

Final Agency Determination: FAD-309

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Subject: A joint request dated December 3, 2021, submitted to the Risk Management Agency (RMA) for a final agency determination for the 2020 crop year of section 17(f)(12)(i) of the Common Crop Insurance Policy (CCIP) Basic Provisions, published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, Subpart X.

Reference:

The 2020 CCIP Basic Provisions states, in relevant part:

17. Prevented Planting.

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

(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);

Other applicable references:

FAD-089 (issued on August 28, 2008)

The request, dated June 16, 2008, was for an agency determination for the 2007 crop year regarding the interpretation of section 17(f)(3) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. The determination states, in part, “when cash rent lease provisions

apply, the requirement for the payment of cash rent is necessary to provide a legitimate insurable interest to receive prevented planting indemnity payments.”

FAD-244 (issued on September 28, 2015)

The request, dated August 12, 2015, was for an agency determination for the 2014 crop year regarding the interpretation of section 17(f)(12) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. The determination states, “prevented planting coverage will not be provided if a cause of loss that may prevent planting has occurred at the time the producer **leased** (emphasis added) the acreage, regardless of whether it is known if the cause of loss will actually prevent planting.”

FAD-248 (issued on December 2, 2015)

The request, dated October 23, 2015, was for an 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 Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. The determination states, “prevented planting coverage will not be provided if a cause of loss that may prevent planting has occurred at the time the producer **acquired** (emphasis added) the acreage, regardless of whether it is known if the cause of loss will actually prevent planting.”

Informational Memorandum: Advisory Regarding Cash Rent and Establishing Insurable Interest for Prevented Planting Payments (issued on May 18, 2001) states, in relevant part:

Insurance providers are reminded that when cash rent lease provisions apply, the payment of cash rent is necessary to provide a legitimate insurable interest to receive prevented planting indemnity payments. Terms of cash rent leases vary and a review of the cash rent lease may be necessary to determine insurable interest.

Manager’s Bulletin: MGR-20-003 (issued on February 20, 2020) states, in relevant part:

When making prevented planting coverage determinations, approved insurance providers (AIPs) may consider conditions at the time the new tenant (insured) takes possession of the added acreage. This may require determining if a cause of loss exists at the time the insured takes **possession** (emphasis added) of added land that may prevent planting.

Interpretation Submitted

The requestors state clarification is sought as to what constitutes the “time ... you lease the acreage” under a cash rent lease agreement. The requestors question if this refers to the date on which the lease agreement was negotiated, the beginning date of the lease term, or the date on which the cash rent payment was made.

First Requestor’s Interpretation:

The first requestor believes that under a cash rent lease arrangement, the “time ... you lease the acreage” refers to the later of: (1) the beginning date of the lease term specified in the lease agreement; or (2) the date on which the initial cash rent payment is tendered by the policyholder to the landlord. The “time ... you lease the acreage” does not refer to the date of on which the lease agreement was negotiated.

The first requestor states the right of the policyholder to farm the acreage is derived from the lease agreement. As such, the beginning date of the lease term as provided for in the lease agreement is the date on which the policyholder shall be deemed to have leased (or acquired) the acreage. However, under a cash rent lease arrangement, the transfer of interest from the landlord to the tenant does not occur until payment of the initial cash rent payment—or in the case of an agreement requiring a one-time payment, the complete cash rent payment. Therefore, if the cash rent payment is tendered after the beginning date specified in the lease agreement, the payment date will be considered the “time ... you lease the acreage.” On the other hand, if the cash rent payment is tendered before the beginning date specified in the agreement, the lease inception date will be considered the “time ... you lease the acreage.” The date of negotiation of the lease agreement has no relevance for purposes of section 17(f)(12)(i). Finally, if there is a dispute as to the effective date of the lease agreement (for instance, if the policyholder claims the beginning date specified in the written contract was modified by an oral agreement), that dispute must be resolved by the arbitrator based on the

law of the forum state.

Second Requestor's Interpretation:

The second requestor interprets the relevant policy provision to provide that **a policyholder “leases” acreage, for the purposes of prevented planting coverage, at the time a lease agreement is entered and the farmer has control of the leased acreage, regardless of whether the lease is written or oral.**

While there are variations in State Law, it is generally accepted that a binding lease agreement forms when there is a “meeting of the minds” and the necessary elements of contract formation are satisfied. There is no legal requirement that a payment be made before a lease is effective. There is also no doubt that oral agreements for the rental or “lease” of farmland are enforceable. Written lease agreements may be modified by agreement of the parties to these written contracts, oftentimes without a written modification. The first requestor's proposed interpretation is in error as it effectively bars the parties to a lease agreement from modifying the beginning date of the lease term (as may or may not be specified in writing). The first requestors' interpretation also ignores the fact that many farmers sign lease agreements annually, and these lease agreements may not recognize the same farmer's prior possession or rental of the property. The second requestor suggests that the key requirement for a lease is a question of contract formation. For the purposes of section 17(f)(12)(i) of the CCIP Basic Provisions, the primary questions should be: 1) when is a lease effective and 2) when does a policyholder have control of the property? The time that a lease begins under this provision should be the time when there is both a mutually agreed lease agreement and the policyholder has control of the leased acreage.

The second requestor strongly disputes the first requestor's proposed interpretation that a lease does not begin, under a cash lease arrangement, until the initial cash rent payment is tendered by the policyholder. Many cash lease arrangements do not require payment until the fall of the year, after normal harvest time. An interpretation by this Agency, that a cash lease does not begin until a rental payment is made, will no-doubt render many acres uninsurable for prevented planting purposes, because many contracts do not require an “initial” payment of cash rent. It is customary for parties to negotiate the payment of a lump sum rent, to be paid in the fall of the year. Such lease agreements are legally enforceable

contracts so long as there is a promised rental payment on a date set certain. Policyholders have control of the leased acreage on the date established in the lease agreement, regardless of when the rental payment is due. Control of the acreage is often not dependent on prior payment of cash rent. Furthermore, a FAD to the contrary would suggest that farmers whose cash rent is not due, until after harvest, do not have an insurable interest in their insured acres. This is an extreme position which jeopardizes insurance coverage for many policyholders.

The first requestor's interpretation, that the "time" a policyholder leases acreage does not begin until the date on which a cash rent payment is tendered, should be rejected as a policyholder can have legal control of acreage prior to the payment of rent. While the first requestor states that "the transfer of interest from the landlord to the tenant does not occur until payment of the initial cash rent payment," this is not an accurate reflection of the law in all states across this Nation. In fact, no law is cited in support of such a proposition. Prior FADs have made clear that the concern of FCIC has been when a policyholder "acquires" or has control of farmland. The second requestor believes that this concern is adequately protected with this interpretation. The second requestor's interpretation is that the "time" a policyholder leases acreage, for the purposes of the relevant policy provision, is the time at which there is both a legally enforceable lease agreement and the policyholder has control of the leased acreage for farming purposes.

Final Agency Determination

FCIC agrees with the second requestor that, for the purposes of section 17(f)(12)(i) of the CCIP Basic Provisions, the time a lease begins is when the policyholder has both a lease agreement and has taken possession of the leased acreage. As stated in FAD-089, to be eligible for prevented planting coverage, the lease must contain the requirement for cash rent payment for the acreage. However, FAD-089 does not stipulate when the payment of cash rent must occur. As indicated in FAD-244 and FAD-248, and as clarified in MGR-20-003, the acreage will not qualify for a prevented planting payment if a cause of loss that may prevent planting is present at the time the policyholder takes possession of the leased acreage.

FCIC disagrees with the first requestor that, for the purposes of section 17(f)(12)(i) of the CCIP Basic Provisions, a lease does not begin until the initial cash rent payment is tendered by the policyholder, unless the terms of the lease require payment prior to the lease becoming effective. While FAD-089 states that to have an insurable

interest, the payment of cash rent is necessary for prevented planting purposes, it does not specify that payment is due prior to the time the acreage is prevented from planting. FAD-089 references an Informational Memorandum: Advisory Regarding Cash Rent and Establishing Insurable Interest for Prevented Planting Payments that addressed prevented planting payments that were inappropriately made on acres that were covered by cash rent leases that specified payment was only due on planted acres. Thus, since the acreage was never planted, rent was not due, and the policyholder did not have an insurable interest. The terms of cash rent lease(s) must be examined on a case-by-case basis to determine insurable interest.

In accordance with 7 C.F.R. § 400.766(b)(2), this FAD 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: February 14, 2022