Final Agency Determination: FAD-293c

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Subject: A joint request dated January 2, 2020, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2016 crop year regarding the interpretation of section 12(e) 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:
*****
12. Settlement of Claim
*****

(e) Production to be counted as non-seed production will include all harvested or mature appraised production that does not qualify as seed production to count as specified in section 12(d). Any such production may be adjusted in accordance with section 12(f).
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Interpretation Submitted

The first requestor interprets “Production to be counted as non-seed production” does not include payments to a grower 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; and
(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.

The second requestor believes that the “Production to be counted as seed production” as set forth in 7 C.F.R. § 457.152, section 12(d) of the Crop Provisions is clear and unambiguous. If a policyholder is provided with a minimum guarantee that is to 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, then such payment, if any, must be taken into account for claim purposes when determining the “amount of insurance per acre” so as to properly calculate any indemnity that may be owed. This interpretation is consistent with the claim examples provided in 7 C.F.R. § 457.152 section 12(c) of the Crop Provisions.

Final Agency Determination

The Federal Crop Insurance Corporation (FCIC) agrees, in part, with the first requestor’s interpretation of section 12(e) of the Hybrid Seed Corn Crop Provisions (Crop Provisions). Payments, including minimum contract payments, associated with the policyholder’s sale contract with a hybrid seed corn processor are not used to determine production to count. Minimum contract payments are, however, used to determine amount of insurance per acre, per section 1 of the Crop Provisions.

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