

Final Agency Determination: FAD-301

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Subject: Request dated November 25, 2020, submitted to the Risk Management Agency (RMA) for Final Agency Determination (FAD) regarding the interpretation of section 15(h)(7) of the Common Crop Insurance Policy Basic Provisions (CCIP Basic Provisions), published at 7 C.F.R. §457.8. This request is pursuant to 7 C.F.R. § 400, Subpart X.

Background:

The requestor seeks a FAD regarding Section 15(h)(7) of the CCIP Basic Provisions. The specific request relates to a first insured crop followed by a second insured crop planted on the same acreage and one of the two policies have provisions that waive or do not require records of acreage and production in order to meet the double cropping requirements.

Referenced Policy, and FAD:

Section 15 of the Basic Provisions states, in relevant part:

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

(h) You may receive a full indemnity, or a full prevented planting payment for a first insured crop when a second crop is planted on the same acreage in the same crop year, if each of the following conditions are met, regardless of whether or not the second crop is insured or sustains an insurable loss:

(7) With respect to double cropped acreage for which one of the crops you have double cropped is insured under a plan of insurance not covered under these Basic Provisions, each insured crop must follow its own Basic

Provisions, Crop Provisions, and Special Provisions to determine if the double cropping requirements have been met. If the double cropping requirements in the applicable Basic Provisions, Crop Provisions, or Special Provisions have not been met for each insured crop, section 15(e) of these Basic Provisions applies.

FAD-291 (November 22, 2019):

The Request dated, August 26, 2019, was for an agency determination regarding the interpretation of section 15(e)(2) of the Common Crop Insurance Policy Basic Provisions (CCIP Basic Provisions) published at 7 C.F.R. § 457.8. The determination states, in part:

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.

FAD-291 further states:

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.

Interpretation Submitted:

The requestor interprets section 15(h)(7) of the CCIP Basic Provisions to mean when an approved insurance provider (AIP) is determining if the acreage meets the double cropping requirements, or if the first and second crop rules apply, when one of the two policies have provisions that do not require double crop history or records of acreage and production (i.e., Annual Forage Crop Provisions), then those provisions should be followed.

Therefore, 100% indemnity would be payable to both the first and second crops, provided all the other applicable double cropping requirements are met. For example with Annual Forage, in order to meet the double-cropping requirements, the remaining requirements must be met including, but not limited to, the following conditions: 1) it is a practice that is generally recognized by agricultural experts or organic agricultural experts for the area to plant two or more crops for harvest in the same crop year; 2) the second crop is customarily planted after the first crop for harvest on the same acreage in the same crop year in the area (for example, regionally it is a generally recognized double- cropping practice to plant wheat for grazing followed by soybeans); and 3) additional coverage offered under the authority of the Federal Crop Insurance Act (Act) is available in the county on the two or more crops that are double- cropped.

The requestor believes this interpretation is consistent with the guidance contained in section 15(h)(7) of the CCIP Basic Provisions, FAD-291, and the changes that were incorporated into the 2021 Rainfall Index Plan Common Policy, Basic Provisions.

Final Agency Determination

FCIC agrees with the requestor's interpretation of section 15(h)(7) of the CCIP, Basic Provisions. The Act specifies double cropping rules to allow for policyholders to collect a full indemnity if both crops meet certain requirements outlined in the Act. Double-cropping rules are generally contained in individual basic provisions and crop policies. However, grazed crops, such as crops planted and insured under the Annual Forage Crop Provisions, do not require production history because it is unreasonable to expect the policyholder to have production records showing that crops were grazed or livestock were present on specific acres for grazing. There is no practical way to measure production for a crop grazed by livestock; therefore, the Annual Forage Crop Provisions waives the acreage and production records requirements. However, producers will still need to meet the other applicable double-cropping requirements of the Rainfall Index Plan Common Policy, Basic Provisions to receive a

full indemnity on both crops such as the conditions outlined in the interpretation submitted.

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: December 18, 2020