

Final Agency Determination: FAD-322

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Subject: Two requests dated April 23, 2024, and May 3, 2024, submitted to the Risk Management Agency (RMA) for a final agency determination (FAD) for the 2021 crop year of section 12(d) 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.

Reference:

The relevant policy provisions are:

The 2020 Common Crop Insurance Policy (CCIP), Basic Provisions state, in relevant part:

1. Definitions

Coverage begins, date - The calendar date insurance begins on the insured crop, as contained in the Crop Provisions, or the date planting begins on the unit (see section 11 of these Basic Provisions for specific provisions relating to prevented planting).

12. Causes of Loss.

Insurance is provided only to protect against unavoidable, naturally occurring events. A list of the covered naturally occurring events is contained in the applicable Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

(b) Failure to follow recognized good farming practices for the insured crop;

(d) Failure or breakdown of the irrigation equipment or facilities, or the inability to prepare the land for irrigation using your established irrigation method (e.g., furrow irrigation), unless the failure, breakdown or inability is due to a cause of loss specified in the Crop Provisions.

(1) You must make all reasonable efforts to restore the equipment or facilities to proper working order within a reasonable amount of time unless we determine it is not practical to do so.

(2) Cost will not be considered when determining whether it is practical to restore the equipment or facilities;

The 2021 Rice Crop Provisions state, in relevant part:

1. Definitions

Flood irrigation - An irrigated practice commonly used for rice production whereby the planted acreage is intentionally covered with water that is maintained at a uniform and shallow depth throughout the growing season.

9. Causes of Loss.

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions (except drought);

The 2021 Special Provisions for rice in Lincoln County, Arkansas, state, in relevant part:

*15 Failure to obtain a stand of rice adequate to produce at least the yield used to determine the production guarantee or amount of insurance because you did not apply surface irrigation or “flush” the acreage in accordance with practices generally recognized by agricultural experts for the area will not be a covered cause of loss in accordance with section 12

(b) of the Common Crop Insurance Policy.

The following must have occurred no later than the rice crop reaching the one-tiller stage. If these activities have not occurred, the rice crop will not be considered an insured crop as defined in Section 6 (c) of the Rice Crop Provisions:

1. the irrigation pump is operable; and
2. the requirements stated in the definition of Flood Irrigation in section 1. of the Rice Crop Provisions or the definitions of Intermittent Flood Irrigation or Furrow Irrigation herein have been met.

Interpretation Submitted

First Requestor's Interpretation:

The first requestor questions whether a planted rice crop that is to be flood irrigated is insurable if excessive precipitation or other adverse weather conditions prevent the insured from preparing the levees necessary to establish flood irrigation by the time the rice reaches the one-tiller stage.

The first requestor states according to item *15 of the Special Provisions, for a planted crop to be insurable both of the following must occur prior to the crop reaching the one-tiller stage: (1) the irrigation pump must be operable; and (2) all the requirements stated in the policy definition of “Flood Irrigation,” “Intermittent Flood Irrigation,” or “Furrow Irrigation” must have been met. If the policyholder's chosen irrigation method is flood irrigation, this means that the rice must be “covered with water” by the time it reaches the one-tiller stage. The policy contains no exceptions to the irrigation requirement. Thus, for a producer who has elected to utilize flood irrigation, if the producer does not have necessary levees in place to

carry out flood irrigation by the time the crop reaches the one-tiller stage, the rice crop is not insurable. The first requestor believes this is true regardless of whether the producer can show that the failure to establish the levees was caused by excessive rainfall or other adverse weather conditions.

The first requestor states item *15 of the Special Provisions further provides that “failure to obtain a stand of rice adequate to produce at least the yield used to determine the production guarantee or amount of insurance because you did not apply surface irrigation or ‘flush’ the acreage in accordance with practices generally recognized by agricultural experts for the area will not be a covered cause of loss.” If the policyholder experiences a stand reduction based on the inability to flush the acreage (where flushing is a practice generally recognized by agricultural experts), and this inability to flush is due to the absence of levees, such stand reduction will not be attributable to a covered cause of loss. The first requestor believes this is true regardless of whether the policyholder can show that the failure to establish the levees was caused by excessive rainfall or other adverse weather conditions.

Second Requestor’s Interpretation:

The second requestor questions whether a planted rice crop is insurable if excess precipitation or other adverse weather conditions prevent an insured farmer from irrigating or preparing land for irrigation by placing earthen levees necessary for flood irrigation, prior to the one-tiller stage of plant growth.

The second requestor believes the answer to this question is “yes.” A planted rice crop is insurable if excess precipitation or other adverse weather conditions prevent a farmer from irrigating or preparing land for irrigation prior to the one-tiller stage. If it is impossible to irrigate or prepare land for irrigation before the planted crop reaches the one-tiller growth stage (due to excess rainfall or adverse weather conditions), then the planted crop is insurable and losses to that crop are losses covered by the applicable policy provisions. If the failure to irrigate or prepare land for irrigation results from the farmer’s failure to employ good farming practices (instead of an inability to work the land because of disaster conditions), the loss would be uninsurable.

The second requestor states their interpretation is supported by the CCIP Basic Provisions and the Rice Crop Provisions. The Special Provisions do not contradict the second requester’s interpretation. Instead, the Special Provisions clarify that a

failure to obtain a stand of rice resulting from a failure to irrigate is not “a covered cause of loss in accordance with section 12. (b) of the Common Crop Insurance Policy.” Section 12(b) of the CCIP Basic Provisions provides that “failure to follow recognized good farming practices” is not a covered cause of loss. The CCIP Basic Provisions specifically anticipates that “the inability to prepare the land for irrigation using your established irrigation method (e.g., furrow irrigation),” is not a covered cause of loss “unless the failure, breakdown or inability is due to a cause of loss specified in the Crop Provisions” in accordance with section 12(d) of the CCIP Basic Provisions. The CCIP Basic Provisions allow coverage for failure to irrigate when that failure results from an insured cause of loss. For this reason, where a policyholder’s inability to prepare the land for irrigation (including inability to pull levees for flood irrigation) is the result of a covered cause of loss, insurance is available. Section 9(a)(1) of the Rice Crop Provisions specifically provide that insurance is available for an insured rice crop that is impacted by “adverse weather conditions (except drought).” An interpretation that a rice crop is not insurable, should adverse weather conditions prevent irrigation or the preparation of land for irrigation, would contradict the Rice Crop Provisions and the CCIP Basic Provisions which state that a failure of irrigation due to a listed cause of loss is not excepted from the covered causes of loss.

The second requestor states the first requestor takes the position that, for a planted rice crop to be insurable, the crop must be irrigated or flooded prior to the one-tiller growth stage. Such an interpretation would not provide insurance to a policyholder whose rice crop was destroyed by flood prior to it reaching the one-tiller growth stage. The second requestor believes this an absurd result and policyholders should not be denied coverage in such situations where there is a clearly established and obvious cause of loss, prior to the time when levees are established pursuant to “good farming practices” standards. The second requestor states the first requestor, however, argues that, even if adverse weather bars a policyholder from constructing levees to carry out irrigation, the insured crop is not insurable “regardless of whether the producer can show that the failure to establish the levees was caused by excessive rainfall or other adverse weather conditions.” The second requestor states the first requestor’s interpretation ignores section 12(d) of the CCIP Basic Provisions and would result in a rule where no rice crop is insurable until it has been flooded or “flushed” with irrigation water. Such an interpretation also conflicts with the definition of “coverage begins, date” in section 1 of the CCIP Basic Provisions. The second requestor states the first requestor seeks an interpretation that

coverage does not begin for planted rice, until flooding has occurred. Such an interpretation conflicts with Federal Regulation and should be rejected by FCIC.

Federal Crop Insurance Corporation Interpretation

FCIC agrees with the second requestor's interpretation. Insurance coverage begins on the date the insured crop is planted. In accordance with section 12(d) of the CCIP Basic Provisions, if the policyholder is unable to prepare the land for irrigation due to a cause of loss specified in the Crop Provisions, any resulting damage to the crop is a covered cause of loss and may be indemnified under the policy.

Special Provisions statement *15 references section 12(b) of the CCIP Basic Provisions, which is failure to follow good farming practices. The inability to prepare acreage for the established irrigation practice due to a covered cause of loss is not considered a failure to follow good farming practices and is instead addressed in section 12(d) of the CCIP Basic Provisions.

In accordance with 7 C.F.R. § 400.766(b)(2), this FAD 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 Issued: June 20, 2024