chooses not to insure even though insurance, including prevented planting insurance, is available. Finally, the requestor interprets the parenthetical language "you will be considered to have planted if your APH database contains actual planted acres..." to apply to situations where APH procedures allow the policyholder to use someone else's planted acres in his database and not to mean that planting only occurs if the acres appear in the policyholder's APH database. Simply, the requestor interprets this to mean that a policyholder cannot use an intended acreage report to establish eligible acres when he personally has

not planted a crop, but procedure allows him to use someone else's planted acres in his APH database.

Taken as a whole, the requestor interprets these provisions to mean that a new policyholder who has planted any crop in any of the four most recent crop years, for which insurance was available, will qualify for prevented planting coverage for those crops and acres. A new policyholder without a planting history must determine eligible acres under section 17(e)(1)(ii). The intended acreage report exists for the purpose of allowing a new policyholder with no planting history to obtain a prevented planting payment.

For example, if a policyholder has planted only one crop in the past four crop years, for instance soybeans, and intended to plant and insure corn in the current crop year, the policyholder would be eligible for prevented planting coverage based on a soybean production guarantee only. If the policyholder elects not to insure his soybeans, the only crop which he has prevented planting eligibility, he is both disqualified from submitting an intended acreage report and has no eligible acres.

Second requestor's interpretation:

The requestor is asking for an interpretation as to whether eligible prevented planting acres should be based on a previous crop year's uninsured, planted acres (these actual planted acres were not certified to the Actual Production History database) or, instead, that eligible prevented planting acres should be limited to the acres stated on an insured's intended acreage report.

The requester's suggested interpretation is that, if a producer has not certified any acres to the APH database and has not received a prevented planting insurance guarantee in any of the four most recent crop years, eligible prevented planting acres are those acres stated on the intended acreage report. This makes good sense, as a contrary interpretation would allow insured's to claim eligible acres for which approved insurance providers and FCIC would have no accurate way of verifying.

Final Agency Determination

FCIC agrees, in part, with the first requestor's interpretation. FCIC agrees that section 17(e)(1)(i) applies when the policyholder previously has planted any crop in the county for which prevented planting insurance was available or has received a

prevented planting insurance guarantee in at least one of the previous four crop years. FCIC agrees that section 17(e)(1)(ii) applies when the policyholder has not planted any crop in the county for which prevented planting insurance was available or has not received a prevented planting insurance guarantee in any of the four most recent crop years. FCIC agrees that the “planted any crop in the county” language in sections 17(e)(1)(i) and (ii) applies to any crop that the policyholder planted, even crops that the policyholder chooses not to insure even though insurance, including prevented planting insurance, is available. FCIC disagrees with the interpretation that an intended acreage report can be used only if the producer did not plant a crop in any of the four most recent crop years.” The producer can have planted crops in the county during the prior four crop years and still have eligible prevented planting acreage established under section 17(e)(1)(ii) but only if the producer has never planted a crop for which prevented planting insurance was available, or has not received a prevented planting insurance guarantee in all of the four most recent crop years.

FCIC does not agree with the second requestor’s interpretation. Consistent with FAD-200 published on RMA’s website on December 24, 2013, the provisions of section 17(e)(1)(ii) are only applicable if a policyholder has never planted a crop for which prevented planting insurance was available, or has not received a prevented planting insurance guarantee in all of the four most recent crop years. If the policyholder has planted any crop in the county (insured or uninsured) in any one or more of the four most recent crop years for which prevented planting was available, section 17(e)(1)(i) of the Basic Provisions is applicable, regardless of whether or not the acreage planted was insured. Therefore, if the producer previously planted 500 acres of corn in the county in 2013 and elects not to insure these acres, for subsequent years, eligible prevented planting acreage is not established under section 17(e)(1)(ii) of the Basic Provisions because the producer planted a crop for which prevented planting was available in one of the last four years. Eligible prevented planting acreage is established under section 17(e)(1)(i) of the Basic Provisions.

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 31, 2015