



## **Final Agency Determination: FAD-277**

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**Subject:** Request received November 2, 2017, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2016 crop year regarding the interpretation of sections 14(e)(4)(i)(A) and 14(e)(5) 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:**

Section 14(e) of the Basic Provisions states, in relevant part:

#### **14. Duties in the Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage.**

Your Duties:

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(e) Claims:

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(4) To receive any indemnity (or receive the rest of an indemnity in the case of acreage that is planted to a second crop), prevented planting payment or replant payment, you must, if applicable:

(i) Provide:

(A) A complete harvesting, production, and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured.

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(C) Any other information we may require to settle the claim.

(ii) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

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(C) Provide us with records and documents we request and permit us to make copies.

(iii) Establish:

(A) The total production or value received for the insured crop on the unit;

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(iv) Upon our request, or that of any USDA employee authorized to conduct investigations of the crop insurance program, submit to an examination under oath.

(5) Failure to comply with any requirement contained in section 14(e)(4) will result in denial of the claim and any premium will still be owed, unless the claim denied is for prevented planting.

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## **Interpretations Submitted**

The requestor states the denial of a claim under sections 14(e)(4)(i) and 14(e)(5) is not proper when a policyholder inadvertently fails to produce some of its harvesting or production records and the approved insurance provider (AIP) obtains the missing records from third parties through the independent loss adjustment investigation it is required to perform pursuant to the Loss Adjustment Manual (LAM).

The denial authorized by section 14(e)(5) is for those situations where the loss adjustment process results in a finding that there is a complete absence of records necessary to accurately adjust the loss, whether from the policyholder or third parties.

In conclusion, the Basic Provisions and the LAM are intended to enable the adjustment of a loss. They equip AIPs with tools that are necessary for adjusting losses. Those tools include the gathering of records from third parties and the requirement that policyholders cooperate in the loss adjustment process, which entails the production of additional records upon request. The Basic Provisions and the LAM are not intended to equip AIPs to deny a claim when policyholders, particularly larger ones, inadvertently omit harvest or production records from their initial production of such records. Sections 14(e)(4)(i)(A) and 14(e)(5) are intended to lead to a denial if the loss adjustment investigation results in a finding that there are a complete absence of harvest or production records necessary to accurately adjust the loss.

### **Final Agency Determination**

FCIC disagrees with the requester's interpretation of sections 14(e)(4) and 14(e)(5) of the Basic Provisions. Section 14(e)(4) of the Basic Provisions clearly state that in order to receive any indemnity (or receive the rest of an indemnity in the case of acreage that is planted to a second crop), prevented planting payment or replant payment, the policyholder must provide a complete harvesting, production, and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured. In accordance with section 14(e)(5), failure to comply with any requirement contained in section 14(e)(4) will result in denial of the claim and any premium will still be owed, unless the claim denied is for prevented planting. While AIPs have an obligation to obtain records from third parties, this obligation is for the purposes of verifying that the producer has provided all records of production. It is not for the purposes of establishing the production to count as the requestor seems to suggest. To accept the requestors interpretation would nullify the provision in section 14(e)(5) because the only way the AIP would realize that records were missing was if it discovered them. Under the requesters interpretation, in these circumstances section 14(e)(5) would not apply because the missing records were "inadvertent." Since AIPs are in no position to determine whether the missing records were intentional or inadvertent, section 14(e)(4) is drafted to place the obligation on the producer to provide the complete records and failure to do so will result in the application of section 14(e)(5). Denial of a claim need not be predicated on a complete absence of harvest or production records, but rather, may be based on the policy holder's failure to provide complete records.

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:** January 16, 2018