

## **Final Agency Determination: FAD-288**

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**Subject:** Request dated February 26, 2019, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2017 crop year regarding the interpretation of section 14 of the Common Crop Insurance Policy, Basic Provisions published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, subpart X.

### **Background:**

Referenced policy related to the request:

The Basic Provisions state, in relevant part:

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

Your Duties:

(a) In case of damage or loss of production or revenue to any insured crop, you must protect the crop from further damage by providing sufficient care.

(b) Notice provisions:

(1) For a planted crop, when there is damage or loss of production, you must give us notice, by unit, within 72 hours of your initial discovery of damage or loss of production (but not later than 15 days after the end of the insurance period, even if you have not harvested the crop).

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(5) If you fail to comply with these notice requirements, any loss or prevented planting claim will be considered solely due to an uninsured cause of loss for the acreage for which such failure occurred, unless we

determine that we have the ability to accurately adjust the loss. If we determine that we do not have the ability to accurately adjust the loss:

- (i) For any prevented planting claim, no prevented planting coverage will be provided and no premium will be owed or prevented planting payment will be paid; or
- (ii) For any claim for indemnity, no indemnity will be paid but you will still be required to pay all premiums owed.

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(e) Claims:

(2) Failure to timely submit a claim or provide the required information necessary to determine the amount of the claim will result in no indemnity, prevented planting payment or replant payment:

- (i) Even though no indemnity or replant payment is due, you will still be required to pay the premium due under the policy for the unit; or
- (ii) Failure to timely submit a prevented planting claim will result in no prevented planting coverage and no premium will be due.

(3) You must submit a claim not later than:

- (i) For policies other than revenue protection, 60 days after the date the insurance period ends for all acreage in the unit (When there is acreage in the unit where the insurance period ended on different dates, it is the last date the insurance period ends on the unit. For example, if a unit has corn acreage that was put to another use on July 15 and corn acreage where harvest was completed on September 30, the claim must be submitted not later than 60 days after September 30); or
- (ii) For revenue protection, the later of:
  - (A) 60 days after the last date the harvest price is released for any crop in the unit; or
  - (B) The date determined in accordance with section 14(e)(3)(i).

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The Cotton Crop Provisions state, in relevant part:

## 7. Insurance Period

(a) In lieu of section 11(b)(2) of the Basic Provisions, insurance will end upon the removal of the cotton from the field.

### **Interpretation Submitted**

The requestor interprets section 14 of the Basic Provisions to mean a policyholder's claim must be paid, even if the producer fails to submit a notice of loss or claim within time frames set forth in section 14 of the Basic Provisions, provided the Approved Insurance Provider (AIP) can accurately adjust the loss.

The requestor bases this assertion on section 14(b)(5), which the requestor believes provides that the failure to timely provide a notice of loss does not result in denial of indemnity, provided the AIP can accurately adjust the loss. Thus, because a notice of loss is given and a claim is then made, section 14(b) and section 14(e) should be read together. The claim must be paid provided the notice of loss is given within a period where the loss can be accurately adjusted.

The requestor argues there is no underwriting justification for denying a claim under circumstances where the AIP can accurately adjust the loss. The risk covered by the policy, the risk contemplated when the policy was issued, and the premium calculated, do not change when the notice of loss or the claim is made past a deadline granted the loss can be accurately adjusted.

The requestor states the requested interpretation is consistent with prior interpretations. FAD-018 provides:

“The Federal Crop Insurance Corporation (FCIC) agrees that section 457.7 requires an insured to comply with all policy provisions before an indemnity is paid. In addition, section 14(a) of the Common Crop Insurance Policy (Basic Provisions) (7 C.F.R. 457.8) requires compliance with all policy provisions before an indemnity is paid. Failure to comply with the policy requirements constitutes a breach of the insurance contract and could jeopardize receipt of any indemnity if such breach is determined to be substantive. For example, if the breach results in the inability to accurately determine the amount of loss or

whether a loss occurred, then no indemnity could be paid.

However, when failure to comply with a provision is determined to not affect the amount or existence of a loss in any way, or when the policy provides a remedy for the failure to comply with a policy term, then an indemnity may still be paid.”

The requestor states in a situation where an AIP can accurately adjust the loss despite an insured producer's failure to meet the deadlines set forth in Section 14, there is not a substantive breach which requires denial of the claim. That is because the amount of the loss and whether it occurred can be accurately determined by the AIP.

Similarly, FAD-92, FAD-97, and FAD-176, emphasized that a breach does not require denial of a claim if the AIP can accurately adjust the loss.

### **Final Agency Determination**

The Federal Crop Insurance Corporation (FCIC) agrees in part with the requestor’s interpretation of section 14 of the Basic Provisions. FCIC agrees a policyholder’s claim may be paid if the AIP can accurately adjust the loss, provided all other policy provisions are met, even though the notice of loss may not have been filed within time frames set forth in section 14(b) of the Basic Provisions. However, if timely notice was not filed, and an AIP determines the loss cannot be accurately adjusted, the loss will be considered due to uninsured causes.

This directly relates to the exception set forth in section 14(b)(5), “unless we determine that we have the ability to accurately adjust the loss.” This exception speaks directly to submission of claim requirements as it relates to delayed Notice of Loss. Policyholders must still meet all other policy provisions and AIPs must follow delayed Notice of Loss procedures. Indemnity payments will be limited to what losses an AIP can determine accurately on a case-by-case basis.

Additionally, FAD-176, published on RMA’s website December 10, 2012 states:

“FCIC agrees that with respect to production losses, the notice of loss must be provided not later than 15 days after the end of the insurance period, which would be the date the harvest on the unit was completed or the date stated in the Special Provisions if the crop is not harvested. FCIC agrees that with respect

to revenue losses, the notice of loss must be provided not later than 45 days after the latest date the harvest price is released for the crop. If the notice of loss is not timely filed, the loss will be considered due to uninsured causes for the acreage for which the notice of loss was untimely filed unless the AIP determines it can accurately adjust the loss.”

In accordance with 7 C.F.R. § 400.766(b)(2), 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. § 400.766(b)(5).

**Date of Issue:** August 27, 2019

<sup>1</sup>This FAD revised August 27, 2019, to clarify interpretation of the provisions regarding the Notice of Loss requirements (14(b) of the Basic Provisions) in conjunction with the submission of claims requirements (14(e) of the Basic Provisions).