Final Agency Determination: FAD-291

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Subject: Request dated August 26, 2019, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2018 crop year regarding the interpretation of section 15(e)(2) 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:

Referenced policy related to the request:

The Basic Provisions state, in relevant part:

15. Production Included in Determining an Indemnity and Payment Reductions.

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(e) With respect to acreage where you have suffered an insurable loss to planted acreage of your first insured crop in the crop year, except in the case of double cropping described in section 15(h):

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(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and, if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for premium that is 35 percent of the premium that you would otherwise owe for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 15(e)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 15(e)(2)(ii).

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(g) The reduction in the amount of indemnity or prevented planting payment and premium specified in sections 15(e) and 15(f), as applicable, will apply:

(1) Notwithstanding the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions when a conflict exists, to any premium owed or indemnity or prevented planting payment made in accordance with the Crop Provisions, and any applicable endorsement.

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The Federal Crop Insurance Act, U.S. Code § 1508a. states, in relevant part:

(b) Double insurance

(1) Options On Loss To First Crop Except as provided in subsections (d) and (e), if a first crop insured under this subchapter in a crop year has a total or partial insurable loss, the producer of the first crop may elect one of the following options:

(A) No second crop planted The producer may—

(i) elect to not plant a second crop on the same acreage for harvest in the same crop year; and

(ii) collect an indemnity payment that is equal to 100 percent of the insurable loss for the first crop.

(B) Second crop planted The producer may—

(i) plant a second crop on the same acreage for harvest in the same crop year; and

(ii) collect an indemnity payment established by the Corporation for the first crop, but not to exceed 35 percent of the insurable loss for the first crop.

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Interpretation Submitted

The requestor interprets the above-referenced policy provision to mean that absent compliance with each requirement of section 15(h) of the Basic Provisions, indemnity payments on the first insured crop are limited to 35 percent when a second crop is planted and insured on the same acreage for harvest in the same crop year (hereinafter “double cropping”). This is true even if the first insured crop was planted and insured under an RMA pilot plan of insurance that contains less restrictive language on double cropping (See e.g., section 4(e) of the RMA pilot plan Annual Forage Crop Provisions (18-RI-AF), referencing liberalization of section 6(k)(4) and 6(l) of the Rainfall and Vegetation Index Plan Common Policy (18-RIVI)). Section 6(k)(4) of the 18-RIVI requires that the insured has a documented history of planting two crops on the same acreage for harvest in the same crop year. This requirement is also contained in section 15(h)(5) of the Basic Provisions as well as 7 U.S.C. 1508(d)(3).

The requestor believes that its interpretation is consistent with the guidance contained in section 15(g) of the Basic Provisions. That is, the language contained in the Crop Provisions typically takes precedence over conflicting language in the Basic Provisions. The requestor believes it is also consistent with the mandate of the Federal Crop Insurance Act (“FCIA”) at 7 U.S.C. 1508a. While 7 U.S.C. 1508(d) allows an exception to the limitation on double insurance, such exception is predicated on compliance with each of four requirements, including the requirement that the insured prove history of planting two crops on the same acreage for harvest in the same crop year (7 U.S.C. 1508(d)). If all of the predicates are not met, then the exception does not apply.

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FCIC disagrees with the requestor's interpretation. Section 15(h) of the Common Crop Insurance Policy ("CCIP") Basic Provisions does not contain the double cropping rules for all crops. Double cropping rules required under the Federal Crop Insurance Act are contained in individual crop policies. A crop policy can include more than one set of provisions (e.g., basic provisions, crop provisions, Special Provisions, etc.). The provisions of a crop policy must be read collectively, but do not include provisions from any other crop policy. It is possible to have two insured crops with different double cropping rules. Each insured crop must follow its own policy rules to determine if the double cropping requirements have been met.

For example, the CCIP Basic Provisions and the Rainfall and Vegetation Index Plan Common Policy ("18-RI/VI") are separate and have different double cropping rules. The requestor states that the language contained in the crop provisions typically takes precedence over conflicting language in the Basic Provisions. FCIC disagrees. As these are separate policies, no conflicting language exists between the 18-RI/VI policy provisions and language contained in a policy that is published in 7 C.F.R. chapter IV, including the CCIP Basic Provisions and crop provisions of that individual crop policy. In the event there is a conflict between FCIC regulations and administrative regulations published in 7 CFR part IV, the preamble is used to resolve conflicts. The 18-RI/VI does not reference the CCIP Basic Provisions, therefore no hierarchical order of precedence would be imposed because no conflict would exist.

The Annual Forage Crop Provisions modify the 18-RI/VI by excluding the records requirement to prove a history of double cropping, because it is impractical and unreasonable to expect the insured to keep records of production associated with certain farming practices on annual forage acreage. There is not a practical way to measure production that is grazed by livestock. The double cropping rules in the CCIP Basic Provisions are inapplicable to Annual Forage. Rather, the less stringent documentation requirements specific to the temporal nature of forage govern instead of the more general language in section 15(h) of the CCIP Basic Provisions when determining double cropping rules for forage.

The Approved Insurance Provider ("AIP") must review all the applicable policies including basic provisions, crop provisions, Special Provisions, etc., to determine if double cropping rules apply, to which specific crops, and which rules apply. If Annual Forage is one of the crops involved in a scenario where the AIP is determining if the acreage meets the double cropping requirements or if the first and second crop

rules apply, the AIP must review the Annual Forage crop provisions and those provisions should be followed.

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: November 22, 2019