

Final Agency Determination: FAD-313

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Subject: Two requests for FAD dated June 6, 2022, submitted to the Risk Management Agency (RMA) for a final agency determination for the 2020 crop year of Section 1 (Definition of a Production Report) of the Common Crop Insurance Policy (CCIP) Basic Provisions, published at 7 C.F.R. §457.8. This request is pursuant to 7 C.F.R. § 400, Subpart X.

Reference:

The 2020 CCIP Basic Provisions state in relevant part:

Preamble

The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA unless the policy specifically authorizes a waiver or modification by written agreement. We will use the procedures (handbooks, manuals, memoranda and bulletins), as issued by FCIC and published on RMA's website at <http://www.rma.usda.gov/> or a successor website, in the administration of this policy, including the adjustment of any loss or claim submitted under this policy.

1. Definitions.

Production report - A written record showing your annual production and used by us to determine your yield for insurance purposes in accordance with section 3. The report contains yield information for previous years, including planted acreage and production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop, by

measurement of farm-stored production, or by other records of production approved by us on an individual case basis in accordance with FCIC approved procedures.

3. Insurance Guarantees, Coverage Levels, and Prices

(f) You must report all production of the crop (insured and uninsured) to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date, unless otherwise stated in the Special Provisions or as specified in section 18:

(1) If you do not provide the required production report, we will assign a yield. 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. The production report or assigned yield will be used to compute your approved yield for the purpose of determining your coverage for the current crop year.

(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;

(ii) Because the incorrect information was determined to be inadvertently reported by you (Simply stating the error was inadvertent is not sufficient to prove the error was inadvertent); or

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

The 2020 Document and Supplemental Standards Handbook (DSSH) states in relevant part:

Exhibit 39 of the DSSH:

Production Report

The purpose of a production report is to collect the prior crop year(s)' production from the insured and the information contained within the production report is used to establish the approved APH yield for the current year. An annual production report is required for all crops with a yield-based plan of insurance that is required to establish the approved APH yield. For form completion instructions, see also the CIH.

| 1. Insured Information | | |
|-------------------------------|---------------------------------|-------------|
| A | "Insured's Name" | Substantive |
| B | "Street and/or Mailing Address" | Substantive |
| C | "City and State" | Substantive |
| D | "Zip Code" | Substantive |
| E | "Insured's Telephone Number" | Substantive |
| F | "Policy Number" | Substantive |
| G | "Crop Year" | Substantive |
| H | "Identification Number" | Substantive |

| | | |
|----------------------------|--|------------------------|
| I | <i>"Identification Number Type"</i> | <i>Substantive</i> |
| J | <i>"Plan of Insurance"</i> | <i>Non-Substantive</i> |
| 2. Crop Information | | |
| A | <i>"Crop"</i> | <i>Substantive</i> |
| B | <i>"Practice/Type/T-yield Map Area/Other Characteristics"</i> | <i>Substantive</i> |
| C | <i>"Unit Number"</i> | <i>Substantive</i> |
| D | <i>"Legal Description:"</i> <i>"Section:"</i> <i>"Township:"</i> <i>"Range:"</i> <i>"Other Land Identifier (e.g., Spanish land grants, metes and bounds, etc.):"</i> | <i>Substantive</i> |
| E | <i>"Other Person(s)"</i> | <i>Substantive</i> |
| F | <i>"Other"</i> | <i>Substantive</i> |

Production Report (Continued)

2. Crop Information (continued)

| | | | |
|----------|------------------------------------|---|-----------------|
| G | "Record Type" | | Substantive |
| H | "Processor Number/Name" | Note: Items G-Q are required for the applicable crop year's production report. These items are not required for all crop years within the base period unless the insured reports production for multiple crop years. The AIP developed form may have single crop year reporting or the AIP may adapt these standards to allow for multiple crop year reporting, when applicable. | Substantive |
| I | "Number Trees or Vines" | | Substantive |
| J | "Insurability" | | Substantive |
| K | "FSA Farm/Tract/Field Number" | | Substantive |
| L | "Cropland Acres" | | Non-Substantive |
| M | "Crop Year of History" | | Substantive |
| N | "Total Production" | | Substantive |
| O | "Acres" | | Substantive |
| P | "Yields" | | Substantive |
| Q | "Insured Share" | | Non-Substantive |
| R | "Multi Crop Year Reporting Reason" | Note: Provide instruction for the insured to indication the applicable reason he/she is reporting a crop year other than the most recent APH crop year. | Substantive |

| | | | |
|-------------------------------|--|---|-----------------|
| S | <p>“New Producer <input type="checkbox"/> ”</p> <p>“I certify I have not produced the insured crop in the county for more than two years.”</p> | <p>Note: Non-Substantive, if the New Producer Certification Form in Exhibit 37 is used, i.e., The Insured (including the SBI) has produced the crop less than 3 years. Refer to CIH.</p> | Substantive |
| T | “Added Land/New Crop/Practice/Type/TMA <input type="checkbox"/> ” | | Substantive |
| U | “State and County” | | Substantive |
| V | “Area Classification” | | Substantive |
| 3. Required Statements | | | |
| A | Certification Statement | Para. 502 | Substantive |
| B | Privacy Act Statement | Para. 501 | Substantive |
| C | Nondiscrimination Policy Statement | Para. 503 | Substantive |
| 4. Required Signatures | | | |
| A | “Insured’s Printed Name, Signature and Date” | | Substantive |
| B | “Comments” | | Non-Substantive |

The 2020 Crop Insurance Handbook (CIH) states in relevant part:

Paragraph 1302 of the CIH:

A. Acceptability

Production reports must meet all of the following to be acceptable.

(1) Include all acreage and production (insured and uninsurable/uninsured) by P/T/TMA as identified on the actuarial documents from the insured's operation for each APH crop year being reported.

(2) Conform at least to the unit structure (EU, BU, and/or OU) that applies for the current crop year in which the insured had an interest in the crop for each APH crop year production reports are certified for those currently insured under a CCIP policy.

(4) Be supported by acceptable production evidence. See Part 14 for production evidence requirements. The insured must maintain and provide upon request acceptable production evidence for each crop year by unit, when units are applicable, for each P/T/TMA. In accordance with section (3)(g) of the BP, the insured must accurately report all information that is used to determine approved yield and the insured must certify to the accuracy of the information on their production report. The approved yield is determined by the APH database which is established according to the unit arrangement selected by the crop/P/T/TMA and other authorized APH database situations contained in Para. 1505.

If the insured does not have acceptable supporting production records to support the information on the production report, the insured will be subject to the procedures in Para. 1302 D. For example, if insured with BU or EU reports on an OU basis, they must have acceptable records for their OUs or assigned yield provisions will apply.

(5) Be signed by the insured.

(6) Be submitted by the insured to the AIP by the PRD.

E. Accuracy

Insureds must certify to the accuracy of the information on the production report. If the insured fails to accurately report the production, the insured will be subject to the provisions in Para. 1600 above unless the information is corrected:

(1) on or before the PRD; or

(2) the incorrect information was the result of AIP error or the error of someone from USDA.

Any time it is discovered the insured has misreported any material information on the production report, the insured will be subject to the provisions in Para. 1600 above.

Interpretation Submitted

First Requestor's Interpretation:

The first requestor states the Basic Provisions do not state that the information required for an acceptable production report needs to be on a particular form, needs to be contained in a single document or needs to be provided all at the same time. Therefore, the first requestor's interpretation is that the information required does not need to be on a particular form, does not need to be contained in a single document and all required information does not need to be provided at the same time. Additionally, the certification as to the accuracy of the information is not required to be on a particular form nor is any specific language required to establish that the policyholder is swearing to the accuracy of the information.

The first requestor states the only requirements for an acceptable production report are stated in the Basic Provisions. Whether the requirements have been met by the policyholder are factual issues subject to determination by the arbitrator.

Second Requestor's Interpretation:

The second requestor states the definition of "Production Report" provides that the company may approve a report only "in accordance with FCIC approved procedures." Thus, to satisfy the requirements of the Basic Provisions and be approved by the company, a Production Report must conform to the Risk Management Agency (RMA) procedures applicable to Production Reports. Hence, section 1 of the Basic Provisions must be read in the context of other RMA

procedures governing Production Reports, including, for example, the guidelines set forth in the Documents and Supplemental Standards Handbook (DSSH). To this end, to be acceptable, a Production Report must include all “Substantive” requirements of the DSSH.

The second requestor also notes the Preamble to the Basic Provisions incorporates by reference “the procedures (handbooks, manuals, memoranda, and bulletins), as issued by FCIC and published on RMA’s website” thereby requiring the company to apply, and the policyholder to comply with, the procedures set forth in the CIH and DSSH.

Final Agency Determination

FCIC disagrees with the first requestor that the Basic Provisions do not state that the information required for an acceptable production report needs to be on a particular form, does not need to be contained in a single document and all required information does not need to be provided at the same time. As noted by the second requestor, the Preamble of the Basic Provisions states, “FCIC procedures (handbooks, manuals, memoranda, and bulletins) [are used] in the administration of this policy.” Approved Insurance Providers (AIPs) must use the DSSH and CIH, along with other FCIC issued procedure, to administer policies. AIPs are obligated to service crop insurance policies in accordance with the SRA, the terms of the Basic Provisions, Crop Provisions, and the procedural guidance promulgated by the FCIC. Therefore, the definition of a production report alone does not constitute the full requirements extended by the Basic Provisions. The DSSH provides the official FCIC approved standards and procedures for use in the sale and service of any eligible crop insurance policy; required statements and disclosures. A production report is subject to these standards. In addition, to fulfill the policy requirement in the Basic Provisions section 3(g) that an insured must “accurately report all information that is used to determine your approved yield,” FCIC has developed procedures in paragraph 1302 of the FCIC 18010 Crop Insurance Handbook (CIH) to explain what “all information” is required for a production report.

FCIC also disagrees with the first requestor that the certification to the accuracy of the information on the production report does not need to be on a particular form or have specific language to establish that the policyholder is swearing to the accuracy of the information. In order to be considered a production report, a form must have all items marked as “Substantive” by the DSSH exhibit 39. These items include the

certification statement which is required on all documents that collect information from an insured. This statement provides the context as to what the insured is agreeing to or certifying when they participate in the Federal Crop Insurance Program and fulfills the Basic Provisions requirement of section 3(g)(1) "You must certify to the accuracy of this information on your production report."

FCIC disagrees with the second requestor that the definition of the production report provides that the AIP may approve a report "only in accordance with FCIC Procedures." This phrase in the production report definition concerns the records that are required to support the production being reported and not the production report itself.

FCIC agrees with the second requestor that section 1 of the Basic Provisions must be read in the context of other FCIC procedures governing production reports and that an acceptable production report must include all "Substantive" requirements of the DSSH.

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 of Issue: August 25, 2022