

## **Final Agency Determination: FAD-271**

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**Subject:** A joint request for Final Agency Determination, dated December 27, 2016, was submitted by two parties, along with their separate interpretations of the same policy provision requesting a Final Agency Determination for the 2012 crop year regarding the interpretation of section 3(g) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, subpart X.

### **Background:**

Section 3(g) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions (7 C.F.R. § 457.8)) states, in relevant part:

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(g) It is your responsibility to accurately report all information that is used to determine your approved yield.

(1) You must certify to the accuracy of this information on your production report.

(2) If you fail to accurately report any information or if you do not provide any required records, you will be subject to the provisions regarding misreporting contained in section 6(g), unless the information is corrected:

(i) On or before the production reporting date; or

(ii) Because the incorrect information was the result of our error or the error of someone from USDA.

(3) If you do not have written verifiable records to support the information on your production report, you will receive an assigned yield in accordance with section 3(f)(1) and 7 CFR part 400, subpart G for those crop years for which you do not have such records.

(4) At any time we discover you have misreported any material information used to determine your approved yield or your approved yield is not correct, the following actions will be taken, as applicable:

- (i) We will correct your approved yield for the crop year such information is not correct, and all subsequent crop years;
- (ii) We will correct the unit structure, if necessary;
- (iii) Any overpaid or underpaid indemnity or premium must be repaid; and
- (iv) You will be subject to the provisions regarding misreporting contained in section 6(g)(1), unless the incorrect information was the result of our error or the error of someone from USDA.

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## **Interpretations Submitted**

### First Requestor's Interpretation:

The first requestor interprets this regulation and procedure in section 14B of Crop Insurance Handbook (CIH) to require the insured maintain and produce on request acceptable records to support the production report. Additionally, the first requestor believes that if during an APH review the insured is found to not have acceptable records to support the yield certified on the production report, the insured will be subject to the misreporting provisions contained in section 3(g)(3) of Basic Provisions and an assigned yield will be used for the year that records are not provided. The first requestor also believes that RMA has previously answered the above interpretation with FAD-237.

### Second Requestor's Interpretation:

The second requestor believes that the insured is required to maintain and produce on request acceptable records as outlined in section 14 of the CIH, which specifies

acceptable production evidence by crop as requiring either verifiable production evidence or farm management records to support the insured's certification on the production reports. For crops that use farm management records as acceptable records, the insured is not required to provide verifiable production evidence. The second requestor also believes pursuant to section 3(g)(3) of the Basic Provisions, if a crop requires verifiable records in accordance with the CIH, assigned yield procedures apply if the insured does not provide verifiable production records that support the yield certified on the insured's production report.

The second requestor believes that, if an APH review for a crop using farm management records support a lesser yield than the insured's certified yield or the farm management records reviewed are more accurate, the actual yield in the APH database for the year in question are only corrected in accordance with Section 19B of the CIH. After the actual yield is corrected, the insured is subject to the misreporting provisions contained in section 3(g)(2), 3(g)(4), and 6(g) of the Basic Provisions and the insured will not receive an assigned yield in their APH database. The second requestor believes that in FAD-237, the Risk Management Agency (RMA) was specifically discussing the application of Section 3(g)(3) to production reports as opposed to application, if any, to APH databases. Additionally, the insured would be subject to civil and/or criminal penalties provide in section 27 of the Basic Provisions if it is determined that the insured willfully and intentionally provided false information.

### **Final Agency Determination**

FCIC agrees with the first requestor as stated in FAD 237.

FAD 237 provides FCIC's interpretation in response to all of second requestors interpretations contained herein with the exception of the following:

FCIC disagrees with the second requestor's interpretation that, for a crop allowed to use farm management records as a written verifiable record, as provided in section 14E of the CIH, if acceptable farm management records provided during an APH review support a lesser yield than the insured's certified yield or the farm management records reviewed are more accurate, the actual yield in the APH database for the year in question are only corrected in accordance with Section 19B of the CIH, the insured is subject to the misreporting provisions, and the insured will not receive an assigned yield in their APH database. Previously issued FAD 223

provides that “Section 3(g)(3) applies to situations where the verifiable records do not support the certification by the insured on the production report, it does not mean that the producer does not provide ‘any’ support”. FAD 223 also stated “In addition to Section 3(g)(3), Section 3(g)(2) may also result in additional misreporting penalties for an insured and Section 3(g)(4) applies when correction to the approved APH yield is applicable, such as an assigned yield replacing the production report for an actual yield contained within an APH database.”

This means that if the insured does not have the acceptable production evidence to support the yield certified on their production report, the insured would also be subject to the misreporting provisions contained in 3(g)(2), 3(g)(3), 3(g)(4), and 6(g) of the Basic Provisions. An assigned yield would apply for the crop year the production report is not supported by acceptable production records in accordance with section 3(g)(3) and the approved yield for the APH database containing that assigned yield must be corrected in accordance with the misreporting provisions contained in section 3(g)(4). However, this does not mean that assigned yield provisions provided in 3(g)(3) apply every time an actual yield in an APH database is corrected. For example, the insured has farm management records to support their initial certification but during an APH review it is determined that more accurate records exist. In this situation, after the actual yield is corrected, the insured is subject to the misreporting provisions contained in section 3(g)(2), 3(g)(4) and 6(g) of the Basic Provisions and will not receive an assigned yield in their APH database.

FCIC also disagrees that FAD-237 was specifically discussing the application of section 3(g)(3) to production reports as opposed to APH databases. At any time it is discovered the insured has misreported any material information used to determine the approved APH yield or the approved APH yield is not correct, the insured is subject to all the misreporting provisions contained in the Basic Provisions. Section 3(g)(3) provides “if you do not have written verifiable records to support the information on your production report, you will receive an assigned yield in accordance with section 3(f)(1)” which states “ . . .we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year.”

While this FAD request was for the 2012 crop year, which is outside the scope of crop years authorized in 7 C.F.R. Subpart X Section 400.765(b) , this interpretation is directly related to the interpretation provided in FAD 237; therefore, is being further addressed in this FAD.

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:** March 14, 2017