

## [Final Agency Determination: FAD-242](#)

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**Subject:** Request dated July 20, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2016 crop year(s) regarding the interpretation of section 6 of the Common Crop Insurance Policy Basic Provisions (Basic Provisions). This request is pursuant to 7 C.F.R. § 400, subpart X.

### **Background:**

Section 6 of the Basic Provisions states, in relevant part:

6. (c) Your acreage report must include the following information, if applicable:

\* \* \*

(5) The land identifier for the crop acreage (e.g., legal description, FSA farm serial number or common land unit number if provided to you by FSA, etc.) as required on our form.

\* \* \*

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit. However, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

(g) You must provide all required reports and you are responsible for the accuracy of all information contained in those reports. You should verify the information on all such reports prior to submitting them to us.

(1) Except as provided in section 6(g)(2), if you submit information on any report that is different than what is determined to be correct and such information results in:

(i) A lower liability than the actual liability determined, the production guarantee or amount of insurance on the unit will be reduced to an amount consistent with the reported information (In the event the insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity); or

(ii) A higher liability than the actual liability determined, the information contained in the acreage report will be revised to be consistent with the correct information.

(2) If your share is misreported and the share is:

(i) Under-reported, any claim will be determined using the share you reported; or

(ii) Over-reported, any claim will be determined using the share we determine to be correct.

(h) If we discover you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years substantiating your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense. If the correction of any misreported information would affect an indemnity, prevented planting payment or replant payment that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

#### 34. Units.

(a) You may elect an enterprise unit or whole-farm unit in accordance with the following:

(4) For an enterprise unit:

(i) To qualify, an enterprise unit must contain all of the insurable acreage of the same insured crop in:

(A) Two or more sections, if sections are the basis for optional units where the insured acreage is located;

(B) Two or more section equivalents determined in accordance with FCIC issued procedures, if section equivalents are the basis for optional units where the insured acreage is located or are applicable to the insured acreage;

(C) Two or more FSA farm serial numbers, if FSA farm serial numbers are the basis for optional units where the insured acreage is located;

\* \* \* \* \*

(c) Each optional unit must meet one or more of the following, unless otherwise specified in the Crop Provisions or allowed by written agreement:

(1) Optional units may be established if each optional unit is located in a separate section where the boundaries are readily discernible:

(i) In the absence of sections, we may consider parcels of land legally identified by other methods of measure, such as Spanish grants, provided the boundaries are readily discernible, if such parcels can be considered as the equivalent of sections for unit purposes in accordance with FCIC issued procedures; or

(ii) In the absence of sections as described in section 34(c)(1) or other methods of measure used to establish section equivalents as described in section 34(c)(1)(i), optional units may be established if each optional unit is located in a separate FSA farm serial number in accordance with FCIC issued procedure;

### **Interpretation Submitted**

Section 6(c) of the Basic Provisions provides the information that the insured must provide on their acreage report, if applicable. Section 6(c)(5) of the Basic Provisions requires the land identifier be provided for the crop acreage (e.g. legal descriptions, FSA farm serial number or common land unit number if provided to you by FSA, etc.) as required on our form. The requestor interprets 'if applicable' to mean that information which is specifically required by section 6(c) or by the Risk Management

Agency (RMA) procedure.

Section 6(g) and 6(h) of the Basic Provisions provide consequences to the insured when information they provide on an acreage report is not accurate and the information determined to be correct affects the liability, indemnity, prevented planting payment or replant payment. Section 34(a) and (c) of the Basic Provisions state that the enterprise and optional unit structures must be established by section, section equivalent or farm serial number. Unit structure affects the liability, indemnity, prevented planting payment or replant payment.

The requestor states that section 6 of the Basic Provisions must also be evaluated in the context of the 2016 General Standards Handbook (GSH). In this regard, Part 12, section 2, paragraph 1212 A of the GSH requires the insured to provide the FSA Farm/Tract/Field Number (which represents the USDA FSA Common Land Unit (CLU)) for Area Risk Protection Insurance (ARPI) and Stacked Income Protection (STAX) if it is available from FSA. Likewise, section 6 must also be evaluated in the context of the 2016 Crop Insurance Handbook (CIH). In this regard, Part 12, section 1, paragraph 1202, provides the requirements for an acceptable acreage report which include the requirement to provide all required elements of the acreage report listed in paragraph 1211 which require the insured to report the CLU for ARPI and STAX if it is available from FSA. Paragraph. 1203 of the CIH, provides that the consequence for failure of the insured to provide an acceptable acreage report is to deny liability, unless the approved insurance provider (AIP) determines insurable acreage, share, practice, type, etc.

It is requestor's interpretation of the policy that the CLU is 'applicable' when the insured is required to report the CLU in accordance with the procedure provided in the CIH and GSH. If the insured fails to report the CLU, when the CLU is provided to the insured by FSA, the AIP is compelled to deny liability or determine the CLU and accept liability. However, if the CLU is not provided to the insured by FSA and absent any other RMA procedure, the terms of section 6(g) and 6(h) do not compel an AIP to deny liability or reject an acreage report submitted by an insured that includes a land identifier other than a common land unit number, provided that the land identifier submitted by the insured is sufficient to establish the correct unit structure, liability, indemnity, prevented planting payment or replant payment.

Additionally, paragraph 1212 B of the GSH requires an AIP to report CLU numbers on acreage as defined in Appendix III to the Standard Reinsurance Agreement. These

obligations are independent of and more extensive than the Basic Provision's requirement that the insured report CLUs on the acreage report. Because the Basic Provisions supersedes the GSH, paragraph 1212B does not obligate an AIP to reject an acreage report of deny liability.

The language in section 6 of the Basic Provisions is identical to the provisions of section 8 of the Area Risk Protection Insurance (ARPI) Policy. To ensure uniform program delivery and consistency between plans of insurance, requestor requests that FCIC's interpretation of the Basic Provisions apply equally to the ARPI Policy.

### **Final Agency Determination**

RMA agrees in part with the requestor. As an initial matter, in accordance with the preamble to the Basic Provisions, the policy provisions control over the procedures (i.e., CIH and GSH). Therefore, the procedures are evaluated in the context of the policy provisions, not the other way around as suggested by the requestor. FCIC agrees that the term "if applicable" can be established in the procedures.

FCIC interprets section 6(f) of the Basic Provisions that references failure to provide an acreage report to mean failure to provide any acreage report by the deadline or failure to provide information required to be included on the acreage report.

FCIC agrees that the CLU is 'applicable' when the insured is required to report the CLU in accordance with the procedure provided in the CIH and GSH. FCIC agrees that if the CLU is not provided to the insured by FSA the acreage report cannot be considered as failed to be timely filed unless other information is missing, provided that the land identifier submitted by the insured is sufficient to establish the correct unit structure, liability, indemnity, prevented planting payment or replant payment. However, if FSA has provided the CLU and the insured fails to provide it on the acreage report, the AIP can elect to deny liability or include the CLU and accept liability.

Since the language in section 6 of the Basic Provisions is identical to the provisions of section 8 of the ARPI Policy, this interpretation applies equally to the ARPI Policy.

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:** September 14, 2015