



Final Agency Determination: FAD-283

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Subject: Request dated September 18, 2018, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2016 crop year regarding the interpretation of section 4(b) of the Common Crop Insurance Policy 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:

The Basic Provisions states, in relevant part:

1. Definitions.

Summary of coverage - Our statement to you, based upon your acreage report, specifying the insured crop and the guarantee or amount of insurance coverage provided by unit.

3. Insurance Guarantees, Coverage Levels, and Prices.

(a) Unless adjusted or limited in accordance with your policy, the production guarantee or amount of insurance, coverage level, and price at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage for each crop year.

4. Contract Changes.

(a) We may change the terms of your coverage under this policy from year to year.

(b) Any changes in policy provisions, amounts of insurance, premium rates, program dates, price elections or the Commodity Exchange Price Provisions, if applicable, can be viewed on RMA's Web site not later than the contract change date contained in the Crop Provisions (except as allowed herein or as specified in section 3). We may only revise this information after the contract change date to correct clear errors (e.g., the price for oats was announced at \$25.00 per bushel instead of \$2.50 per bushel or the final planting date should be May 10 but the final planting date in the Special Provisions states August 10).

The Grape Crop Provisions states, in relevant part:

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(g) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect on yield potential of any of the items listed in section 3(f)(1) through (4). If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation date for Arizona and California and August 31 preceding the cancellation date for all other states.

Interpretation Submitted

The requestor's interpretation of how section 4(b) of the Basic Provisions applies is that with respect to the amount of insurance/production guarantee (an amount which is reflected in the Summary of Coverage form for the applicable crop year as described in section 3(a) of the Basic Provisions), is that any changes or adjustments made by the approved insurance provider to the amount of insurance or production guarantee after the "contract change date" are void and do not take effect unless such changes are done in accordance with the policy language contained in the operative Basic Provisions, Crop Provisions, or any applicable Special Provisions.

Final Agency Determination

The Federal Crop Insurance Corporation (FCIC) disagrees that section 4 of the Basic Provisions requires changes to the production guarantee to be available on RMA's website not later than the contract change date contained in the Crop Provisions. Section 4 of the Basic Provisions does not address the production guarantee. Further, under section 3(f) of the Grape Crop Provisions, all the information used to establish the production guarantee is not provided until production reporting date, which is months after the contract change date and after the sales closing date. Therefore, there is no basis for an interpretation that the production guarantee cannot be changed after the contract change date when the production guarantee does not even exist by the contract change date.

Section 4 of the Basic Provisions does mention "amounts of insurance," but that term is specific to an amount of insurance issued by FCIC for dollar plans of insurance and does not apply to the Grape Crop Provisions. These dollar plans of insurance set a specific dollar amount of insurance published in the actuarial documents that the producer can select. Once the dollar amount of insurance is published in the actuarial documents, it cannot be changed after the contract change date. This amount of insurance differs significantly from the production guarantee. The production guarantee is defined in the Basic Provisions as "the number of pounds, bushels, tons, cartons, or other applicable units of measure determined by multiplying the approved yield per acre by the coverage level percentage you elect." As stated above, the number of tons produced under the grape policy is not reported until the production reporting date. Therefore, FCIC disagrees with the requestor that any changes or adjustments to the production guarantee made by the approved insurance provider after the "contract change date" are void and do not take effect. In addition, section 3 of the Grape Crop

Provisions expressly contain provisions that allow for the adjustment of yields used to establish the guarantee at any time when certain conditions are found.

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: December 19, 2018