

## [Final Agency Determination: FAD-273](#)

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**Subject:** Joint request dated July 24, 2017, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2015 crop year regarding the interpretation of the definition of “replanting” in section 1 of the Extra Long Staple (ELS) Cotton Crop Provisions, published at 7 C.F.R. § 457.105. This request is pursuant to 7 C.F.R. part 400, subpart X.

### **Background:**

Referenced policy related to the request:

Section 1 of the ELS Cotton Crop Provisions states, in relevant part:

#### **1. Definitions.**

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*Cotton.* Varieties identified as Extra Long Staple (ELS) cotton and American Upland (AUP) cotton if ELS cotton is destroyed by and insured cause and acreage is replanted to AUP cotton.

*Replanting.* Performing the cultural practices necessary to replace the ELS cotton seed, and replacing the seed with either ELS or AUP cotton seed in the insured acreage with the expectation of growing a successful crop.

Section 5 of the ELS Cotton Crop Provisions states, in relevant part:

#### **5. Insured Crop.**

In accordance with section 8 of the Basic Provisions, the crop insured will be all the cotton lint in the county for which premium rates are provided by the actuarial documents:

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Section 6 of the ELS Cotton Crop Provisions states, in relevant part:

**6. Insurable Acreage.**

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

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Section 11 of the ELS Cotton Crop Provisions states, in relevant part:

**11. Late Planting.**

(a) A late planting period is applicable to ELS cotton, if allowed by the Special Provisions.

(b) If the Special Provisions do not provide for a late planting period, any ELS cotton that is planted after the final planting date will not be insured unless you were prevented from planting it by the final planting date...

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Section 1 of the Basic Provisions states, in relevant part:

**1. Definitions.**

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*Practical to Replant.* Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will be considered to be practical to replant regardless of availability of seed or plants, or the input costs necessary to produce the insured crop such as those that would be incurred for seed or plants, irrigation water, etc.

*Replanted Crop.* The same agricultural commodity replanted on the same acreage as the first insured crop for harvest in the same crop year if the replanting is specifically made optional by the policy and you elect to replant the crop and insure it under the policy covering the first insured crop, or replanting is required by the policy.

*Replanting.* Performing the cultural practices necessary to prepare the land to replace the seed or plants of the damaged or destroyed insured crop and then replacing the seed or plants of the same crop in the same insured acreage. The same crop does not necessarily mean the same type or variety of the crop unless different types or varieties constitute separate crops or it is otherwise specified in the policy.

*Second Crop.* With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop

*Timely Planted.* Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

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Section 9 of the Basic Provisions states, in relevant part:

### **9. Insurable Acreage**

(a) All acreage planted to the insured crop in the county in which you have a share: (2) Is not insurable if:

(iv) The insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

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### **Interpretations Submitted**

Two interpretations were submitted in this FAD request.

First Requestor's Interpretation:

The first requestor interprets the ELS Cotton Crop Provisions section 1 definition of “replanting” in conjunction with the definition of “cotton” and the contents of section 5 to mean that when insured ELS cotton acreage is damaged by an insured cause of loss, then subsequently replanted to AUP cotton after the approved insurance provider (AIP) determines it was practical to replant, the replanted AUP cotton is insurable as a continuation of the original ELS cotton policy. The ELS Cotton Crop Provisions consider replanted AUP cotton as a variety under the definition of “cotton” and states that the “Insured Crop” is all cotton lint in the county. Applying these definitions, ELS and AUP cotton constitute the same crop for purposes of replanting requirements. Furthermore, the requestor interprets section 9(a)(2)(iv) of the Basic Provisions to mean that if the AIP determines it is practical to replant, the insured crop must be replanted to maintain insurability. The requestor interprets this to be true regardless of the applicable final planting date(s). Lastly, where insurable damage occurs to ELS cotton before the final planting date as contained in the Cotton Special Provisions and the AIP determines that it is practical to replant, the damaged ELS cotton must be replanted to AUP cotton to maintain insurability of the failed ELS crop.

#### Second Requestor’s Interpretation:

The second requestor interprets section 11 of the ELS Cotton Crop Provisions to mean that AUP cotton planted after the ELS final planting date is uninsurable. The second requestor supports their interpretation with section 1 of the Basic Provisions definition of “Timely Planted” and section 6 of the ELS Cotton Crop Provisions. The requestor interprets these sections to mean that is never practical to replant cotton after the final planting date when there is no late planting period specified in the Crop Provisions or Special Provisions. Furthermore, that it is only practical to replant if the damage to the insured crop was incurred before the ELS cotton final planting date.

#### **Final Agency Determination**

The Federal Crop Insurance Corporation (FCIC) agrees in part with the first requestor’s interpretation. FCIC agrees that if acreage of ELS cotton is damaged and the AIP agrees it is practical to replant, the producer must replant the crop to maintain insurability and coverage would continue based on the ELS crop originally planted regardless of whether the replanted crop is ELS or AUP cotton. FCIC agrees that the final planting date is critical to the original planting of the crop and that

failure to plant the original crop by the final planting date when there is no late planting period renders the crop uninsurable. However, for the purposes of replanting, the final planting date is not critical to the determination of whether it is practical to replant. Instead, practical to replant is determined by whether there is an expectation of growing a successful crop based on the factors to be considered in the definition of practical to replant. When it is considered practical to replant, FCIC disagrees the producer must plant the acreage to AUP cotton. Where insurable damage occurs to ELS cotton before the final planting date, as contained in the Cotton Special Provisions, and the AIP determines that it is practical to replant, the damaged ELS cotton must be replanted to either ELS or AUP cotton to maintain insurability based on the coverage established for the failed ELS crop.

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:** September 19, 2017