

## **Final Agency Determination: FAD-308**

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**Subject:** Request dated September 22, 2021, submitted to the Risk Management Agency (RMA) for a final agency determination of section 10(b)(2) of the Common Crop Insurance Policy (CCIP) Basic Provisions, published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, Subpart X.

### **References:**

The CCIP Basic Provisions provisions, as applicable are:

#### **1. Definitions.**

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***Liability*** - Your total amount of insurance, value of your production guarantee, or revenue protection guarantee for the unit determined in accordance with the Settlement of Claim provisions of the applicable Crop Provisions.

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***Summary of coverage*** - Our statement to you, based upon your acreage report, specifying the insured crop and the guarantee or amount of insurance coverage provided by unit.

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#### **3. Insurance Guarantees, Coverage Levels, and Prices**

*(a) Unless adjusted or limited in accordance with your policy, the production guarantee or amount of insurance, coverage level, and price at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage for each crop year.*

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## **6. Report of Acreage**

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*(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);*

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*(5) If the acreage report has been revised in accordance with section 6(d)(1), (2), or (3), the information on the initial acreage report will not be considered misreported for the purposes of section 6(g).*

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*(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 6(g).*

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## **10. Share Insured**

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*(b) With respect to your share:*

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*(2) If it is determined that the spouse, child or other member of the household has a separate policy but does not have a separate farming operation or share of the crop, as applicable:*

*(i) The policy for one spouse or child or other member of the household will be void and the policy remaining in effect will be determined in accordance with section 22(a)(1) and (2);*

*(ii) The acreage or share reported under the policy that is voided will be included under the remaining policy; and*

*(iii) No premium will be due and no indemnity will be paid for the voided policy.*

*\*\*\*\*\**

## **22. Other Insurance**

*(a) **Other Like Insurance** - Nothing in this section prevents you from obtaining other insurance not authorized under the Act. However, unless specifically required by policy provisions, you must not obtain any other crop insurance authorized under the Act on your share of the insured crop. If you cannot demonstrate that you did not intend to have more than one policy in effect, you may be subject to the consequences authorized under this policy, the Act, or any other applicable statute. If you can demonstrate that you did not intend to have more than one policy in effect (For example, an application to transfer your policy or written notification to an insurance provider that states you want to purchase, or transfer, insurance and you want any other policies for the crop canceled would demonstrate you did not intend to have duplicate policies), and:*

*(1) One is an additional coverage policy and the other is a Catastrophic Risk Protection policy:*

*(i) The additional coverage policy will apply if both policies are with the same insurance provider or, if not, both insurance providers agree; or*

*(ii) The policy with the earliest date of application will be in force if both insurance providers do not agree; or*

*(2) Both are additional coverage policies or both are Catastrophic Risk Protection policies, the policy with the earliest date of application will be in force and the other policy will be void, unless both policies are with:*

*(i) The same insurance provider and the insurance provider agrees otherwise; or*

*(ii) Different insurance providers and both insurance providers agree otherwise.*

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The 2020 General Standards Handbook (GSH) procedures, as applicable are:

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### *1202 Annual Acreage Report Filing Requirements*

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*(2) If the insured fails to submit a signed acreage report or to report all acreage or units, when units are applicable, the AIP may:*

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*(b) determine the insurable acreage, share, practice, type, etc., by unit, when units are applicable. ...*

*If the AIP declares the acreage or unit "insured" the applicable premium and administrative fee are considered earned and payable.*

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The 2020 Loss Adjustment Manual (LAM) Standards Handbook procedures, as applicable are:

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### *501 Liability Adjustment Factor*

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### *B. Misreported Information*

*The insured must submit annually all required AR information for all insured crops on an annual AR(s) to the AIP. The insured is responsible for the accuracy of all information contained in the AR. The insured is responsible for verifying the information on all such reports prior to submitting them to the AIP. The following subparagraphs identify when the MI provisions in section 6(g)(2) of the BP apply and do not apply:*

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*(10) If the AIP discovers the insured has incorrectly reported any information on the AR for any crop year, the insured may be required to provide documentation in subsequent crop years substantiating his/her report of acreage for those crop years, including, but not limited to, an acreage measurement service at his/her own expense. If the correction of any misreported information would affect an indemnity, PP payment or replant payment that was paid in a prior crop year, such claim will be adjusted and the insured will be required to repay any overpaid amounts. If the AIP has evidence the insured intentionally misreported (misrepresentation) acreage information, the voidance provisions in section 27 of the BP apply. If the AIP does not have evidence that the acreage information was intentionally misreported (misrepresentation), the MI provisions apply.*

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#### *1238 Corrected Claims*

*(1) Once a claim is processed, the claim cannot be corrected unless:*

*(a) One or more entries on the PW is incorrect due to:*

*\*\*\*\*\**

*(iv) the insured failing to report all of the production from the unit;*

*(v) all of stated production is not accounted for; under the provisions of the MI, current and/or prior year's claims would have to be corrected, etc.; or*

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*(4) Prepare a corrected claim only when you are authorized by your AIP to do so, and in accordance with the following tolerances below. For types of corrected claims for which dollar tolerance apply, AIPs are not required to correct claims that are below the dollar tolerances. There is no time limit for when a corrected claim can be prepared. Even though the reason for the corrected claim is not discovered until the subsequent crop year(s), the corrected claim will be prepared if it is to be corrected in accordance with the procedures in paragraph 1238.*

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*(b) When errors as stated in (1)(a), (b), and (g) above are discovered, a corrected claim will be prepared if the underpayment or overpayment is in excess of the FCIC approved tolerance (\$250). This tolerance applies on a policyholder basis. The results of a review on multiple policies held by a single policyholder within a county will be combined to determine the applicability of the tolerance.*

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## **Interpretation Submitted**

This request relates to the proper application of section 10(b)(2) of the CCIP Basic Provisions in a situation in which one spousal policy is voided following the payment of a claim or claims under one or both policies. The requestor interprets section 10(b)(2) to mean that when an Approved Insurance Provider (AIP) determines that spouses do not qualify for separate policies after a claim or claims for indemnity has/have been paid, the following actions should be undertaken by the AIP:

1. The AIP should void one policy and leave the remaining policy in effect using the determination criteria set forth in section 22(a)(1) and (2) of the CCIP Basic Provisions;
2. The acreage and associated liability reported under the voided policy should be included under the remaining policy;
3. Likewise, any production attributable to the acreage transferred from the voided policy should also be included under the remaining policy;
4. Once all acres, liability, and production reported under the voided policy have been included under the remaining policy, claims should be recalculated based on these policy revisions; and

5. Any revisions to the amount of indemnity due to the spouses should be accounted for under the remaining policy with additional indemnities being paid, if necessary, or overpayments being declared, if applicable.

### **Final Agency Determination**

FCIC agrees with the requestor that when spouses do not qualify for separate policies, one policy will be void, and the policy remaining in effect will be determined in accordance with section 22(a)(1) and (2) of the CCIP Basic Provisions.

Section 10(b)(2)(ii) of the CCIP Basic Provisions further stipulates that the acreage or share reported under the voided policy will be included under the remaining policy if both spouses are eligible. Additionally, section 6(d)(1) specifies that when expressly permitted by the policy the acreage report must be revised. The expressed permission of 10(b)(2)(ii) allows the acreage from the voided policy to be added to the remaining policy in effect. When the acreage report is revised, the liability must be adjusted for the acreage added to the policy. If the AIP makes the determination after final settlement of the claim and the acreage report on the remaining policy is revised, the initial acreage report on the remaining policy is not considered misreported according to section 6(d)(5) of the CCIP Basic Provisions. The result is that premium and indemnity will be based on the remaining policy's completed revised acreage report according to section 6(e).

If indemnities are paid on both policies, the indemnity on the voided policy will also be void in accordance with section 10(b)(2)(iii) of the CCIP Basic Provisions. Once the acreage report on the remaining policy is revised to include the acreage from the voided policy, the claim for the remaining policy must also be revised to reflect the information on the revised acreage report. The total acreage and total production from both policies will be used to determine the corrected claim. No Liability Adjustment Factor (LAF) will be applied because it does not meet the criteria under paragraph 501B in the LAM. The total revised indemnity for the remaining policy will be compared to the total indemnity that was previously paid on each separate policy. If this comparison results in an underpayment that exceeds FCIC's approved tolerance, the underpayments will be paid. If this comparison results in an overpayment that exceeds FCIC's approved tolerance, the overpayment must be declared, and the policyholder notified as provided in paragraph 1238(4) of the LAM. Additionally, the total revised premium for the remaining policy will be compared to the total premium that was previously owed on each separate policy as provided in

paragraph 1202(2)(b) of the GSH. If this comparison results in a reduction of premium, any overpaid premium will be refunded. If this comparison results in an increase in premium, the premium revision must be declared, and the policyholder notified.

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

***Date of Issue:*** December 16, 2021