Final Agency Determination: FAD-264

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Subject: Request dated April 15, 2016, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2015 and 2016 crop years regarding the interpretation of section 9(a)(2)(i) 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 and procedure related to the request: Section 9 of the Basic Provisions states, in relevant part:

9. Insurable Acreage.

(a) All acreage planted to the insured crop in the county in which you have a share:

(1) Except as provided in section 9(a)(2), is insurable if the acreage has been planted and harvested or insured (including insured acreage that was prevented from being planted) in any one of the three previous crop years. Acreage that has not been planted and harvested (grazing is not considered harvested for the purposes of section 9(a)(1)) or insured in at least one of the three previous crop years may still be insurable if:

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(2) Is not insurable if:

(i) The only crop that has been planted and harvested on the acreage in the three previous crop years is a cover, hay (except wheat harvested for hay) or forage crop (except insurable silage). However, such acreage may be insurable only if:

(A) The crop to be insured is a hay or forage crop and the Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(B) The hay or forage crop was part of a crop rotation;

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Interpretation Submitted

The requestor interprets the word “hay” used in section 9(a)(2) to mean a crop planted with the intent to be hayed that is harvested as hay. A crop that is intended to be harvested as grain, but is subsequently harvested as hay would be considered a grain crop because the intent at planting was for the crop to be harvested as grain.

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The Federal Crop Insurance Corporation (FCIC) agrees in part with the requestor’s interpretation. FCIC agrees with the requestor that “hay” means a crop planted and harvested as hay.

FCIC disagrees with the requestor that a crop that is intended to be harvested as grain, but is subsequently harvested as hay would be considered a grain crop because the intent at planting was for the crop to be harvested as grain. The intent is not determinative because it is almost impossible to prove intent so it is the actual use of the acreage. The provisions in section 9(a)(2)(i) of the Basic Provisions specify that acreage is not insurable if the only crop that has been planted and harvested in the three previous crop years is a cover, hay or forage crop (unless the crop to be insured is for hay or forage or due to crop rotation), or a written agreement specifically allows insurance for such acreage. Section 9(a)(2)(i) provides an exception only for the grain crop, wheat. Section 9(a)(2)(i) allows acreage where wheat has been hayed in at least one of the three previous crop years to be insurable, but not acreage where a hay (other than wheat hay) or forage crop (except insurable silage) has been harvested, unless insurance was requested for a hay or forage crop. Acreage which was planted to wheat but was subsequently harvested as hay in at least one of the three previous crop years would meet the exception of section 9(a)(2)(i); and therefore, would be insurable as the acreage would meet the requirements in section 9(a)(1).

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: July 14, 2016