

## [Final Agency Determination: FAD-248](#)

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**Subject:** Request dated October 23, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 crop year regarding the interpretation of sections 17(e)(1)(i) and 17(f)(12) of the Common Crop Insurance 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 in request:

Section 17 of the Basic Provisions states, in relevant part:

### **17. Prevented Planting.**

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(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double cropped acreage in accordance with section 17(f)(4). The eligible acres for each insured crop will be determined as follows:

(i) If you have planted any crop in the county for which prevented planting insurance was available (you will be considered to have planted if your APH database contains actual planted acres) or have received a prevented planting insurance guarantee in any one or more of the four most recent crop years, and the insured crop is not required to be contracted with a processor to be insured:

(A) The number of eligible acres will be the maximum number of acres certified for APH purposes, or insured acres reported, for the crop in any one of the four most recent crop years (not including reported prevented planting acreage that was planted to a second crop unless you meet the double cropping requirements in section 17(f)(4)).

(B) If you acquire additional land for the current crop year, the number of eligible acres determined in section 17(e)(1)(i)(A) for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that:

(1) You submit proof to us that you acquired additional acreage for the current crop year by any of the methods specified in section 17(f)(12);

(2) The additional acreage was acquired in time to plant it for the current crop year using good farming practices; and

(3) No cause of loss has occurred at the time you acquire the acreage that may prevent planting (except acreage you leased the previous year and continue to lease in the current crop year).

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(f) Regardless of the number of eligible acres determined in section 17(e), prevented planting coverage will not be provided for any acreage:

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(12) If a cause of loss has occurred that may prevent planting at the time:

(i) You lease the acreage (except acreage you leased the previous crop year and continue to lease in the current crop year);

(ii) You buy the acreage;

(iii) The acreage is released from a USDA program which prohibits harvest of a crop;

(iv) You request a written agreement to insure the acreage; or

(v) You acquire the acreage through means other than lease or purchase (such as inherited or gifted acreage).

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Paragraph 27 of the 2014 Prevented Planting Loss Adjustment Handbook states, in relevant part:

## **27. Acreage Which Is Not Eligible for PP Coverage**

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(13) If a cause of loss has occurred that may prevent planting at the time:

(a) The insured bought the acreage;

(b) The insured leased the acreage (except acreage the insured leased the previous crop year and continues to lease in the current crop year);

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## **Interpretation Submitted**

The requestor interprets the above-referenced policy provisions to mean as follows: If at the time an insured acquires additional acres (through lease, purchase, or otherwise) the land is in a drought condition that “may prevent planting,” these additional acres are not eligible for prevented planting coverage during the current crop year. This is true whether it is known for certain if this cause of loss will actually prevent planting. See FAD-244.

## **Final Agency Determination**

FCIC agrees with the requestor’s interpretation. Consistent with FAD-244, section 17(f)(12) of the Basic Provisions uses the phrase “may prevent planting.” The use of the term “may” means that the possibility must exist but it does not have to have occurred yet. Therefore, prevented planting coverage will not be provided if a cause

of loss that may prevent planting has occurred at the time the producer acquired the acreage, regardless of whether it is known if the cause of loss will actually prevent planting.

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 2, 2015