

## Breached Levee Statement

*This document may be periodically updated to answer additional questions.*

This document does not supersede any policy or procedure and only provides additional information regarding the implementation of the following Special Provision statement, which is part of the Actuarial Documents for certain states and counties that may have acreage impacted by a breached levee:

*"Land flooded due to a breach in a levee resulting from prior year(s) flooding is insurable. The applicable rate will be assigned based on conditions of the levee and soils on the latter of the sales closing date or earliest planting date. If, by that date, the levee has not been repaired to prior specifications, or if damaged soil (if any) has not been restored to at least the same crop yield potential as prior to the flood event, the land will be classified as high-risk and will have the highest rate classification in the county. However, if the levee is repaired to prior design specifications, and the soil has at least the same crop yield potential as before the flood, the land will be classified as shown on the current crop year Actuarial Map. If the levee has been temporarily or permanently repaired, but not to prior design specifications, by the latter of the sales closing date or earliest planting date, and the soil has at least the same crop yield potential as before the flood, then RMA may adjust the rate to an amount consistent with the level of flood risk by written agreement, if applicable. For RMA to consider any levee repair, RMA must be provided a certification from the U.S. Army Corps of Engineers or signed and sealed certification from a professional engineer who is currently licensed and registered in the state where the levee is located. For soils to be considered restored to the same crop yield potential as before the flood, you must sign a statement that damaged soil (if any) has been restored to at least the same crop yield potential as prior to the flood event."*

**For more information, contact your RMA [Regional Office](#).**

## **What is the purpose of the "breached levee" statement?**

As part of the Actuarial Documents, the statement notifies policyholders that land flooded by a levee breach is insurable. Additionally, the statement ensures crop insurance premium rates adequately reflect the risk associated with growing crops in an area that, due to the breach, may have an increased risk of flood or diminished yield potential.

Since the breached levee statement is a condition of insurance, it must be posted to the Actuarial Documents by the Contract Change Date (CCD), which is several months before the insurance period begins. If the land is restored and the levee is repaired to prior specifications by the latter of the Sales Closing Date (SCD) or the Earliest Planting Date (EPD) (if there is an earliest planting date), then the rate classification for that land will be as designated in the crop year Actuarial Documents. However, if the breached levee hasn't been repaired to prior specifications nor has it been temporarily or permanently repaired (but not to prior specifications) by the dates listed in the statement, then the land will receive the highest rate classification in the county as shown on the Actuarial Documents.

## **What does the term "prior specification" mean?**

This means the levee is repaired to its original designed height, slope, crown width, etc. using the same (or similar) materials used to build the levee prior to the breach event. However, the repaired levee will not have to be seeded or turfed by the SCD or EPD. For the Risk Management Agency (RMA) to consider any levee repair, RMA must be provided a certification from the U.S. Army Corps of Engineers (USACE) or signed and sealed certification from a professional engineer who is currently licensed and registered in the state where the levee is located.

## **What if the breached levee has been temporarily or permanently repaired, but not to prior design specifications, by the latter of the SCD or EPD?**

The rate your land will receive is specified in the breached levee statement in the Actuarial Documents. The highest rate classification shown in the Actuarial Documents for the county will be applicable for a breached levee that was not repaired to prior specifications by the later of the SCD or EPD.

However, if the breach(es) in the levee system have been temporarily or permanently repaired (but not to prior specifications) by the latter of the SCD or EPD, then RMA may adjust the rate for acreage on the protected side of the breached levee system to reflect the new flood risk to the acreage. The temporary or permanent repairs must be completed prior to the SCD or EPD, and RMA must receive the necessary certifications (see Question and Answer below for more information on certifications) for those repairs in order to consider the levee system repaired. Please note that if the levee system has multiple breaches, the breach with the lowest level of protection will determine the flood risk and associated high-risk rate.

Producers do not need to submit a Request for Actuarial Change for a Written Agreement (hereinafter called "written agreement request") to RMA when the breached levee has been repaired and certified. RMA can adjust the high-risk rate for all the acreage behind a repaired and certified levee system without insured's submitting a written agreement request. Once RMA has received the necessary certification (see Question and Answer below for more information on certification requirements), RMA will be able to calculate the appropriate high-risk rate and apply it to all the acreage behind the levee system. RMA will notify your Approved Insurance Provider (AIP) of the acreage where the adjusted rate applies. However, if the breached levee affecting your land is repaired and certified after the latter of the SCD or EPD, but BEFORE you plant your crop, you will need to work with your crop insurance agent to submit a written agreement request. (See the Question and Answer below on this topic.)

**What will RMA need to determine a breached levee system has been repaired to "prior specification," or if a breached levee system has been temporarily or permanently repaired, but not to prior specification? And how will RMA receive that information?**

For any repair to a breached levee system, RMA must receive certification from the USACE or signed and sealed certification from a professional engineer who is currently licensed and registered in the state where the levee is located. For levee systems under the USACE jurisdiction, RMA will be able to directly obtain a certification from USACE of the repair. However, for levee systems outside the jurisdiction of the USACE, you or your AIP will need to provide the necessary certification.

- **Note:** You or your AIP can contact your RMA Regional Office to provide this information. A written agreement request is not needed to submit the breached levee system certification.

### **How will I know if the breached levee has been repaired to prior specifications, or if it has been temporarily or permanently repaired, but not to prior specifications?**

Please contact your crop insurance agent for the most current levee repair status from RMA according to USACE. As the SCD approaches, RMA will notify AIPs of the repair status of the breached levee, the acreage which is subject to the breached levee statement, and the rate classification of that acreage. AIPs will be periodically notified thereafter on the status of repairs.

The RMA Regional Office will also provide information on status of breached levee repairs on the [RMA's website](#).

### **If a levee system that protects my land has been certified as temporarily or permanently repaired by the SCD or EPD, do I need to submit a written agreement request through my crop insurance agent to receive a lower rate?**

No, you do not need to send in a written agreement request for land that is within a sub-county area behind a breach has been certified as temporarily or permanently repaired by the SCD or EPD. RMA will notify AIPs of the repair status and high-risk rates as the SCD approaches. Thereafter, RMA will continue to notify AIPs on the status of repairs.

As noted previously in this document, RMA will be able to directly obtain a certification of the breached levee system repairs for levee systems under the USACE jurisdiction. For levee systems outside the jurisdiction of the USACE, you or your AIP will need to provide the necessary certification from a professional engineer who is currently licensed and registered in the state where the levee is located by contacting the RMA Regional Office directly.

**My acreage is classified as high-risk and is behind a breached levee. However, the acreage did not flood, but my agent says the breached levee statement will apply to my acreage and it will get a higher high-risk rate due to the breach in the levee. What can I do?**

As noted earlier, RMA will notify AIPs of the repair status to breached levees and the acreage affected by those breaches. However, if your acreage is subject to the breached levee statement, but it did not flood, you may submit a high-risk (HR) written agreement request through your crop insurance agent, and the RMA Regional Office will consider it. Your agent will know the requirements of an HR written agreement request. Please state in the request the reason (s) you are submitting the high-risk written agreement request. The RMA Regional Office will evaluate your request for lower rates in accordance with Section 3(k) and Section 18 of the Common Crop Insurance Policy, Basic Provisions.

It should be noted that any written agreement requests from acreage that is subject to the breached levee statement will be considered a new high-risk request. This applies to 2019-issued written agreements in which the RMA Regional Office issued a reduced high-risk rate. A 2020 crop year request would normally be considered a

renewal request but, due to the breach in the levee, which is a significant change in conditions, it would be considered a new request. The deadline for new high-risk requests is the acreage reporting date for the crop.

**In March 2019, I received a high-risk written agreement on my acreage. In May 2019, a levee breached and flooded my acreage. If I were to resubmit the same request for the 2020 crop year, would it be considered a new or renewal request?**

It would be considered a new request since conditions in which the 2019 written agreement was issued have changed (i.e. breach in levee). The deadline to submit a new request by the acreage reporting date for the crop. Normally in these cases, the request would be considered a renewal request which has a deadline to submit the request of the sales closing date. However, due to the breach in the levee, which is a significant change in conditions, it would be considered a new request. The RMA Regional Office will evaluate your request for lower rates in accordance with Section 3(k) and Section 18 of the Common Crop Insurance Policy, Basic Provisions.

**Can RMA make any changes to the breached levee statement after it is posted in the Actuarial Documents?**

No. The breached levee statement is part of the Actuarial Documents and cannot be changed after the CCD. The CCD for fall planted crops is June 30 and for spring planted crops is November 30.

Crop insurance contract terms and conditions for the upcoming crop year are announced by the CCD. Terms and conditions include rates, transitional yields, actuarial maps, and all Special Provisions, including the breached levee statement. Posting this information by the CCD allows AIPs, crop insurance agents, agricultural producers, and the public adequate time to understand the terms and conditions of insurance for the upcoming crop year.

The existing breached levee statement can be modified for subsequent crop years based on new information regarding levee repairs, provided the new information is

received well before the CCD to allow for adequate analysis, review, and possible implementation by RMA.

**The breached levee is certified as repaired to prior specifications (or certified temporarily or permanently repaired, but not to prior specifications) BEFORE I planted my crop but after the date specified in the statement. Will my land still be subject to the "highest rate classification in the county"?**

Yes, however, you may submit a Written Agreement request through your crop insurance agent for RMA to re-examine your rates in accordance with Section 3(k) and Section 18 of the Common Crop Insurance Policy, Basic Provisions. If the breached levee has been repaired after the SCD or EPD, but before you planted your crop, RMA will re-examine the high-risk rate for your acreage. However, as noted in an earlier Question and Answer on certification, RMA must receive certification regarding the levee repair from the USACE or a signed and sealed certification from a professional engineer who is currently licensed and registered in the state where the levee is located. The date of levee repair completion must be before you plant your crop. RMA may require a crop inspection in these cases.

It should be noted that any written agreement requests for acreage subject to the breached levee statement will be considered a new high-risk request. This applies to 2020 crop year requests to renew a 2019-issued written agreement. The 2020 crop year request would normally be considered a renewal request but, due to the significant change in conditions caused by the breach in the levee, it would be considered a new request. The deadline for new high-risk requests is the Acreage Reporting Date for the crop.

**The breach is certified as repaired to prior specifications (or certified as temporarily or permanently repaired, but not to prior specifications) AFTER I plant my crop, but no crop damage has occurred. Can I receive lower crop insurance premium rates?**

No. Crop insurance protection attaches, and premium is earned, when the crop is planted.

### **What are my insurance coverage options if my land has a higher rate due to a breached levee?**

There are crop insurance options to reduce or exclude coverage on land designated as high-risk. One option is a High-Risk Land Exclusion Option (available nationwide). This option allows you to choose to not insure your high-risk land or to insure it separately under a CAT policy. Another option is the High-Risk Alternate Coverage Endorsement (available in select counties). It is a separate policy which allows you to select a different coverage level on high-risk land than your non-high-risk land. Please talk with your crop insurance agent about these options and applicable deadlines.

### **What does the phrase "...or if damaged soil (if any) has not been restored to at least the same crop yield potential as prior to the flood event..." mean?**

If any soil is damaged as a result of the breached levee, the soil must be restored prior to planting the next crop so it has the ability to produce at least the same crop yield potential as before the breach. Damage includes erosion (e.g., gullies, scour), debris, or sedimentation. Restoration means adequately addressing eroded land (e.g., leveling gullies), clearing debris and sediment from the field or, in the case of light sediment, incorporating it into the soil. In general, you should consult agricultural experts regarding the best way to restore damaged soils. All actions taken to restore damaged soils must be documented. Your AIP will need to make certain determinations regarding whether the land has been repaired and/or restored.

### **How does RMA verify that damaged soils (if any) have been restored to at least the same crop potential as prior to the flood event?**



Even if the breached levee system is repaired, the breached levee statement still requires that damage soils (if any) be restored to at least the same crop yield potential as prior to the flood event. As noted in the previous Question and Answer, damage includes erosion (e.g., gullies, scour), debris, or sedimentation. Restoration means adequately addressing eroded land (e.g. leveling gullies), clearing debris and sediment from the field or, in the case of light sediment, incorporating it into the soil. You should consult agricultural experts regarding the best way to restore damaged soils. You must restore any damaged soils AND sign/date a self-certification which states: *“Soils affected by the breached levee have been restored to at least the same crop potential as prior to the flood event.”*

You must retain this signed and dated self-certification statement for your records and provide it, upon request, to your AIP. Your AIP will need to make certain determinations regarding whether the land has been repaired and/or restored. If you do not restore damaged soils to at least the same crop potential as prior to the flood event, you will not satisfy the breached levee statement. Therefore, acreage with the damaged soils will receive the highest rate classification in the County as shown on the Actuarial Documents. The signed and dated statement is considered part of your crop insurance records (see Section 21 of the Common Crop Insurance Policy, Basic Provisions).

**I planted winter wheat this past fall on acreage that was flooded by a breached levee, but there is a different breached levee statement in the Actuarial Documents for winter wheat than the one listed above. The statement that applies to my winter wheat does not have any language concerning levee which have been temporarily or permanently repaired, but not to prior design specifications. Which statement applies to me?**

You are required to follow the terms and conditions of your crop’s applicable state/county Actuarial Documents. Therefore, you must follow the version of the breached levee statement in your crop’s applicable state/county Actuarial Documents. The statement you noted is associated with fall-planted crops (such as

winter wheat) which had a CCD of June 30, 2020. Since the 2020 crop year fall-planted crop SCD or EPD have passed, winter wheat and other fall-planted crops in these breached levee areas are subject to the language in the statement and, therefore, will be classified as high-risk and will have the highest rate classification in the County, unless a written agreement has been issued on your acreage.