

Final Agency Determination: FAD-289

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Subject: A joint request dated July 9, 2019, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2016 crop year regarding the interpretation of section 9(b) of the Common Crop Insurance Policy, Basic Provisions published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, subpart X.

Background:

Referenced policy related to the request:

The Basic Provisions state, in relevant part:

1. Definitions.

Coverage begins, date - The calendar date insurance begins on the insured crop, as contained in the Crop Provisions, or the date planting begins on the unit (see section 11 of these Basic Provisions for specific provisions relating to prevented planting).

Irrigated practice - A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee or amount of insurance on the irrigated acreage planted to the insured crop.

9. Insurable Acreage.

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities and adequate water, or the reasonable expectation of receiving adequate water at the time coverage begins, to carry out a good irrigation practice. If you knew or had reason to know that your water may be reduced before coverage begins, no reasonable expectation exists.

11. Insurance Period

(a) Except for prevented planting coverage (see section 17), coverage begins on each unit or part of a unit at the later of:

(1) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 2);

(2) The date the insured crop is planted; or

(3) The calendar date contained in the Crop Provisions for the beginning of the insurance period.

The General Standards Handbook (GSH) states, in relevant part:

Exhibit 1B Definitions:

Acreage Insurable under the Irrigated Practice – Insurable acreage for which the insured can demonstrate, to the AIP's satisfaction, that adequate facilities and water existed, at the time insurance attached to carry out a good irrigation practice for the insured crop. The insured is responsible for demonstrating that, at the time insurance attached, there was a reasonable expectation receiving adequate water to carry out a good irrigation practice on acreage insured under the irrigated practice.

Good Irrigation Practice – Application of adequate water in an acceptable manner, at the proper times to allow production of a normal crop which is often

identified as the approved yield for crops under APH.

Irrigation Adequacy of Facilities – Irrigation facilities are considered adequate if it is determined that, at the time insurance attaches to planted or perennial acreage, they will be available and usable at the times needed and have the capacity to timely deliver water in sufficient quantities to carry out a good irrigation practice for the acreage insured under the irrigated practice.

The Crop Insurance Handbook (CIH) states, in relevant part:

Paragraph 1103 Applicable Terms

Adequacy of Irrigation Facilities - Irrigation facilities are considered adequate if it is determined that, at the time insurance attaches to planted or perennial acreage, they will be available and usable at the times needed and have the capacity to timely deliver water in sufficient quantities to carry out a good irrigation practice for the acreage insured under the IRR practice.

Interpretation Submitted

The first requestor interprets section 9(b) of the Basic Provisions to mean that adequate irrigation facilities must actually be in place and operational at the time coverage begins for the insured crop. The first requestor believes their interpretation is supported by definition of “acreage insurable under an irrigated practice” provided in Exhibit 1B. of GSH. This definition is as follows:

Insurable acreage for which the insured can demonstrate, to the AIP's satisfaction, that adequate facilities and water existed, at the time insurance attached to carry out a good irrigation practice for the insured crop. The insured is responsible for demonstrating that, at the time insurance attached, there was a reasonable expectation receiving adequate water to carry out a good irrigation practice on acreage insured under the irrigated practice.

Additionally, the first requestor believes their interpretation is likewise supported by definition of adequacy of irrigation facilities provided in CIH paragraph 1103. The definition is as follows:

Irrigation facilities are considered adequate if it is determined that, at the time insurance attaches to planted or perennial acreage, they will be available and usable at the times needed and have the capacity to timely deliver water in sufficient quantities to carry out a good irrigation practice for the acreage insured under the irrigated practice.

Furthermore, the first requestor states that adequate irrigation facilities must be in place and operational at the time coverage begins (as defined by the policy) in order for the acreage to be insured under an irrigated practice. If they are not, the acreage must be insured under a non irrigated practice if such practice is insurable for the specific crop in the county. A mere hope or expectation of having operational irrigation facilities later in the growing season is not sufficient to meet the requirement that the insured must have adequate irrigation facilities "at the time coverage begins."

The second requestor interprets section 9(b) of the Basic Provisions regarding adequate irrigation facilities in place at the time coverage begins does not entail that the irrigation system be fully operational. The second requestor believes that if at the time the policy was written, sufficient wells are in place to irrigate the subject crop, and that the wells would provide sufficient water to irrigate the property, that minor repairs needed to make it fully operational would not defeat coverage. The second requestor states that minor repair work needed on the irrigation equipment in order to make it fully functional does not take it outside of the definition of operational at the time this policy was written.

Furthermore, the second requestor provides that with respect to adequacy of irrigation facilities provided in CIH paragraph 1103 states that irrigation facilities are considered adequate "... if it is determined that at the time insurance attaches to planting or perineal acreage, they will be available and useable at the times needed and have the capacity to timely deliver water in sufficient quantiles to carry out a food irrigation practice for the acreage insured under the IRR practice.

Final Agency Determination

The Federal Crop Insurance Corporation (FCIC) agrees with the first requestor that adequate irrigation facilities must be in place at the time coverage begins for the insured crop. FCIC agrees with the second requestor that the irrigation system is not required to be fully operational at the time coverage begins, as long as there is a reasonable expectation that it will be available and usable at the times needed in order to be considered a good irrigation practice. Section 9(b) of the Basic Provisions provides acreage can be reported under an irrigated practice when adequate facilities and adequate water exist, or the insured can demonstrate there is a reasonable expectation of receiving adequate water at the time coverage begins, to carry out a good irrigation practice.

Whether the irrigation facilities can be reasonably expected to be ready to deliver water to the crop at the appropriate time to allow production of a normal crop in accordance with the policy and procedures outlined above, must be determined by the Approved Insurance Provider (AIP) on a case-by-case basis. If the AIP determines that adequate irrigation facilities are available at the time coverage begins, but there is not a reasonable expectation of receiving adequate water at the time coverage begins to allow production of a normal crop, then there would be no reasonable expectation that a good irrigation practice could be followed during the growing season.

If the AIP determines the policyholder has adequate facilities that are not operational at the time coverage begins, but will be operational during the growing season at the time needed to carry out a good irrigation practice by applying water when it is needed to allow production of a normal crop and there was a reasonable expectation of receiving adequate water at the time coverage began, then the crop can be insurable under an irrigated practice.

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: September 16, 2019