

## **Final Agency Determination: FAD-257**

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**Subject:** Request dated November 6, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination (FAD) for the 2015 and succeeding crop years regarding the interpretation of section 3 of the Arizona-California Citrus Crop Provisions, published at 7 C.F.R. § 457.121. This request is pursuant to 7 C.F.R. § 400, subpart X.

### **Background:**

Section 3 of the Arizona-California Citrus Crop Provisions states:

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

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(c) In addition, you must report, by the production reporting date designated in section 3 of the Basic Provisions, by commodity type, if applicable:

- (1) The number of trees damaged, dehorned or removed; any change in practices or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based; and the number of affected acres;
- (2) The number of bearing trees on insurable and uninsurable acreage;
- (3) The age of the trees and the planting pattern; and
- (4) For the first year of insurance for acreage interplanted with another perennial agricultural commodity and any time the planting pattern of such acreage is changed:

- (i) The age of the interplanted agricultural commodity and commodity type, if applicable;
- (ii) The planting pattern; and
- (iii) Any other information that we request in order to establish your approved yield.

(d) We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of any situation listed in section 3(c) that may occur. If you fail to notify us of any situation in section 3(c), we will reduce your production guarantee as necessary, at any time we become aware of the circumstance. If the situation in 3(c) occurred:

(1) Before the beginning of the insurance period, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the situation was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) After the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 11(c) due to uninsured causes. We may reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees.

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### **Interpretation Submitted**

Approved insurance providers (AIPs) are not authorized to establish procedures or calculations to reduce yields that are not authorized by the Basic Provisions, Crop Provisions, APH regulations, or FCIC procedures. Therefore, in the absence of policy or procedure language to reduce the yield in accordance with section 3, it is the

requestor's interpretation that the RMA Regional Office (RO) must reduce the yield not only when the insured does notify the AIP by the production reporting date (PRD), but also when the insured fails to notify the AIP by the production reporting date. The requestor further believes section 3 of the Crop Provisions does not authorize an AIP to apply uninsured causes in the event of a loss, except when the situation occurred after the beginning of the insurance period and the insured failed to notify the AIP by the production reporting date.

## **Final Agency Determination**

FCIC agrees, in part, with the requestors' interpretation. AIPs are not authorized to establish procedures or calculations to reduce yields that are not authorized by the Basic Provisions, Crop Provisions, APH regulations, or FCIC procedures if the insured reports a condition stated in section 3 of the policy stated above occurs after the beginning of the insurance period and is reported on or before the production reporting date. In accordance with the above cited policy provisions, the 2015 Crop Insurance Handbook (CIH) Part 15, Section 9, Para. 1581, contains procedures that allow the AIP to request a Regional Office (RO) Determined Yield that the AIP can use to adjust the producer's guarantee if certain circumstances that occur after the start of the insurance period that may reduce the yield are reported on the Producer's Pre-acceptance Worksheet by the production reporting date, as required by these Crop Provisions.

If a condition stated in section 3 occurs after the beginning of the insurance period that is not reported by the production reporting date, the policy allows uninsured causes in an amount equal to the reduction in yield to be applied as production to count. The procedure for determination of uninsured causes of loss is detailed in the 2015 Loss Adjustment Manual (LAM), Part 4 Section 2 Para. 281.

If a condition stated in section 3 occurs before to the beginning of the insurance period is not reported by the production reporting date, the cited policy provisions require the AIP to reduce the yield for the current crop year. In such cases, in the absence of FCIC issued procedures or guidelines, the AIP is authorized to establish its own procedures or calculations to be used for reducing such yields. In addition, the AIP must make additional determinations such as whether the crop is insurable and if misrepresentation penalties apply in accordance with section 27 of the Common Crop Insurance Policy Basic Provisions.

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 29, 2016