

## **Final Agency Determination: FAD-293a**

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**Subject:** A joint request dated December 31, 2019, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2016 crop year regarding the interpretation of section 1 of the Hybrid Seed Corn Crop Provisions, published at C.F.R. § 457.152. This request is pursuant to 7 C.F.R. § 400, subpart X.

### **Background:**

Referenced policy related to the request:

The Hybrid Seed Corn Crop Provisions (Crop Provisions) state, in relevant part:

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#### 1. Definitions

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**Minimum guaranteed payment** - A minimum amount (usually stated in dollars or bushels) specified in your hybrid seed corn processor contract that will be paid or credited to you by the seed company regardless of the quantity of seed produced.

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### **Interpretation Submitted**

The first requestor interprets the definition of “Minimum guaranteed payment” does not encompass payments to an insured pursuant to the hybrid seed corn processor contract which payments:

- (i) are not determinable as a fixed or final amount of bushels or dollars as of the time planting is completed;
- (ii) are based upon an amount of imputed, and not actual, bushels of non-seed

corn, said amount of bushels being determined formulaically with respect to location-specific average yields of non-seed corn for the crop year; and (iii) could ultimately be calculated and fixed at zero dollars, depending on the values of the payment formula input variables resulting from the year's harvest.

The first requestor also states that "Minimum guaranteed payments" are subtracted from the total revenue guarantee sought by the producer when purchasing a crop policy, to determine the limit of the indemnity policy the approved insurance provider (AIP) will sell to fill the "gap" in desired protected revenue. To include as "minimum guaranteed payment" payments which are not fixable as an amount certain of dollars or bushels at the time of acreage reporting pursuant to 7 C.F.R. § 457.152, would inequitably and improperly allow the AIP to both:

- (i) claim additional amounts of insurance per acre for purposes of assessing premiums, by assigning a value of zero dollars to the uncertain payment when deducting it from the total revenue guarantee sold to the producer; and then
- (ii) retroactively claim the revenue guarantee provided was less than the full amount determined and reported on the final schedule of insurance following the acreage report, which full amount served as the basis for determination of the policyholder's premium payment obligations.

The second requestor interprets the definition of "minimum guaranteed payment" as used in 7 C.F.R. § 457.152 is self-evident. It simply means that an agreed upon payment made or credited to a producer by the seed corn processor in instances where the producer did not satisfy the contract by producing the quantity of "seed production" (as defined by the policy) under contract will be considered a "minimum guaranteed payment". The second requestor believes while the definition parenthetically notes that the payment is "(usually expressed in bushels or dollars)", such language is not exclusive; that is, other methods of expressing the "minimum guaranteed payment" are allowed. The defined term then has operational significance in the Hybrid Seed Corn Crop Provisions (Crop Provisions), most notably in establishing the "amount of insurance per acre" (as defined in the policy), by

reducing the calculated dollar per acre coverage by the per acre minimum guaranteed payment. The purpose of the defined term is likewise self-evident; to-wit, to assure that producers are properly insuring (i.e., not over-insuring) their “at risk” farming exposure.

The second requestor also believes that the fact that the “minimum guaranteed payment” may not be immediately quantifiable in bushels or dollars is not determinative under the definition. Likewise, the fact that the payment may be calculated by a formula outlined in the seed corn contract wherein the payment is based on a percentage of location-specific average harvested yields for the year at a to-be-determined price does exempt the payment from the definition. For claim calculation purposes, the minimum guaranteed payment is simply calculated and inputted at harvest time when the actual bushel/dollar amount of the minimum guaranteed payment becomes apparent. The second requestor states that this interpretation is consistent with the stated intent of the defined term; that is, to offset the amount of insurance per acre number for insuring purposes. To allow otherwise would result in potentially overstated liability and, hence, indemnity.

The second requestor acknowledges that the minimum guaranteed payment “amount, if any” is to be provided by the policyholder at acreage reporting time (7 C.F.R. § 457.152, Section 6(c)) In instances where the amount of the payment in bushels/dollars is not calculable at that date, the second requestor believes that the formula must nonetheless be disclosed to the AIP at acreage reporting, and then implemented when the information is available to calculate and express the payment, if any, in bushels/dollars. In the event that a payment is made by the seed corn company based on the formula contained in the seed corn contract, then such payment must be taken into account on the policy to establish the final “amount of insurance per acre” and the corresponding premium associated therewith. Even if the formula is not disclosed by the policyholder at acreage reporting, any minimum guaranteed payment made by the seed corn company must nonetheless be taken into account and used to determine the “amount of insurance per acre” if a claim is filed on the policy. In such event, the “amount of insurance per acre” and corresponding premium will be adjusted prior to the determination and payment of any indemnity.

Finally, the second requestor believes that the interpretation is supported by the claim examples provided in 7 C.F.R. § 457.152, Section 12(c). In both examples the

minimum payment guarantee amount is reduced from the per acre liability prior to the calculation of the indemnity.

## **Final Agency Determination**

The Federal Crop Insurance Corporation (FCIC) disagrees, in part, with the first requestor's interpretation of section 1 of the Hybrid Seed Corn Crop Provisions (Crop Provisions). FCIC agrees that minimum guarantee amount(s) need not necessarily be determinable as of the date of execution of hybrid seed corn processor contract(s). Per section 7(a)(2) of the Crop Provisions, however, any minimum guarantee amount(s) must be determined by the AIP not later than the acreage reporting date.

FCIC agrees, in part, with the second requestor's interpretation of section 1 of the Crop Provisions that a minimum guaranteed payment must be reflected in the determination of the amount of insurance per acre. The amount of insurance per acre is defined in the policy as a dollar amount determined by multiplying the adjusted yield by the price election you select and subtracting any minimum guaranteed payment, not to exceed the total compensation specified in the hybrid seed corn processor contract.

Section 7(a)(2) of the Crop Provisions indicates that the processor contract, containing specification of such minimum payment(s), must be executed before the acreage reporting date. If the AIP later discovers an omission or miscalculation of minimum guaranteed payment(s) in determination of amount of insurance per acre, the AIP must make corrections to the acreage report and related changes to the amount of insurance per acre, premiums owed, etc. Any payment to the policyholder made regardless of the quantity of seed produced would be considered a minimum payment guarantee. If the seed company provides other compensation based on the amount of seed produced such compensation would not qualify as a minimum payment guarantee as specified in the policy.

In accordance with 7 C.F.R. § 400.766(b)(2), 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. § 400.766(b)(5).

**Date of Issue:** March 16, 2020