

PM-18-017: Impact of Changing the Business Entity of a Farm Operation After the Sales Closing Date

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Date

March 21, 2018

To

All Approved Insurance Providers

All Risk Management Agency Field Offices

All Other Interested Parties

From

Richard H. Flournoy, Deputy Administrator /s/ Richard H. Flournoy

Subject

Impact of Changing the Business Entity of a Farm Operation After the Sales Closing Date

Background

Risk Management Agency (RMA) has received questions regarding the impact to an insured's crop insurance policy when changes are made in a farming operation's business entity after the sales closing date. For example, the insured is a corporation and the shareholders form a partnership after the sales closing date. The partnership leases land, equipment and other assets from the existing corporation to produce the crop and the corporation does not have a share in the crop. This memorandum addresses the requirements for a crop insurance policy to continue when the business entity changes after the sales closing date/cancellation date and the impact changing a business entity has on Actual Production History (APH) yields.

A. Changes in Business Entity after Sales Closing Date

(1) The Common Crop Insurance Policy Basic Provisions (Policy) in section 28 provides for a Transfer of Coverage and Right to an Indemnity (Transfer of Coverage) to transfer insurance coverage and the right to any subsequent indemnity from one insured person to another person when part or all of the share of the insured crop is transferred during the insurance period.

- Insurance must have attached for Transfer of Coverage to be effective.
- Transfer of Coverage is only effective for the share/acreage in the insured crop actually held by the insured at the time the insured's interest in the crop was transferred.
- Transfer of Coverage cannot be used to transfer insurance coverage if share/acreage is transferred after the sales closing date and prior to the planting of the crop because insurance has not attached and the insured does not have a share in the crop to transfer to someone else.
 - Exception: In the case of prevented planted acres only, insurance attaches to the acreage and the policyholder has a share of the crop as of the prior crop year's sales closing date.

(2) The Policy in section 2(g)(4) provides that if the insured business entity dissolves on or after the cancellation date, if it is not due to death, disappearance, or judicially declared incompetence, the policy will continue through the crop year and be automatically canceled at the end of the insurance period for the current crop year. When this happens, any indemnity, replant payment, or prevented planting payment will be paid to the person(s) determined to be beneficially entitled, such person(s) must comply with all policy provisions and pay the premium.

B. Business Entity Change Impact on APH Yields

(1) If an entity changes and the new entity has any of the same members/shareholders and farms any of the same land as the previous entity, the new entity is required to use the production history of the previous entity for the same land.

(2) If an entity change is in name only, with no other changes to the farming operation (e.g., a corporation changes to a partnership without adding new or changing existing members), all existing years of the APH database, actual and non-actual/assigned yields (including Simple Average (SA) T-Yields), will transfer to the new person.

(3) If members are added or changed, non-actual/assigned yields do not transfer. For example, if a partnership or other entity is dissolved and the land is split between members, non-actual/assigned yields (including SA T-Yields) do not transfer.

C. Business Entity Change Impact on Conservation Compliance

(1) In the case of a Transfer of Coverage and Right to an Indemnity, both the transferor and transferee must have form AD-1026 on file with the Farm Service Agency (FSA) for the reinsurance year, and both must be in compliance with the Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) provisions for either to be eligible for premium subsidy on the portion of the policy that is transferred, unless an exception described in Paragraph 455 of the General Standards Handbook (GSH) applies.

(2) If the insured business entity dissolves on or after the cancellation date, the originally named insured must be in compliance with the conservation compliance requirements for the policy to be eligible for premium subsidy for the reinsurance year. The policy beneficiary would not need to have form AD-1026 on file with FSA for the reinsurance year.

Action

This informational memorandum is for informational purposes only and does not change any existing policy or procedural requirements. See the FCIC 18190 General Standards Handbook (GSH) paragraph 853 for more information regarding Transfer of Coverage and paragraph 232 for more information regarding dissolution of a business entity after the cancellation date.

DISPOSAL DATE:

December 31, 2018