

## [Final Agency Determination: FAD-228](#)

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**Subject:** A request for a Final Agency Determination, dated February 13, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2015 crop year of section 9(a)(1) 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. §400, subpart X.

### **Background:**

Section 9(a)(1) 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:

(1) Except as provided in section 9(a)(2), is insurable if the acreage has been planted and harvested or insured (including insured acreage that was prevented from being planted) in any one of the three previous crop years. Acreage that has not been planted and harvested (grazing is not considered harvested for the purposes of section 9(a)(1)) or insured in at least one of the three previous crop years may still be insurable if:

(i) Such acreage was not planted:

(A) In at least two of the three previous crop years to comply with any other USDA program;

(B) Due to the crop rotation, the acreage would not have been planted in the previous three years (e.g., a crop rotation of corn, soybeans, and alfalfa; and the alfalfa remained for four years before the acreage was planted to corn again); or

(C) Because a perennial tree, vine, or bush crop was on the acreage in at least two of the previous three crop years

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### **Interpretation Submitted**

The requestor interprets section 9(a) to mean the policyholder is required to insure all acres of the crop in the county in which they have a share, unless the acres have not been planted and harvested in one of the three prior crop years. If the acreage was not planted and harvested in one of the three prior crop years, it may be insurable if the acreage was not planted in at least two of the three previous crop years to comply with any other USDA program; due to the crop rotation, the acreage would not have been planted in the previous three years (e.g., a crop rotation of corn, soybeans, and alfalfa; and the alfalfa remained for four years before the acreage was planted to corn again); or because a perennial tree, vine, or bush crop was on the acreage in at least two of the previous three crop years.

Additionally, the requestor says the National Organic Program (NOP) is a USDA program, under which fallowing ground for three or more crop years to certify into the NOP is considered an acceptable crop rotation to satisfy NOP regulation § 205.202 "Land requirements."

The requester interprets section 9(a)(1)(A) to mean fallowing (not planting and harvesting) the acreage for three or more crop years to comply with the NOP regulation would be an acceptable exception for insuring acreage not planted and harvested in one of the three prior crop years. Additionally, allowing acres to sit fallow for three or more crop years during the transition period for certified organic acreage under the NOP is an acceptable exception for insuring acreage not planted and harvested in one of the three prior crop years under section 9(a)(1)(B).

### **Federal Agency Determination**

The Federal Crop Insurance Corporation (FCIC) agrees, in part, with the requestor's interpretation that section 9(a) means the policyholder is required to insure all acres of the crop in the county in which they have a share provided the acreage meets insurability requirements of the Basic Provisions and applicable Crop Provisions. FCIC also agrees, in part, with the requestor's interpretation of section 9(a)(1) that acreage not planted and harvested in one of the three previous crop years may be

insurable if such acreage meets the requirements in section 9(a)(1)(i)(A), (B) or (C). However, section 9(a)(1) actually states “if the acreage has been planted and harvested or insured.” Therefore, to be more precise, acreage not planted and harvested or insured in one of the three previous crop years may be insurable if such acreage meets the requirements in section 9(a)(1)(i)(A), (B) or (C).

FCIC agrees with the requestor that the NOP is a USDA program. However, FCIC is not rendering any final determination as to whether fallowing ground for three or more crop years to certify into the NOP is considered an acceptable crop rotation to satisfy NOP regulation § 205.202 “Land requirements” as this is beyond the legislative or regulatory authority of the FCIC.

If fallowing the acreage for three or more crop years to comply with the NOP regulation, or allowing acres to sit fallow for three or more crop years during the transition period for certified organic acreage is required or considered acceptable under the NOP regulation, and determined as such by the proper Agency authorities responsible for administering the NOP regulation, then FCIC agrees the acreage is not planted and harvested or insured in one of the three prior crop years in accordance with section 9(a)(1)(A) and (B).

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:** April 8, 2015