Final Agency Determination: FAD-293b

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Subject: A joint request dated January 2, 2020, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2016 crop year regarding the interpretation of section 12(d) of the Hybrid Seed Corn Crop Provisions, published at C.F.R. § 457.152. This request is pursuant to 7 C.F.R. § 400, subpart X.

Background:

Referenced policy related to the request:

The Hybrid Seed Corn Crop Provisions (Crop Provisions) state, in relevant part:
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12. Settlement of Claim
*****
(d) Production to be counted as seed production will include:

(1) All appraised production as follows:

(i) Not less than the amount of insurance per acre for acreage:

(A) That is abandoned;
(B) Put to another use without our consent;
(C) That is damaged solely by uninsured causes; or
(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;
(iii) Mature unharvested production with a germination rate of at least 80 percent of the commercial hybrid seed corn as determined by a certified seed test. Any such production may be adjusted in accordance with section 12(f);
(iv) Immature appraised production;

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or
(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) Harvested production that you deliver as commercial hybrid seed corn to the seed company stated in your hybrid seed corn processor contract, regardless of quality, unless the production has inadequate germination.
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Interpretation Submitted

The first requestor interprets “Production to be counted as seed production” does not include payments to a producer pursuant to the hybrid seed corn processor contract which payments:

(i) are not determinable as a fixed or final amount of bushels or dollars as of the time planting is completed; and
(ii) are based upon an amount of imputed, and not actual, bushels of non-seed corn, said amount of bushels being determined formulaically with respect to location-specific average yields of non-seed corn for the crop year.

The second requestor believes “Production to be counted as seed production” as set forth in 7 C.F.R. § 457.152, section 12(d) of the Crop Provisions is clear and unambiguous. If a policyholder is provided with a minimum guarantee that is to be calculated by a formula outlined in the seed corn contract wherein the payment is based on a percentage of location-specific average harvested yields for the year at a to-be-determined price, then such payment, if any, must be taken into account for claim purposes when determining the “amount of insurance per acre” so as to properly calculate any indemnity that may be owed. This interpretation is consistent with the claim examples provided in 7 C.F.R. § 457.152 section 12(c) of the Crop Provisions.

Final Agency Determination

The Federal Crop Insurance Corporation (FCIC) agrees, in part, with the first requestor’s interpretation of section 12(d) of the Hybrid Seed Corn Crop Provisions (Crop Provisions). Payments, including minimum contract payments, associated with the policyholder’s sale contract with a hybrid seed corn processor are not used to determine production to count. Minimum contract payments are, however, used to determine amount of insurance per acre, per section 1 of the Crop Provisions.

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: March 16, 2020