



Final Agency Determination: FAD-255

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Subject: Request dated December 7, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2015 crop year regarding the interpretation of section 15(i) 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 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:

(2) Is not insurable if:

(ix) The acreage is of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop, unless it is a practice that is generally recognized by agricultural experts or organic agricultural experts for the area to plant three or more crops for harvest on the same acreage in the same crop year, and additional coverage insurance provided under the authority of the Act is offered for the third or subsequent crop in the same crop year. Insurance will only be provided for a third or subsequent crop as follows:

(A) You must provide records acceptable to us that show:

(1) You have produced and harvested the insured crop following two other crops harvested on the same acreage in the same crop year in at least two of the last four years in which you produced the insured crop; or

(2) The applicable acreage has had three or more crops produced and harvested on it in the same crop year in at least two of the last four years in which the insured crop was grown on the acreage; and

Section 15 of the Basic Provisions states, in relevant part:

15. Production Included in Determining an Indemnity and Payment Reductions.

(h) You may receive a full indemnity, or a full prevented planting payment for a first insured crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or organic agricultural experts for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped;

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first

insured crop was grown on it; and

(5) In the case of prevented planting, the second crop is not planted on or prior to the final planting date or, if applicable, prior to the end of the late planting period for the first insured crop.

(i) The receipt of a full indemnity or prevented planting payment on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 15(h).

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (e.g., if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres); or

(2) If the records you provided are from acreage that another producer double cropped in at least two of the last four crop years, you may only use the history of double cropping for the same physical acres from which double cropping records were provided (e.g., if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped).

Section 17(f)(4) of the Basic Provisions states, in relevant part:

17. Prevented Planting.

(f) Regardless of the number of eligible acres determined in section 17(e), prevented planting coverage will not be provided for any acreage:

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year, excluding share arrangements, unless:

(ii) For the insured crop that is prevented from being planted, you provide records acceptable to us of acreage and production that show, in at least two of the last four crop years:

(A) You have double cropped acreage on which the insured crop that is prevented from being planted in the current crop year was grown (You may apply your history of double cropping to any acreage of the insured crop in the county (e.g., if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres)); or

(B) The acreage you are prevented from planting in the current crop year was double cropped with the insured crop that is prevented from being planted (You may only use the history of double cropping for the same physical acres from which double cropping records were provided (e.g., if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped)); and

Paragraph 43(3) of the 2015 Prevented Planting Standards Handbook states, in relevant part:

43. PP Payment As It Relates To Double-Cropping History

(3) Acceptable double-cropping records include but are not limited to: APH acreage and production records, settlement sheets, bin measurements, FSA maps, or FSA

578s that identify the acreage, production, and location from which the production came.

(a) Acceptable records listed above may be:

(i) The insured's own acreage and production records, acceptable to the AIP, that show the insured has double-cropped acreage in at least two of the last four CYs in which the insured crop that is prevented from being planted in the current year was planted in the county for which the PP claim is being made. In this situation, the double cropping exemption may be used anywhere in the county.

Example: If the insured has double cropped 100 acres of wheat and soybeans in the county and the insured acquires an additional 100 acres in the county, the insured can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres.

(ii) Another person's acreage and production records, acceptable to the AIP, that show the exact same acreage in the county on which the PP claim is being made, for the current CY was double cropped in at least two of the last four CYs in which the insured crop that is prevented from being planted in the current CY was grown by someone else and the insured acquired this exact same acreage. In this situation, the double-cropping exemption may only be used for the exact same acreage for which the double-cropping records were provided.

Example: If a neighbor has double cropped 100 acres of wheat and soybeans in the county and the insured acquires the neighbor's 100 double-cropped acres and an additional 100 acres in the county, the insured can only apply the neighbor's history of double-cropped acreage to the same 100 acres that the neighbor double cropped.

Interpretation Submitted

The requestor's interpretation is as follows:

The policyholder should first (following Paragraph 43(3)(a)(1) of the Prevented Planting Standards Handbook) look at their own records to find four years in which

the subsequent (prevented) crop was grown in the county on their previously owned land. They should consider those four years and determine the number of acres that they double in at least two of those four. That will determine the number of *anywhere eligible acres*.

Then (following Paragraph 43(3)(a)(2) of the Prevented Planting Standards Handbook) they should also look at the records that go along with the acquired land. They should find four years in which the subsequent (prevented) crop was grown on that specific acquired land. They should consider those four years to determine the number of acres of the acquired land that was double cropped (by someone else) in at least two of those four years. That will determine the number of *acquired land specific* eligible acres. These may be used on that land only.

If both the acquired land and some previously owned land have a subsequent crop that was prevented, then the total double cropping eligibility is determined by first applying all of the *acquired land specific* eligible acres to that acquired land. Then they may apply the *anywhere eligible acres* to any remaining of the acquired land and also to any other land in the county.

Final Agency Determination

FCIC agrees with the requestor's interpretation that eligible double cropping acres are determined separately based on a policyholder's own history of acreage and production records of double cropping, and the other person's history of acreage and production records for double cropping acreage on that specific land acquired by the policyholder.

Section 15(i)(1) of the Basic Provisions provides that if the policyholder provides their own records of acreage and production showing they double cropped in at least two of the last four crop years, that history of double cropping may be applied to any acreage of the insured crop in the county.

Section 15(i)(2) of the Basic Provisions provides the requirements for acreage that the policyholder acquires from another producer, and clearly states if the records provided are from acreage that another producer double cropped in at least two of the last four crop years, the policyholder may only use the history of double cropping for the same **physical acres** from which double cropping records were provided. (Emphasis added) For example, the policyholder acquires 100 acres from

another producer who had double cropped those acres with wheat and soybeans, and the policyholder has a history of double cropping wheat and soybeans on 100 other acres in the county. If the policyholder elects to plant 50 acres of corn and 50 acres of double cropped wheat and soybeans on the acreage acquired from another producer with the previous double cropping history and 150 acres of wheat and soybeans on other acreage in the county, the policyholder is only eligible for double cropping on 50 acres of land with the acquired double cropping history and 100 of the acres of land elsewhere in the county.

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 19, 2016