



United States
Department of
Agriculture

Risk
Management
Agency

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Kansas City,
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July 1, 2005

INFORMATIONAL MEMORANDUM: R&D-05-028

TO: All Reinsured Companies
All Risk Management Agency Field Offices
All Other Interested Parties

FROM: Tim B. Witt /s/ *Tim B. Witt*
Deputy Administrator

SUBJECT: Questions and Answers regarding the 2005 Basic Provisions

BACKGROUND:

Several questions have been raised regarding new provisions contained in the 2005 Basic Provisions.

ACTION:

To assure consistent administration of the provisions contained in the 2005 Basic Provisions, the Risk Management Agency is providing the questions and answers contained herein for approved insurance providers use.

DISPOSAL DATE:

This informational memorandum is for transmitting information and will remain in effect until December 31, 2005.



QUESTIONS AND ANSWERS REGARDING THE 2005 BASIC PROVISIONS**1. SSN or EIN reporting:**

Question A: Section 2(b)(2) provides that incorrect I.D. numbers must be corrected by the acreage reporting date. Additionally, paragraph 1B(1) of R&D-04-045 states that the allowance to correct I.D. numbers after the sales closing date contained in section 4, paragraph F(1)(d) of the Crop Insurance Handbook (CIH) is removed. Does this mean that approved insurance providers may no longer correct keying errors on I.D. numbers after the acreage reporting date?

Response A: If the incorrect I.D. number is the result of an approved insurance provider error (e.g., a processing or keying error), and the person with the incorrect I.D. number is otherwise eligible, the approved insurance provider should correct the error. Other errors not corrected by the acreage reporting date will result in reduced or no coverage in accordance with section 2(b)(2)(i) or (ii), whichever is applicable.

2. Section 6 (Report of Acreage):

Question A: How will an approved insurance provider determine whether to apply the misreporting provisions contained in section 6(g) or void the policy?

Response A: The voidance provisions in section 27 of the Basic Provisions would apply when the approved insurance provider had evidence the insured intentionally misreported information. If there was no evidence the information was intentionally misreported, section 6(g) would apply.

Question B: Will the liability adjustment factor (LAF) specified in section 6(g)(1)(i) and the misreporting information factor (MIF) specified in section 6(g)(2) be applied on an entire unit basis, or will they be applied separately for each individual payment type within a unit? For example, if a separate replant, prevented planting, and indemnity payment are all due on a specific unit, will a separate LAF and MIF be calculated for each payment, or would one LAF and MIF be calculated for the entire unit and be applied to each payment?

Response B: The LAF is used to hold the liability for any payment to the liability reported by the insured, when the liability reported by the insured is less than the liability determined. The MIF is used to reduce a payment proportionately, when a producer has misreported the liability by more than 10 percent. Since

both the LAF and MIF are used to limit payments, and each payment type (i.e., replant, prevented planting, and indemnity payment) has separate liabilities and payment calculations, the LAF and MIF must be calculated separately for each payment type within a unit.

For example, if a producer is entitled to a prevented planting payment for unplanted acreage within a unit and an indemnity for the planted acreage within the same unit, if the producer correctly reported the prevented planting liability but misreported the liability for the planted acreage within the unit, no LAF or MIF would apply to the prevented planting payment.

- Question C: Will the LAF or MIF apply in the following circumstances regarding share:
- (1) If a person farmed and insured on a 50 percent share basis in prior years and changed to a \$100 cash lease in the current year and inadvertently carried over the 50 percent share on the current year acreage report?
 - (2) If a person reported their correct share at acreage reporting time as 100 percent, but has less than a 100 percent share at claim time because they sold or gave away an interest in the crop after the acreage reporting date?
 - (3) If a person reported their correct share at acreage reporting time as 50 percent, but received a greater share in the crop after the acreage reporting date?
 - (4) If the share is reduced to 50 percent because the policyholder did not report his or her spouse's SSN?
 - (5) If a person reported their share as .700, but at the time of reporting their share was actually .900?

Response C: Neither the LAF nor MIF will apply to any misreported share, because for the purpose of determining the LAF and MIF the liability will be calculated without regard to share. To do otherwise could result in applying the LAF factor twice. For example, if share were under-reported and share was included when determining the reported and correct liabilities, section 6(g)(1)(i) of the Basic Provisions would require the production guarantee to be reduced to reflect the reported share. Then, when an indemnity calculation is performed in accordance with the applicable crop provisions, the under-reported share amount would be used again, effectively resulting in double application of the LAF factor.

Question D: Section 6(d)(3) states, "For prevented planting acreage not reported on the acreage report, you cannot revise your acreage report to add prevented planting acreage." Does that statement apply only when "0"

prevented planting acres were reported, or does it also apply to a situation where some of the prevented planting acres were reported and some were not?

Response D: The insured cannot revise his or her acreage report to add any prevented planting acreage not reported by the acreage reporting date. This would apply if the insured reported “0” prevented planting acres or if the insured reported the incorrect number of prevented planting acres. Prevented planting acreage can be added on or prior to the acreage reporting date. However, prevented planting acres may be added by the approved insurance provider after the acreage reporting date if the approved insurance provider or a USDA employee caused the incorrect reporting. For example, if a FSA acreage measurement for a field is found to be incorrect, the number of acres for the field can be corrected without penalty.

Question E: If an insured reports 100 planted acres on the acreage report, but these acres are actually 75 acres planted and 25 acres that were prevented from being planted, would the approved insurance provider be allowed to make this revision to the acres (assume that a timely prevented planting notice of loss was submitted as other prevented planting fields exist on the policy)? If an insured reports acres as planted, but does not actually get those acres planted, can the insured revise the acres to report prevented planting acres? Would this be considered an acceptable revision per the Prevented Planting Loss Handbook, as it lists numerous allowable situations but does not specifically address this one? If so, would this and other revisions allowed be subject to the misreporting penalties in the Basic Provisions?

Response E: Section 6(d)(3) states the insured cannot revise his or her acreage report to add prevented planting acreage not reported by the acreage reporting date. Therefore, if the producer reported 100 planted acres but 25 of those were actually prevented from being planted; the acreage report could not be changed to include the 25 prevented planting acres. Since the acreage reporting date is long after the final planting date, insured’s should never be reporting intended planted acres. Only the number of acres actually planted can be reported.

With respect to the 75 acres actually planted, there are circumstances where the insured may request to revise planted acres on the acreage report and the approved insurance provider should process the request in accordance with section 6(d) of the Basic Provisions. If there are no grounds to grant a request to revise the acreage report, the producer

will be subject to the misreporting provisions in section 6(g). The Prevented Planting Loss Handbook will be revised to be consistent with the new provisions.

Question F: If a measurement service has been requested by the insured by the acreage reporting date, who can perform such measurement service?

Response F: Acceptable measurement services include measurements made by an approved insurance provider or their loss adjusters, FSA offices, or firms engaged in land measurement. However, if more than one measurement is made, and the difference between the measurements cannot be reconciled, the priority in section 6(d)(5) of the Basic Provisions will apply.

Question G: How long must an approved insurance provider wait for an insured to provide their measurement service results? There is a timeliness consideration both from a payable claim and a billing (premium calculation) perspective if no claim is involved. If the insured ultimately provides the measurement service results sometime after the premium billing date, will the measured acres then be used, requiring the premium to be recalculated? If there had been a claim reported, would the claim then be required to be worked?

Response G: The policy does not include a specific date by which the insured must provide the acreage measurement. However, the approved insurance provider must still administer the policy, including the adjustment of losses and the collection of premium. If the insured has not provided the acreage measurement by the time a notice of loss has been provided to the approved insurance provider, it is the responsibility of the approved insurance provider to determine the acreage and make whatever adjustments are required by the Basic Provisions if the estimated acres reported by the insured were incorrect. However, if there is no loss and the insured has not provided the acreage measurement by the premium billing date, the approved insurance provider would base the premium on the estimated acreage reported by the insured. If the acreage measurement is later provided, the premium must be adjusted to reflect the actual acreage.

Question H: Will the misreporting provisions contained in section 6(g) apply to over or under reported prevented planting acres the same way they would apply to over or under reported planted acres? For example, if an insured reported prevented planting on 500 actual acres but it was determined that only 100 acres were eligible (due to historical eligibility), would the misreporting

provisions apply? Assume a different example. This time an insured reports 100 prevented planting acres and the insured has plenty of historical eligibility but the adjuster measures the field and determines there are only 80 actual acres in the field. Will the misreporting provisions apply in this case?

Response H: The misreporting provisions will apply to prevented planting acres whenever the insured misreports any actual information (for example, when there are only 80 acres but the insured reported 100 acres). However, when the information reported by the insured is correct, but the policy requires the reported information to be considered something else, the misreporting provisions contained in section 6(g)(2) will not apply (for example, when the insured reported prevented planting on 500 actual acres, but due to eligibility requirements, 400 of the 500 acres were determined to be ineligible for prevented planting coverage).

Question I: How will the misreporting provisions contained in section 6(g) of the Basic Provisions be applied under the nursery or clam policy? For example, the nursery provisions already contain an under-reporting factor. Will the provisions contained in section 6(g) of the Basic Provisions be in addition to those contained in the nursery policy or will the nursery provisions be in lieu of the Basic Provisions in this case? What about over-reported situations under the nursery policy?

Response I: Both the nursery and clam policies state that section 6 of the Basic Provisions will not apply to these policies. The specific Crop Provisions for these policies specify any required adjustments. Therefore, the misreporting provisions contained in section 6 of the Basic Provisions are not applicable.

Question J: Will the misreporting provisions contained in section 6(g)(2) apply when a person misreports the information used to determine his or her APH, or if the policyholder does not have the production records he or she certified? In such case, yields would be assigned and unit structure collapsed.

Response J: If the producer misreports material information used to determine the approved yield, the misreporting provisions in section 6(g) will apply unless the misreporting was a result of an error of the approved insurance provider or someone from USDA.

If the insured does not have the production records he or she certified to qualify for optional units, yields would be assigned and the optional units

would be combined into a basic unit. Further, section 21(f) states that failure to retain records as required by that section will subject the insured to the misreporting provisions in section 6(g).

Question K: How will the misreporting provisions contained in section 6(g)(2) apply when a person misreports the information used to determine his or her APH, when the misreporting resulted in an approved yield that is within the tolerance stated in the CIH or that exceeds the tolerance stated in the CIH?

Response K: The tolerances stated in the CIH are irrelevant to the misreporting provisions in section 6(g) of the Basic Provisions because actual liability must be determined. The only issue is whether the actual liability exceeds the standards contained in section 6(g)(2). If the standards are exceeded the adjustments contained in section 6(g)(2) must be made.

Question L: Will the misreporting provisions contained in section 6(g)(2) apply if a revision is made due to the new APH yield adjustments contained in sections 3(g)(1), (2) or (3) regarding excessive actual yields, inconsistent approved APH yields and insured acreage limitations?

Response L: The misreporting provisions will only apply if information provided by the insured has been actually misreported or the producer does not have records as required under section 21(f). If one of these conditions does not exist, the misreporting provisions will not apply even though there may have been an APH adjustment in accordance with sections 3(g)(1), (2) or (3).

Question M: Will the misreporting provisions contained in section 6(g)(2) apply if:

- (1) The production is reported on a wet weight basis and due to a review, the approved insurance provider reduces it to a dry weight basis?
- (2) If the insured reports figures from the settlement sheets but the elevator does not take the same dockages that are used for crop insurance?
- (3) If the policyholder does not qualify as a new producer, or does not qualify for added land, practice or variety?

Response M: The insurance provider must demonstrate the information reported by the insured was actually incorrect. Reporting the wrong unit of measure does not mean the information reported was incorrect. For example, if the insured reports 18 tons of wet production, instead of the correct 13 tons of dry production, the misreporting provisions in section 6(g)(2) will only apply if the insured did not actually have 18 tons of wet

production, even though the approved insurance provider will be required to adjust the production. Likewise, if the insured reports accurate information from settlement sheets, the misreporting provisions would not apply and the production would be adjusted for crop insurance purposes. However, if the insured provided incorrect information indicating eligibility for new producer status or for added land, practice or variety, and it is determined the insured does not qualify, the misreporting provisions will apply.

Question N: Will the misreporting provisions contained in section 6(g)(2) apply in the following circumstances:

- (1) If an incorrect planting date is reported (for example, the ten percent tolerance could be exceeded if the plant date is misreported by enough days within the late planting period to result in this much change)?
- (2) If the legal description, high risk land vs. regular rated land, map areas that have different T-Yields or Determined Yields are misreported?
- (3) If the skip row factor on cotton is incorrect?

Response N: The misreporting provisions will apply if:

- (1) The crop is not planted on the date reported;
- (2) The insured misreported the actual location of the acreage; or
- (3) The insured misreported the actual skip row planting pattern used.

Question O: If the insured correctly reported the acreage report information, but the information was incorrectly processed by the approved insurance provider or FSA committed an error regarding the information on the acreage report, will the approved insurance provider be allowed to correct those errors? If so, will the misreporting provisions contained in section 6(g)(2) apply?

Response O: If the insured correctly reported the acreage report information, but the information was incorrectly processed by the approved insurance provider, or FSA committed an error regarding the information on the acreage report, the approved insurance provider can correct the error and the misreporting provisions contained in section 6(g)(2) do not apply.

3. Section 7 (Annual Premium and Administrative Fees):

Question A: Is the allowance contained in section 7(e)(4) of the Basic Provisions for a carryover insured to continue to qualify as a limited resource farmer under the

previous policy definition (2004 Basic Provisions) only good for the 2005 crop year or would it also be allowed for the 2006 and succeeding crop years? Or, does it break out by contract change date (e.g. perennial and spring crops with contract change dates on or after 8/31/04 would qualify in 2005 but for crops/counties with earlier contract change dates, the allowance in the 2005 Basic Provisions will be effective for the first time for the 2006 crop year)? The policy language in section 7(e)(4)(ii) is not limited to the first year, so wouldn't the allowance remain in effect, at least until the Basic Provisions are revised again?

Response A: The provisions in section 7(e)(4) allow a producer whose administrative fee was waived in a prior crop year because the insured qualified as a limited resource farmer under a policy definition previously in effect, who continues to remain qualified under the previous policy definition, to be eligible for the waiver of the administrative fee under the new policy. This waiver applies for the 2005 and succeeding crop years for crops with a contract change date on or after August 31, 2004, and for the 2006 and succeeding crop years for crops with a contract change date prior to August 31, 2004. Once the waiver has been granted under the new 2005 Basic Provisions, the insured will continue to be eligible to request waiver of the administrative fee for succeeding crop years as long as the insured continues to remain qualified under the previous policy definition or until the provision is revised.

4. Section 9 (Insurable Acreage):

Question A: Section 9(a)(1) refers to the need for acreage being planted and harvested "or insured" in at least one of the three previous crop years unless.... Would a crop covered under the noninsured crop disaster assistance program (NAP) qualify as being insured?

Response A: No. Crops covered under NAP are not considered insured.

5. Section 17 (Prevented Planting):

Question A: Provisions contained in section 17(f)(3) state that prevented planting coverage will be limited to the number of acres specified in the lease for which the insured is required to pay either cash or share rent. Does this mean the approved insurance provider will have to secure copies of leases on all prevented planting claims?

Response A: Approved insurance providers are not required to obtain copies of leases for all prevented planting claims. However, the approved insurance provider must verify the information contained in all leases to determine the eligibility of the acreage.

Question B: Provisions contained in sections 17(f)(4) and (5) need to be clarified to better address situations where you have a planted first crop and a subsequent crop that is prevented from being planted. Provisions in section 17(f)(4) address two prevented planting payments, while provisions in section 17(f)(5) relate to a first crop that is planted when prevented planting is claimed for a subsequent crop. The double cropping history requirements contained in section 17(f)(4) apply to both circumstances. However, whether or not the first crop is insured or not makes a difference in determining whether or not double cropping history can be proven. If you use the double cropping history requirements in section 17(f)(4)(ii), which crop is the first insured crop?

Response B: In determining what is the first insured crop, it would be the first crop that is planted or prevented from being planted on the acreage and that is insured. For example, if the producer plants wheat that is not insured and later is prevented from planting grain sorghum that is insured on the same acreage, the first insured crop would be grain sorghum. Conversely, if the producer is prevented from planting wheat that is insured but later plants grain sorghum that is also insured, the first insured crop would be the wheat.

6. Section 34 (Unit Division):

Question A: Section 34(a)(2)(vii) of the Basic Provisions states that for enterprise units, the enterprise unit discount only applies to the acreage that has been planted. However, for whole farm units, similar language is not contained in either the definition for whole farm units nor section 34(a)(3). Was it intended that the whole farm unit discount be applicable to only planted acreage as well? Or, will the discount apply to both planted and prevented planting acres as long there are some planted acres for each crop in the whole farm unit?

Response A: RMA has discovered the provision contained in section 34(a)(2)(vii) conflicts with a provision contained in section 17(c) that states the premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage except as specified in section 15(f). Under the basic tenets of insurance contract construction, such conflicts must be construed in favor of the insured. Therefore, the unit discount for enterprise units, whole farm units and basic units will apply to both planted and prevented planting acres.