

## **Final Agency Determination: FAD-234**

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**Subject:** Request dated February 25, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 crop year regarding the interpretation of section 17(e) 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 17 of the Basic Provisions states, in relevant part:

#### **17. Prevented Planting.**

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(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double cropped acreage in accordance with section 17(f)(4). The eligible acres for each insured crop will be determined as follows:

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(iii) For any crop that must be contracted with a processor to be insured:

(A) The number of eligible acres will be:

(1) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for

the crop year;

(2) The result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted (for the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used); or

(3) Notwithstanding sections 17(e)(1)(iii)(A)(1) and (2), if a minimum number of acres or amount of production is specified in the processor contract, this amount will be used to determine the eligible acres.

(B) If a processor cancels or does not provide contracts, or reduces the contracted acreage or production from what would have otherwise been allowed, solely because the acreage was prevented from being planted due to an insured cause of loss, we will determine the number of eligible acres based on the number of acres or amount of production you had contracted in the county in the previous crop year. If the applicable Crop Provisions require that the price election be based on a contract price, and a contract is not in force for the current year, the price election will be based on the contract price in place for the previous crop year. If you did not have a processor contract in place for the previous crop year, you will not have any eligible prevented planting acreage for the applicable processor crop. The total eligible prevented planting acres in all counties cannot exceed the total number of acres or amount of production contracted in all counties in the previous crop year.

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(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 17(e)(1), we will use acreage from another crop insured for the current crop year for which you have remaining eligible prevented planting acreage.

(1) The crop first used for this purpose will be the insured crop that would have a prevented planting payment most similar to the payment for the crop that was prevented from being planted.

(i) If there are still insufficient eligible prevented planting acres, the next crop used will be the insured crop that would have the next closest prevented planting payment.

(ii) In the event payment amounts based on other crops are an equal amount above and below the payment amount for the crop that was prevented from being planted, eligible acres for the crop with the higher payment amount will be used first.

Paragraph 26 C(3) of the 2014 Prevented Planting Loss Adjustment Standards Handbook (PP LASH) states, in relevant part:

## **26. Eligible Acres**

### **C. Maximum eligible acreage for each insured crop**

(3) For crops requiring processor contracts:

#### **Eligible acres for crops that require a processor contract:**

A. The number of eligible acres will be:

(1) The number of acres specified in the processor contract, if the contract specifies a number of acres contracted for the crop year;

(2) The result of dividing the quantity of production stated in the processor contract by the insured's approved yield, if the processor contract specifies a quantity of production that will be accepted. (For the purposes of establishing the number of PP acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used.);  
or

(3) Regardless of A (1) or (2) above, if a minimum number of acres or amount of production is specified in the processor contract, this amount will be used to determine the eligible acres.

B. If a processor cancels or does not provide contracts, or reduces the contracted acreage or production from what would have otherwise been allowed, solely because the acreage was prevented from being planted due to an insured cause of loss, the AIP will determine the number of acres eligible based on the number of

acres or amount of production the insured had contracted in the county in the previous crop year. 1/

(1) If the applicable CP require that the price election be based on a contract price, and a contract is not in force for the current year, the price election will be based on the contract price in place for the previous crop year.

(2) If the insured did not have a processor contract in place for the previous crop year<sup>1/</sup>, the insured will not have any eligible PP acres for the applicable processor crop.

(3) The total eligible PP acres in all counties cannot exceed the total number of acres or amount of production contracted in all counties in the previous crop year<sup>1/</sup>.

1/ crop year as defined in the applicable CP.

### **Interpretation Submitted**

The suggested interpretation is that an approved insurance provider (AIP) may not arbitrarily apportion or assign all or part of eligible prevented planting acres to a certain county, contrary to the wishes of the insured. The Prevented Planting LASH Handbook procedures do not provide authority for an AIP to arbitrarily apportion acres between counties or to assign all eligible prevented planting acres to one county. The requestor respectfully suggests that there is no RMA procedure allowing such action. The AIP should not be allowed to leave an insured, which has eligible prevented planting acres, in a situation where that insured has no prevented planting coverage. The requestor states the insured is entitled by contract and in accordance with the Prevented Planting Handbook to prevented planting coverage on a certain number of acres. It is not in the best interest of the Federal Crop Insurance Program to allow AIP's broad and unfettered discretion in the apportionment and/or complete assignment of prevented planting acres across counties. The effect of such practices allows an AIP to rob an insured of the benefit of prevented planting eligibility gained through a processor contract.

### **Final Agency Determination**

FCIC agrees with the requestor that an AIP may not arbitrarily apportion or assign eligible prevented planting acres. However, neither can the insured apportion or

assign eligible prevented planting acres. FCIC insurance offers are established on a county basis. Insurable acreage is described in section 9(a) of the Basic Provisions as all acreage planted to the insured crop in the county in which you have a share. Further, the Basic Provisions defines an insured crop as the crop in the county for which coverage is available under your policy as shown on the application accepted by us. Insurance for each agricultural commodity in each county will constitute a separate policy. When the insured wants to plant and insure crops in two or more counties, he or she must obtain separate and distinct policies for each county. When an insured enters into a production contract with a processor to grow a specified number of acres of a crop that will be planted in two or more counties, the insured must have a separate crop policy for each county.

Section 17 of the Basic Provisions establishes prevented planting eligible acres on a policy basis and therefore, the AIP must determine the number of eligible acres for each county in accordance with section 17(e) of the Basic Provisions. The Basic Provisions do not allow transfer of eligible prevented planting acres between counties. However, if an insured does not have an adequate base of eligible prevented planting acreage in the county for a crop, as determined in accordance with section 17(e)(1), the AIP can use acreage from another crop insured under the same policy for the current crop year for which the producer has remaining eligible prevented planting acreage. Acres can be used for a crop in the county that does not require a processing contract.

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 29, 2015