

## **Final Agency Determination: FAD-250**

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**Subject:** Request dated October 5, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 crop year regarding the interpretation of section 17(h)(4) of the Common Crop Insurance 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:**

Referenced policy and procedure related to the request:

Section 17 of the Basic Provisions states, in relevant part:

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

(a) Unless limited by the policy provisions, a prevented planting payment may be made to you for eligible acreage if:

(1) You are prevented from planting the insured crop on insurable acreage by an insured cause of loss that occurs:

(i) On or after the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on or after the sales closing date for the previous crop year for the insured crop in the county, provided insurance has been in force continuously since that date. Cancellation for the purpose of transferring the policy to a different insurance provider for the subsequent crop year will not be considered a break in continuity for the purpose of the preceding sentence;

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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.

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(4) Prevented planting coverage will be allowed as specified in section 17(h) only if the crop that was prevented from being planted meets all policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop whose eligible acres are being used.

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### **Interpretation Submitted**

The requestor interprets section 17(h)(4) to mean that in order to roll acres from the crop that is prevented from being planted to "...another crop insured for the current crop year for which you have remaining eligible prevented planting acreage", the crop that was prevented from being planted must be insurable. That is, the crop prevented from being planted must "...meet(s) all policy provisions, except for having an adequate base of eligible prevented planting acreage" such that it is otherwise covered for a loss. If the crop that is prevented from planting is uninsurable, i.e., it does not meet all policy provisions (other than a sufficient base of eligible prevent plant acres), then the policyholder is not eligible to roll such non-insurable crop acres to another insured crop that has an adequate base of eligible prevent plant acres.

### **Final Agency Determination**

FCIC agrees in part with the requestor's interpretation. In accordance with section 17(a)(1) of the Basic Provisions, a prevented planting payment may be made for eligible acreage if the policyholder is prevented from planting the **insured crop** on insurable acreage by an insured cause of loss during the prevented planting

insurance period (Emphasis added). In accordance with section 17(h), if a policyholder does not have an adequate base of eligible prevented planting acreage in the county for a crop, the approved insurance provider can use acreage from another crop insured for the current crop year for which the policyholder has remaining eligible prevented planting acreage. Therefore, the crop that was prevented from being planted must first be insured, not just insurable, in order for an approved insurance provider to use the remaining eligible prevented planting acreage from another insured crop to make the prevented planting payment. For example, the producer cannot claim potatoes as the crop prevented from planting if the producer had not included potatoes on his application for insurance even though potatoes is an insurable crop.

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:** December 11, 2015