

Final Agency Determination: FAD-286

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Subject: A request dated September 10, 2018, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2015 crop year regarding the interpretation of sections 12 and 14 of the Common Crop Insurance Policy Basic Provisions (Basic Provisions) and section 8 of the Cotton Crop Provisions, published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, subpart X.

Background:

Referenced policy related to the request:

The Basic Provisions state, in relevant part:

Preamble.

We will use the procedures (handbooks, manuals, memoranda and bulletins), as issued by FCIC and published on RMA's Web site at www.rma.usda.gov/ or a successor Web site, in the administration of this policy, including the adjustment of any loss or claim submitted hereunder.

AGREEMENT TO INSURE: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is: (1) the Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), etc. If there is a conflict between the policy provisions published at 7 CFR part 457 and the administrative regulations published at 7 CFR part 400, the policy

provisions published at 7 CFR part 457 control. If a conflict exists among the policy provisions, the order of priority is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) the Commodity Exchange Price Provisions, as applicable; (4) the Crop Provisions; and (5) these Basic Provisions, with (1) controlling (2), etc.

1. Definitions.

Policy. The agreement between you and us to insure an agricultural commodity and consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each agricultural commodity in each county will constitute a separate policy.

12. Causes of Loss.

Insurance is provided only to protect against unavoidable, naturally occurring events. A list of the covered naturally occurring events is contained in the applicable Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

- (a) Any act by any person that affects the yield, quality or price of the insured crop (e.g., chemical drift, fire, terrorism, etc.);

14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage.

Your duties:

(e) Claims:

(4) To receive any indemnity (or receive the rest of an indemnity in the case of acreage that is planted to a second crop), prevented planting payment or replant payment, you must, if applicable:

(iii) Establish:

- (A) The total production or value received for the insured crop on that unit;
- (B) That any loss occurred during the insurance period;
- (C) That the loss was caused by one or more of the insured causes specified in the Crop Provisions; and
- (D) That you have complied with all provisions of this policy.

The Cotton Crop Provisions state, in relevant part:

8. Causes of Loss

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period:

- (a) Adverse weather conditions;
- (b) Fire;
- (c) Insects, but not damage due to insufficient or improper application of pest control measures;
- (d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply due to a cause of loss specified in sections 8(a) through (g) that also occurs during the insurance period.

Interpretation Submitted:

The requestor interprets section 12 of the Basic Provisions provides that “insurance is provided only to protect against unavoidable, naturally occurring events. A list of the covered naturally occurring events is contained in the applicable Crop Provisions.” Section 12 of the Basic Provisions further provides that “all other causes of loss, including but not limited to the following are NOT covered ... (a) any act of any person ... ” Section 8 of the Cotton Crop Provisions provides in relevant part that “insurance is provided only against the following causes of loss which occur within the insurance period: ... (h) Failure of the irrigation water supply due to a cause of loss specified in sections 8 (a) through (g) that also occurs during the insurance period.” The requestor interprets the term “unavoidable” to mean that the causative event must be a naturally occurring event that was not caused or contributed to by human activity, not that it was merely “unavoidable” from the policyholder’s perspective.

The requestor contends that section 12 of the Basic Provisions and Section 8 of the Cotton Crop Provisions must be read together to mean that where failure of irrigation water supply is the cause of loss, such failure must be caused by one of the specific stated causes of loss and that such cause of loss must have occurred during the insurance period to be considered an insurable cause of loss. The fact that the cause of the failure of irrigation water supply was unavoidable from the policyholder's perspective is immaterial unless the policyholder also establishes that such failure resulted from by one of the specific stated causes of loss and that such cause of loss occurred during the insurance period. In other words, to constitute an insurable cause of loss, section 12 of the Basic Provisions and section 8 of the Cotton Crop Provisions require that the failure of irrigation water supply be caused by one

of the specific stated causes of loss which must have occurred during the insurance period, even where the failure of the irrigation water supply was completely unavoidable from the policyholder's perspective. That is, the policyholder may have done everything possible within his control to irrigate his crop, but the loss will not be insurable if the failure of the irrigation water supply was not caused by one of the insured causes of loss that occurred during the insurance period.

The requestor interprets section 12 of the Basic Provisions and section 8 of the Cotton Crop Provisions to mean that losses caused by human activity, i.e., a person, even if unavoidable, are not covered losses. For example, neither a failure of irrigation water supply caused by the failure to properly maintain irrigation canals and ditches nor a supplier's refusal to sell irrigation water to a policyholder would be an insurable loss.

The Basic Provisions define the Policy as "The agreement to insure consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV". The requestor interprets this definition to mean that handbooks published by FCIC, including the Document and Supplemental Standards Handbook (DSSH) are not part of the policy and do not form the basis of the agreement to insure, although they are used in the administration of the policy. The DSSH, and specifically the Irrigation Practice Guidelines ("Guidelines") contained therein are not referenced in the hierarchy of application nor are they cited in the definition of the policy. The requestor contends that the purpose of the DSSH is to provide form standards and procedures for use in the sales and service of any eligible crop insurance policy and that the purpose of the Guidelines is to enable insureds to properly report planted or perennial crop acreage to be insured under the irrigated practice in order to receive maximum protection under their crop insurance policy. The Guidelines themselves do not govern determinations of whether a loss is insurable. The requestor interprets these provisions to mean that the Guidelines, while used in the administration of the policy, do not and cannot circumvent the requirements of the Basic Provisions and Crop Provisions that require a failure of irrigation water supply to be caused by one of the insured causes of loss that occurred during the insurance period in order to constitute an insurable cause of loss. The requirements and conditions of the Cotton

Crop Provisions and the Basic Provisions take priority over the Guidelines.

The requestor interprets section 14(4)(iii)(B) and (C) of the Basic Provisions to place the burden on the policyholder to establish that the failure of the irrigation supply was as a result of one of the stated causes of loss in the Cotton Crop Provisions and that such causative event occurred during the insurance period, otherwise the policyholder is not entitled to receive an indemnity.

Final Agency Determination

The Federal Crop Insurance Corporation (FCIC) agrees with the requestor's interpretation. Section 12 of the Basic Provisions and section 8 of the Cotton Crop Provisions are specific as to the insurable causes of loss. FCIC agrees with the requestor that sections 14(4)(iii)(B) and (C) of the Basic Provisions place the burden on the policyholder to establish that the failure of the irrigation supply was a result of one of the stated causes of loss in the Cotton Crop 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: February 7, 2019