

## **Final Agency Determination: FAD-297**

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**Subject:** Joint request dated May 7, 2020, resubmitted to the Risk Management Agency (RMA) by one of the original requesters on June 16, 2020, for Final Agency Determination (FAD) regarding the interpretation of section 6(d)(1) of the Common Crop Insurance Policy Basic Provisions, published at 7 C.F.R. §457.8. This request is pursuant to 7 C.F.R. § 400, Subpart X.

### **Background:**

Referenced policies and FADs:

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Section 6(d)(1) of the Common Crop Insurance Policy Basic Provisions:

### **6. Report of Acreage.**

(d) Regarding the ability to revise an acreage report you have submitted to us:

(1) For planted acreage, you cannot revise any information pertaining to the planted acreage after the acreage reporting date without our consent (Consent may only be provided when no cause of loss has occurred; our appraisal has determined that the insured crop will produce at least 90 percent of the yield used to determine your guarantee or the amount of insurance for the unit (including reported and unreported acreage), except when there are unreported units (see section 6(f)); the information on the acreage report is clearly transposed; you provide adequate evidence that we or someone from USDA have committed an error regarding the information on your acreage report; or if expressly permitted by the policy).

(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.

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FAD-046 (May 2005):

The Request, dated February 3, 2005, was for an agency determination regarding the interpretation of section 6(d)(1) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. 457.8. The determination states, in part:

FCIC also agrees the phrase “someone from USDA have committed an error” includes mistakes, miscalculations or other inaccuracies made by an employee of the Farm Service Agency (FSA) or their representative in the preparation of an FSA-578, FSA-20-20, or other form that an insured or agent may rely on in the preparation of the crop insurance acreage report.

FCIC does not agree the term “adequate evidence” would include an FSA-578 form dated after the acreage reporting date that includes different acreage or otherwise differs from a prior FSA-578 form that was dated before the acreage reporting date. Such evidence could only be used if it was documented that the difference was due to a correction of an FSA error, not due to a correction of a reporting error made by the insured.

FCIC agrees under the terms of section 6(d)(1), an approved insurance provider may consent to the revision of an acreage report if the insured provides adequate evidence that an employee or representative of FSA erred in the preparation of, for example, the FSA-578 form an insured relies on in preparing an acreage report. Adequate evidence would include, but not be limited to, source documents that show the information reported by the insured was correct, but was subsequently changed due to a mistake, miscalculation or other inaccuracy clearly made by an employee of FSA or their representative.

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FAD-134 (February 2011)

The request, dated November 29, 2010, was for an agency determination for the 2008 crop year regarding the interpretation of section 6(g)(1) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. 457.8. The determination states, in part, that the Federal Crop Insurance Corporation (FCIC) “agrees with the requestor's interpretation that the policyholder is responsible for the information certified on their acreage report.”

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### **Interpretation Submitted**

The requestor<sup>1</sup> contends that the failure of an FSA employee to provide the policyholder or agent with all FSA-578 forms does not qualify as a “USDA error” for purposes of section 6(d)(1) of the Basic Provisions. The requestor interprets section 6(g) of the Basic Provisions to mean that the policyholder is the party responsible for compiling all FSA-578 forms and for the accuracy of the information submitted in the acreage report.

The requestor also cites previously issued FADs, in addition to the Common Crop Insurance Policy Basic Provisions, as the basis for their interpretation. For example, the requestor states that the FCIC, under FAD-046, agreed the phrase from section 6(d)(1), “we or someone from the USDA have committed an error” includes mistakes, miscalculations or other inaccuracies made by a USDA or their representative in the preparation of an FSA-578 (among other forms) that an insured or agent may rely on in the preparation of the acreage report. The requestor also contends that the FCIC differentiated in FAD-046 between preparation errors on the part of the FSA and acreage reporting errors made by a policyholder, where the FCIC determined that an approved insurance provider’s consent to an acreage report revision cannot be based on “a reporting error made by the insured.”

### **Final Agency Determination**

The FCIC agrees with the requestor’s interpretation of the Common Crop Insurance Policy Basic Provisions, section 6(d)(1) and (g), for the 2017 crop year. Per the Common Crop Insurance Policy Basic Provisions, there is no requirement that an FSA-578 must be used to report acreage for a policy. Therefore, it cannot be a “USDA error” if an FSA-578 is not provided by the FSA. If an FSA-578 is used, then any evidence that the FSA employee made mistakes, miscalculations, and/or other

inaccuracies in the preparation of forms, could be considered an error.

Furthermore, it is the insured's responsibility to provide all required reports, ensure the accuracy of all information, and verify the information on all such reports prior to submitting them pursuant to section 6(g) of the Common Crop Insurance Policy Basic Provisions.

In accordance with 7 C.F.R. § 400.766(b)(2), 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. § 400.766(b)(5).

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<sup>1</sup> Although the FAD is a joint request, only one interpretation was provided.

**Date of Issue:** July 21, 2020