



United States Department of Agriculture

Farm and Foreign Agricultural Services
Risk Management Agency

INFORMATIONAL MEMORANDUM

TO: All Reinsured Companies
All Risk Management Field Offices

FROM: Phyllis W. Honor /s/ Tim B. Witt 5-18-01
Acting Administrator

SUBJECT: Advisory Regarding Cash Rent and Establishing Insurable Interest for Prevented Planting Payments

ISSUE:

The Department of Agriculture's Office of the Inspector General (OIG) conducted an audit of multiple peril crop insurance policies and has found cases where the insured entity received prevented planting payments on acreage for which no cash rent was paid. Insured entities are required to report all acreage of the crop in the county (insurable and not insurable) in which they have a share. Share is defined in section 1 of the Basic Provisions as "your percentage of interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss or the beginning of harvest."

DISCUSSION:

In the one specific case used by OIG to demonstrate their finding, a corporate entity entered into a land lease arrangement with a third-party landowner. The land lease required the corporation to pay cash rent on a minimum amount of acreage with additional cash rent to be paid for any acreage exceeding the minimum requirement on which a crop was planted. The corporation subsequently subleased several parcels of land to an associated individual with the same cash rent provisions in place.



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The corporate entity and the individual with the sublease were able to plant the minimum amount of acreage for which they were required to pay cash rent. They were unable to plant any additional acreage and received prevented planting payments on cropland acreage for which no cash rent was paid. OIG questioned whether the producers held legitimate insurable interests on the unplanted acres, since the producers were not required to pay rent on them.

Under normal circumstances, insurance attaches with the seeding of a crop. In the case of prevented planting, there is no seeding to trigger the attachment of insurance. As such, it is reasonable to establish that some other event which supports a transfer of interest from the landowner to the tenant should take place. Customary cash lease arrangements require the payment of one half of the agreed to cash rent up front, with the remainder paid at the time of harvest. Thus, the initial payment of cash rent could be considered an identifiable event.

With respect to the specific case cited, the provisions of the lease agreements requiring the payment of cash rents only upon the plantings of crops serve to eliminate the other identifiable event signaling a transfer of interest. Thus, the provisions of the lease, while serving as a means of risk protection for the corporation and the individual, prevent insurance from attaching and prohibit the establishment of insurable interests.

Insurance providers are reminded that when cash rent lease provisions apply, the payment of cash rent is necessary to provide a legitimate insurable interest to receive prevented planting indemnity payments. Terms of cash rent leases vary and a review of the cash rent lease may be necessary to determine insurable interest.

This advisory is being issued as an informational bulletin. Because there will be a wide range of circumstances regarding lease arrangements, each producer's situation must be considered on its own merits and will be determined individually based on each producer's circumstances by the insurance company.

DISPOSAL:

This memorandum is for the purpose of transmitting/updating information and the disposal date is December 31, 2001.