

Final Agency Determination: FAD-274

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Subject: Request dated July 31, 2017, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2016 crop year(s) regarding the interpretation of section 14(e)(4)(i)(A) and 14(e)(5) 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. part 400, subpart X.

Background:

Referenced policy and procedure related to the request:

The Basic Provisions state, in relevant part:

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.

3. Insurance Guarantees, Coverage Levels, and Prices.

(a) Unless adjusted or limited in accordance with your policy, the production guarantee or amount of insurance, coverage level, and price at which an indemnity will be determined for each unit will be those used to calculate your summary of

coverage for each crop year.

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:

(i) Provide:

(A) A complete harvesting, production, and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured.

(iii) Establish:

(A) The total production or value received for the insured crop on the unit;

(5) Failure to comply with any requirement contained in section 14(e)(4) will result in denial of the claim and any premium will still be owed, unless the claim denied is for prevented planting.

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

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.

21. Access to Insured Crop and Records, and Record Retention.

(b) You must retain, and provide upon our request, or the request of any employee of USDA authorized to investigate or review any matter relating to crop insurance:

(1) Complete records of the planting, replanting, inputs, production, harvesting, and disposition of the insured crop on each unit for three years after the end of the crop year (This requirement also applies to all such records for acreage that is not insured);

Interpretations Submitted

The requestor interprets that a policyholder's failure to provide harvest or production records with respect to a unit or units covered by one of the policyholder's MPCI policies in violation of section 14(e)(4)(i)(A) of the Basic Provisions cannot be used by approved insurance provider to deny claims pursuant to section 14(e)(5) of the Basic Provisions which are made on other MPCI policies the policyholder is insured under.

Each policy issued by an approved insurance provider is issued to cover specific units. The Basic Provisions support that each policy is to be treated in isolation without regard to other policies.

The above-referenced policy provisions demonstrate that each policy covers specific units of a specific commodity in a specific county and that in adjusting losses under each policy, the losses from the units insured are to be considered along with the production to count from those units.

Final Agency Determination

FCIC agrees with the requester's interpretation of sections 14(e)(4)(i)(A) and 14(e)(5) of the Basic Provisions. The policy specifies "Insurance for each agricultural commodity in each county will constitute a separate policy." Therefore, all determinations are made on a policy-by-policy basis. This would include the determinations in sections 14(e)(4)(i)(A) and 14(e)(5) of the Basic Provisions. The Basic Provisions do not authorize the approved insurance provider to deny a claim

on a crop policy, solely on the basis of a claim on another crop policy having missing information. For example, an approved insurance provider cannot deny a claim on a soybean policy solely based on a violation of section 14(e)(4) on a corn policy. However, it is possible that failure to provide acceptable production records for a unit can affect the claim on other units within the same policy in accordance with section 11(a) of the Basic 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: October 17, 2017