Final Agency Determination: FAD-284

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Subject: Request received October 17, 2018, to the Risk Management Agency (RMA) requesting a Final Agency Determination (FAD) for the 2016 crop year regarding the interpretation of section 20(d)(1) of the Common Crop Insurance Policy 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 20(d)(1) of the Basic Provision states, in relevant part:

> **20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.**
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> (d) We will make decisions regarding what constitutes a good farming practice and determinations of assigned production for uninsured causes for your failure to use good farming practices.
>
>> (1) We will make decisions regarding what constitutes good farming practice and determinations of assigned production for uninsured causes for your failure to use good farming practices.
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>> *****

Interpretation Submitted

The requester interprets section 20(d)(1) of the Basic Provisions to state that if the producer successfully challenges and wins a reversal of a good farming practices (GFP) determination by an approved insurance provider (AIP) that the entire amount of production added to the total production to count, because of such wrongfully

assigned production for uninsured causes for failure to use GFP, is invalid and does not remain in effect.

The requestor proposes that the amount determined by the Federal Crop Insurance Corporation (FCIC) to be wrongfully assigned production for uninsured causes for failure to use GFP would then be credited back to the policyholder to correspondingly reduce the relevant total production to count.

The requestor states that to the extent that such wrongfully assigned production causes the total production to count to decrease to an amount less than the production guarantee for the operative crop year, the AIP must pay the policyholder for that amount of the wrongfully assigned production that actually reduced the relevant total production to count below the operative production guarantee stated in the operative Summary of Coverage.

Final Agency Determination

The FCIC agrees, in part, with the requestor. First, it is the AIP that assigns production when there is a failure to follow good farming practices. Under the policy, the AIP, and FCIC if applicable, makes the determination of whether good farming practices were followed. After that determination, the AIP assigns production to count for the production lost due to the uninsured cause of loss. FCIC does not assign the production.

A successful challenge during mediation, arbitration, or litigation to a GFP determination made by an AIP may cause the underlying production to be recalculated by the AIP to reflect a revised total production to count.

A GFP determination that rules in favor of the policyholder does not imply the policyholder will automatically qualify for a revised total production to count. Following GFP is one of many requirements that a policy holder must meet under the terms of the policy. There may be other uninsured causes of loss that also require assignment of production to count. This would affect the amount of production to count even if the determination of failing to follow good farming practices is reversed. Only the production to count assigned as a result of failing to follow good farming practices would be removed from the production to count. If this results in a production to count that is less than the production guarantee, the producer would be entitled to an indemnity based on the difference between the newly calculation

production to count and the production 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: December 19, 2018