

## **Final Agency Determination: FAD-314**

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**Subject:** A joint request dated July 13, 2022, submitted to the Risk Management Agency (RMA) for a final agency determination for the 2019 crop year of section 17(f)(12)(i) of the Common Crop Insurance Policy (CCIP) Basic Provisions, published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, Subpart X.

**Reference:**

The 2018 CCIP Basic Provisions states, in relevant part:

**17. Prevented Planting.**

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(f) Regardless of the number of eligible acres determined in section 17(e), prevented planting coverage will not be provided for any acreage:

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(12) If a cause of loss has occurred that may prevent planting at the time:

(i) You lease the acreage (except acreage you leased the previous crop year and continue to lease in the current crop year);

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Other applicable references:

FAD-112 (issued March 9, 2010)

The request, dated December 23, 2009, was for an agency determination for the 2008 and subsequent crop years regarding the interpretation of section 17(b)(4) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. The determination states: "If the

effects of one or more causes of loss are evident at the time the producer requests the increased prevented planting coverage level and it can be established that if normal weather conditions were to occur after the time the producer requested the increased prevented planting coverage level it would allow the acreage to be planted, the producer's request to increase their coverage level should be accepted. For example, if prior to the request to increase coverage, there is an unusually heavy snowstorm early in the winter season but the early snowstorm is unlikely to affect planting if normal weather continues into the spring, then the request to increase the prevented planting coverage level may be granted. However, if it is unlikely, or questionable, as to whether normal weather conditions could mitigate events that occurred prior to the time the producer requested the increased prevented planting coverage level, the producer's request must be denied. For example, if excessive precipitation that occurred throughout the previous fall is followed by a long and early winter, where significantly more than normal snowfall occurred, these events could result in the inability to plant a spring crop even if normal spring weather conditions were to occur and therefore, the request to increase prevented planting coverage should be denied.

Section 17(b)(4) of the Basic Provisions does not require the AIP to determine, at the time the producer requests the additional prevented planting coverage level, whether or not a cause of loss that previously occurred "will" ultimately prevent planting. Instead the AIP should prohibit the increased coverage if the cause of loss will or "could" prevent planting. At the time the increased coverage is requested, it may be impossible to determine whether the acreage will actually be prevented from being planted several months later, since other intervening events could change the outcome. Therefore, if a cause of loss has occurred that may "or could" prevent planting, the request must be denied."

FAD-217 (issued on June 27, 2014)

Two requests, dated March 28, 2014, and April 4, 2014, were for an agency determination for the 2012 crop year regarding the interpretation of section 14(e)(4)(iii) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. 457.8. The determination states, "based on section 14(e)(4)(iii) of the Basic Provisions, it is the policyholder who bears the burden of proof to prove that they satisfy each requirement for completing a Federal crop insurance claim. Section 14 of the Basic Provisions contains both

“Your Duties” and “Our Duties” in the event of damage or loss with “Your Duties” being that of the policyholder and “Our Duties” being that of the AIP. Under section 14(e)(4)(D), the policyholder has the burden to establish that the subject acreage satisfies all conditions imposed by the Basic Provisions and the Special Provisions relating to prevented planting coverage. One of the requirements of the Basic Provisions is that acreage for which prevented planting is claimed is physically available for planting. Therefore, the burden rests with the producer to establish that it met this requirement to qualify for prevented planting.”

FAD-220 (issued on July 7, 2014)

Two requests, dated May 7, 2014, and May 13, 2014, were for an agency determination for the 2012 crop year regarding the interpretation of the section 1 definition of “prevented planting” and section 17(a)(1) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. The determination states, “if a cause of loss occurs prior to the beginning of the current prevented planting insurance period, and the policyholder cannot prove, using available information, that with normal weather conditions the acreage would be expected to be planted during the current crop year, no prevented planting payment would be paid for this acreage in the current crop year.”

### **Interpretation Submitted**

#### First Requestor’s Interpretation:

The first requester believes that a similar analysis, as provided in FAD-220, is appropriate in determining whether a cause of loss has occurred that may prevent planting at the time a first year insured leases acreage that was not leased by the insured the previous crop year. That is, if at the time of leasing there is an insurable cause of loss already present, a prevented planting payment will not be provided if the insured cannot prove, using available information, that with normal weather conditions the acreage would be expected to be planted on or before the final plant date.

#### Second Requestor’s Interpretation:

The second requester believes that the approved insurance provider has the burden to prove that the subject property had incurred an insurable cause of loss due to abnormal weather conditions at the time of the leasing and that said conditions continued through the policy inception date and on through the final planting date.

Additionally, the second requester takes the position that if abnormal or excessive weather conditions did not occur until after the policy was written, that prevented planting coverage would be available to the insured. The second requester also takes the position that if under normal weather conditions the ground would be unsuitable to plant at the inception date of the policy, but that subsequent thereto abnormal weather conditions kept the ground unsuitable through the end of the planting period, that prevented planting coverage would also be available to the insured.

The second requester takes the position that most insurance policies are written in the winter and fall of the year, when under normal circumstances it is physically impossible or unsuitable to plant a crop. But this fact alone should not prohibit prevented planting coverage if under normal weather conditions the ground would have been available for planting during the policy period and prior to the final plant date.

### **Final Agency Determination**

FCIC agrees with the first requestor. As indicated in FAD-217, it is the insured's responsibility to establish that land, including newly acquired land, meets the requirements to qualify for prevented planting coverage. However, if a cause of loss exists at the time the insured takes possession of newly acquired acreage, the approved insurance provider determines whether the presence of that cause of loss may result in the acreage being prevented from planting. This includes the consideration, under normal weather conditions, if the acreage would be available for planting by the final planting date. If not, prevented planting coverage will not be provided for the acreage in the applicable crop year.

As indicated in FAD-112, a cause of loss that may prevent planting is not intended to include normal weather conditions, such as typical snowpack in winter. [MGR-20-003](#), which was issued after the crop year in question, clarified examples of factors approved insurance providers are to consider when determining if a cause of loss exists that may prevent planting. These factors include, but are not limited to,

historical weather patterns, timing of the final plant date, and insured's individual planting history.

In accordance with 7 C.F.R. § 400.766(b)(2), this FAD 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:** August 25, 2022