

Final Agency Determination: FAD-304

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Subject: A joint request dated June 11, 2021, to the Risk Management Agency requesting a Final Agency Determination for the 2020 crop year regarding the interpretation of the preamble and section 35 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.

Background:

The relevant policy provisions are:

The CCIP Basic Provisions states, in relevant part:

22. Other Insurance.

(c) For the purpose of section 22(b), the amount of loss from fire will be the difference between the total value of the insured crop before the fire and the total value of the insured crop after the fire. This amount will be determined in accordance with the provisions in section 35.

35. Multiple Benefits.

(a) If you are eligible to receive an indemnity and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) Any amount received for the same loss from any USDA program, in addition to the crop insurance payment, will not exceed the difference between the crop

insurance payment and the actual amount of the loss, unless otherwise provided by law. The amount of the actual loss is the difference between the total value of the insured crop before the loss and the total value of the insured crop after the loss.

(1) For crops for which revenue protection is not available:

(i) If you have an approved yield, the total value of the crop before the loss is your approved yield times the highest price election for the crop; and

(ii) If you have an approved yield, the total value of the crop after the loss is your production to count times the highest price election for the crop; or

(iii) If you have an amount of insurance, the total value of the crop before the loss is the highest amount of insurance available for the crop; and

(iv) If you have an amount of insurance, the total value of the crop after the loss is your production to count times the price contained in the Crop Provisions for valuing production to count.

(2) For crops for which revenue protection is available and:

(i) You elect yield protection:

(A) The total value of the crop before the loss is your approved yield times the applicable projected price (at the 100 percent price level) for the crop; and

(B) The total value of the crop after the loss is your production to count times the applicable projected price (at the 100 percent price level) for the crop; or

(ii) You elect revenue protection:

(A) The total value of the crop before the loss is your approved yield times the higher of the applicable projected price or harvest price for the crop (If you have elected the harvest price

exclusion, the applicable projected price for the crop will be used); and

(B) The total value of the crop after the loss is your production to count times the harvest price for the crop.

(c) FSA or another USDA agency, as applicable, will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

Interpretation Submitted

First requestor's interpretation:

The first requestor believes that section 35, titled "Multiple Benefits," does not limit a policyholder's recovery under the CCIP Basic Provisions due to the fact that: (i) the policyholder had another fire insurance policy; and (ii) the amount by which the loss from fire is determined to not exceed the indemnity paid or payable under such other insurance. As applied to section 22, section 35 is relevant only to the extent it provides guidance for calculating the value of the insured crop before the fire and the total value of the insured crop after the fire, which is then divided by the policyholder's elected percentage of coverage to determine the "loss from fire."

The first requestor states, first, section 35(a), (b), and (c) are moot to situations regarding fire damage and other private fire insurance policies, as said subsections only apply when a policyholder receives benefit for loss from another USDA program in relation to the sections 35(a), (b), and (c) outlines the relationship and process upon which the CCIP Basic Provisions and another USDA program work with one another when a policyholder suffers an insurable loss that falls under multiple Government sponsored benefit programs - not when an insurable loss falls under multiple insurance policies.

The first requestor continues, it cannot be interpreted that section 35(b) limits indemnity through its language stating the payment "will not exceed the difference between the crop insurance payment and the actual amount of loss." First, it is dependent on receiving a benefit from another USDA program; second, the provision refers to the "the crop insurance payment" not "any crop insurance payment." The narrow specification that payment cannot exceed the loss of the crop insurance payment -- not any crop insurance payment -- is further bolstered by the proceeding

sentence in 35(b) which references “insured crop.” The “insured crop” is defined as the available coverage, and “coverage” is defined as “the insurance provided by this policy.”

The first requestor opines that it is true, however, that section 35(c) states that FSA or any USDA agency will determine pay “after first considering the amount of any crop insurance indemnity.” Yet, this does not limit a policyholder from receiving indemnity for its fire loss under the Basic Provision by virtue of having and receiving indemnity under a separate policy. This is because 35(c) states as a general proposition that, “as applicable,” additional amounts due will be determined after first considering the amount of any crop insurance indemnity. This general proposition is not applicable as it relates to other insurance against fire when the amount by which the loss from fire is determined to not exceed the indemnity paid or payable under any other crop insurance. When that is the case, section 22(b)(1) of the CCIP Basic Provisions states what is applicable: “the amount of indemnity determined under the policy without regard to such other insurance.”

Moreover, the first requestor notes the use of “any crop insurance payment” in section 35(c) further illustrates the point that section 35(b) specifically refers to crop insurance payment under the policy specifically.

The requestor believes section 35, as applied to section 22, is relevant only to determine the total value of the insured crop before the fire and the total value of the insured crop after the fire, which differs from whether the policyholder had yield protection or revenue protection, which is then divided by the policyholder’s elected percentage of coverage to determine the “loss from fire” in section 22.

Second requestor’s interpretation:

The second requestor prefaces their interpretation that, section 35 includes multiple terms defined in section 1 of the CCIP Basic Provisions, including, but not limited to: Revenue Protection, Yield Protection, Approved Yield, Price Election, Projected Price, and Harvest Price.

With respect to the reference in section 22(c) to section 35, the second requestor interprets that section 35 applies differently for yield protection and revenue protection. For a policy with “revenue protection” coverage, the “loss from fire” is determined in accordance with section 35(b)(2)(ii) of the CCIP Basic Provisions. The second requestor interprets this subpart to mean that the “total value of the crop

before the loss” is simply determined by multiplying the “approved yield” by the higher of the applicable “projected price” or “harvest price” for the crop. This calculation establishes the total value of the crop before the loss on a per-acre basis. Likewise, the total value of the crop after the loss is determined on a per-acre basis.

Furthermore, for the purpose of section 22 determinations, the second requestor believes the applicability of section 35 is limited exclusively to quantifying, on a dollar-per-acre basis, the amount of the “loss from fire.” Neither the name of section 35, Multiple Benefits, or the language in sections 35(a) and (b) modify or affect the narrow purpose of section 35 as it relates to “Other insurance against fire,” which is to establish the total value of the loss from fire.

Final Agency Determination

FCIC agrees with the second requestor’s interpretation. A loss due to fire where the policyholder had a separate fire policy is not considered a multiple benefits situation. Multiple benefits mean a policyholder receives benefits for the same loss under any other USDA program.

Section 22(c) provides the explanation of how to determine the value of a loss from fire referred to in section 22(b). Section 35 generally addresses situations where the same loss was paid for by another USDA program. However, section 22(c) cross references section 35 solely to define the methodology to determine the value of the crop in that case. Section 35 specifies exactly how the actual amount of the loss is determined and how to calculate the value of the crop before and after a loss.

For revenue protection, the language is clear that the “total value of the crop before the loss” is determined by multiplying the “approved yield” by the higher of the applicable “projected price” or “harvest price” for the crop.

In accordance with 7 C.F.R. § 400.766(b)(2), 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. § 400.766(b)(5).

Date of Issue: September 1, 2021