

Final Agency Determination: FAD-256

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Subject: Requests dated November 6, 2015, to the Risk Management Agency (RMA) requesting Final Agency Determination's (FADs) for the 2015 and succeeding crop years regarding the interpretation of section 3 of the Grape Crop Provisions and Texas Citrus Fruit Crop Provisions, published at 7 C.F.R. § 457.138 and § 457.119 (respectively). This request is pursuant to 7 C.F.R. § 400, subpart X.

Background:

Two separate FAD requests were submitted, referencing the above stated Crop Provisions. Thus, the two requests have been combined. For reference, each set of policy language is presented below.

Section 3 of the Grape Crop Provisions states:

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

In addition to the requirements of section 3 of the Basic Provisions:

(f) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type or variety, if applicable:

- (1) Any damage, removal of bearing vines, 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 vines on insurable and uninsurable acreage;
- (3) The age of the vines and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and any time the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and the grape type or variety, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(g) We will reduce the yield used to establish your production guarantee, based on our estimate of the effect on yield potential of any of the items listed in section 3(f)(1) through (4). If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee at any time we become aware of the circumstance.

Section 3 of the Texas Citrus Fruit Crop Provisions states:

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions:

(d) In addition to the reported production, each crop year you must report by type:

(1) The number of trees damaged, topped, hedged, pruned 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 crop, and anytime the planting pattern of such acreage is changed:

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

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal, topping hedging, or pruning of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(e) The yield used to compute your production guarantee will be determined in accordance with Actual Production History (APH) regulations, 7 CFR part 400, subpart G, and applicable policy provisions unless damage or changes to the grove or trees, require establishment of the yield by another method. In the event of such damage or changes, the yield will be based on our appraisal of the potential of the insured acreage for the crop year.

Interpretation Submitted

The requestor's interpretation of the policy provisions for each crop is consistent, stating:

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.

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 policies stated above prior to 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 may reduce the yield are reported on the Producer's Pre-acceptance Worksheet by the production reporting date, as required by these Crop Provisions. These procedures do not allow an RO Determined Yield to be requested if such circumstance is not reported on the Pre-acceptance Worksheet by the production reporting date.

If a condition stated in section 3 of the Texas Citrus Fruit Crop Provisions and Grape Crop Provisions is not reported by the production reporting date, the cited policy provisions clearly state the AIP will reduce the yield. 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