

Final Agency Determination: FAD-237

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Subject: A joint request for a Final Agency Determination, dated May 5, 2015, was submitted by two parties, along with their separate interpretations of the same policy provision requesting a Final Agency Determination for the 2012 crop year regarding the interpretation of section 3(g) 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. part 400, subpart X.

Background:

Section 3(g) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions) (7 C.F.R. § 457.8) states, in relevant part:

3. Insurance Guarantees, Coverage Levels, and Prices

(g) It is your responsibility to accurately report all information that is used to determine your approved yield.

(1) You must certify to the accuracy of this information on your production report.

(2) If you fail to accurately report any information or if you do not provide any required records, you will be subject to the provisions regarding misreporting contained in section 6(g), unless the information is corrected:

(i) On or before the production reporting date; or

(ii) Because the incorrect information was the result of our error or the error of someone from USDA.

(3) If you do not have written verifiable records to support the information on your production report, you will receive an assigned yield in accordance with section 3(f)(I) and 7 CFR part 400, subpart G for those crop years for which you do not have such records.

(4) At any time we discover you have misreported any material information used to determine your approved yield or your approved yield is not correct, the following actions will be taken, as applicable:

(i) We will correct your approved yield for the crop year such information is not correct, and all subsequent crop years;

(ii) We will correct the unit structure, if necessary;

(iii) Any overpaid or underpaid indemnity or premium must be repaid; and

(iv) You will be subject to the provisions regarding misreporting contained in section 6(g)(I), unless the incorrect information was the result of our error or the error of someone from USDA.

Interpretation Submitted

Two interpretations were submitted in this joint FAD request.

First Requestor's Interpretation:

The first requestor interprets this regulation and procedure in section 14B of Crop Insurance Handbook (CIH) to require the insured maintain and produce on request acceptable records to support the production report. Additionally, the first requestor believes that if during an APH review the insured is found to not have acceptable records to support the yield certified on the production report, the insured will be subject to the misreporting provisions contained in section 3(g)(3) of Basic Provisions and an assigned yield will be used for the year that records are not provided.

Second Requestor's Interpretation:

The second requestor interprets this regulation and procedure in section 14B of CIH to require the insured maintain and produce on request acceptable records to support the production report. Furthermore, the second requestor believes the CIH specifies acceptable production evidence by crop as requiring either verifiable production evidence or farm management records to support the insured's certification on the production report.

The second requestor believes that the policy and procedure provide for consequences when the acceptable production evidence shows a different yield than what was certified. In the case of a crop that requires verifiable records, the insured will receive an assigned yield pursuant to section 3(g)(3) when the insured fails to produce verifiable records. In the case of a crop for which verifiable records are not required and farm management records are authorized, the insured will receive a corrected yield, subject to the misreporting provisions in section 3(g)(2) and 3(g)(4) and, by extension, section 6(g). In either case, the insured will be subject to civil and/or criminal penalties, as set forth in Section 27, if it is determined that the insured willfully and intentionally provided false information.

Additionally, the second requestor believes section 3(g) governs the accurate reporting of information that is used to determine an insured's approved yield and provides that section 3(g)(3), deals specifically with crops for which written verifiable records are required. Pursuant to section 3(g)(3) of the Basic Provisions, if a crop requires written verifiable records in accordance with the CIH, assigned yield procedures apply if the insured does not provide written verifiable production records that support the yield certified on an acceptable production report. It is clear from the plain language of section 3(g)(3) that it only applies to crops that require written verifiable records, as that is the only category of records referenced in that section. In other words, there can be no penalty for failing to provide written verifiable records for corn where the insured was never required to have written verifiable records for that crop in the first place. In contrast, sections 3(g)(2) and 3(g)(4) apply to all crops and do not reference written verifiable records, but rather more generally discuss the failure to provide information or required records.

The second requestor believes that in the case of corn crop, an insured is authorized to use farm management records as acceptable records and is not required to provide verifiable records. If during an APH review it is determined that the farm management records reviewed provide a more accurate yield for the crop years at

issue, the actual yield would be corrected in accordance with Section 19B of the CIH. After the actual yield is corrected, the insured will be subject to the misreporting provisions contained in the policy. However, of the various misreporting provisions, Section 3(g)(3) is not implicated, because corn does not require written verifiable records.

Final Agency Determination

FCIC agrees with the first requestor. Section 508(g) of the Federal Crop Insurance Act makes it clear that all producers are required to provide satisfactory evidence of their actual production records or receive an assigned yield. Section 3(g)(3) of the Basic Provisions and the Federal Crop Insurance Corporation's CIH implements this requirement. If during a review the approved insurance provider (AIP) or Risk Management Agency (RMA) determines the insured does not have acceptable records to support the yield certified on the production report, the insured will be subject to the misreporting provisions contained in section 3(g)(3) and an assigned yield will apply for that year.

FCIC agrees with the second requestor, with the exception of the following key points. Section 3(g)(3) expressly states that written verifiable records are required and the consequences when such records are not available. Farm management records, in certain cases, are acceptable written verifiable records for crops which allow farm management records, in accordance with section 14E of the CIH.

If farm management records are authorized for the crop and the insured does not have acceptable farm management or other written verifiable records, as determined by the AIP or RMA, to support the yield certified on the production report, the insured will be subject to the misreporting provisions contained in section 3(g)(3) and an assigned yield will apply for that year.

Section 13A(1)(a)4 of the CIH provides that for the production report to be acceptable it must be supported by written verifiable records and refers to section 14 for production evidence requirements. Section 14 of the CIH specifies whether farm management records are acceptable production evidence by crop to support the insured's certification on the production report. Furthermore, section 13A(3)(c) of the CIH provides that, for carryover insureds, if acceptable production reports are not submitted or acceptable production evidence is not provided when requested, optional units are not allowed on the policy and assigned yields apply to all units.

Assigned yield provisions will apply when the insured does not submit an acceptable production report supported by acceptable production evidence, or acceptable production evidence is not provided when requested.

In the case of the crop corn, properly maintained farm management records are acceptable written verifiable records. However, if the AIP believes the amount of production on any acceptable record is not reasonable, or has reason to question any of the records provided, the AIP may do either or both of the following: verify the physical existence of the production or require additional acceptable verifiable records (e.g., settlement sheets).

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: July 6, 2015