Final Agency Determination: FAD-266

View PDF

Subject: Request dated June 22, 2016, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 crop year regarding the interpretation of section 9(a)(1) 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 1 of the Basic Provisions states, in relevant part:

> **1. Definitions.**
>
> *****
>
> **Planted acreage** - Land in which seed, plants, or trees have been placed, appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.
>
> *****

Section 9 of the Basic Provisions states, in relevant part:

> **9. Insurable Acreage.**
>
> (a) All acreage planted to the insured crop in the county in which you have a share:
>
> (1) Except as provided in section 9(a)(2), is insurable if the acreage has been planted and harvested or insured (including insured acreage that

was prevented from being planted) in any one of the three previous crop years. Acreage that has not been planted and harvested (grazing is not considered harvested for the purposes of section 9(a)(1)) or insured in at least one of the three previous crop years may still be insurable if:

(i) Such acreage was not planted:

(A) In at least two of the three previous crop years to comply with any other USDA program;

(B) Due to the crop rotation, the acreage would not have been planted in the previous three years (e.g., a crop rotation of corn, soybeans, and alfalfa; and the alfalfa remained for four years before the acreage was planted to corn again); or

(C) Because a perennial tree, vine, or bush crop was on the acreage in at least two of the previous three crop years;

(ii) Such acreage constitutes five percent or less of the insured planted acreage in the unit;

(iii) Such acreage was not planted or harvested because it was pasture or rangeland, the crop to be insured is also pasture or rangeland, and the Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(iv) The Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(2) Is not insurable if:

(i) The only crop that has been planted and harvested on the acreage in the three previous crop years is a cover, hay (except wheat harvested for hay) or forage crop (except insurable silage). However, such acreage may be insurable only if:

(A) The crop to be insured is a hay or forage crop and the Crop Provisions, Special Provisions, or a written agreement specifically allow insurance for such acreage; or

(B) The hay or forage crop was part of a crop rotation;

*****

(vi) The acreage is otherwise restricted by the Crop Provisions or Special Provisions;

Section 1 of the Coarse Grains Crop Provisions states, in relevant part:

1. Definitions.

*****

Planted acreage - In addition to the definition contained in the Basic Provisions, coarse grains must initially be planted in rows, unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

*****

Interpretation Submitted

The requestor interprets section 9(a)(1) of the Basic Provisions (the "One in Three Rule") to mean that, unless one of the exceptions enumerated thereunder applies, acreage on which insurance is sought to be obtained in the current crop year must have been " ... planted and harvested or insured (including insured acreage that was prevented from being planted) in any one of the three previous crop years" (the "Qualifying Crop") in order to be insurable. More specifically, the requestor interprets the word "planted" in section 9 to be consistent with the defined term "planted acreage" in the Basic Provisions and the Crop Provisions. Therefore, if the qualifying crop was not planted in the manner specified by the Basic Provisions and Crop Provisions for "planted acreage", then the qualifying crop does not satisfy the One in Three Rule and the acreage is not insurable (unless it meets one or more of the exceptions listed under section 9(a)(1)(i-iv)) for the current crop year.

Final Agency Determination

The Federal Crop Insurance Corporation agrees with the requestor's interpretation of section 9(a)(1) that unless one of the exceptions applies, acreage on which insurance is sought to be obtained in the current crop year must have been planted and harvested or insured (including insured acreage that was prevented from being

planted) in any one of the three previous crop years in order to be insurable. More specifically, acreage not planted and harvested or insured in one of the three previous crop years will only be insurable if such acreage meets the requirements in section 9(a)(1)(i)(A), (B) or (C) or 9(a)(1)(ii), (iii), or (iv). Additionally, FCIC agrees that if there was a crop on the acreage in one of the three prior years, that crop must be considered to have been “planted.” In determining whether such crop is “planted” on the acreage, it must meet the requirements in the definitions of “planted acreage” in the Basic Provisions and the applicable Crop 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: August 16, 2016