



BULLETIN NO: MGR-05-010

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

FROM: Ross J. Davidson, Jr. /s/ *Ross J. Davidson, Jr.* 06-10-05
 Administrator

SUBJECT: Good Farming Practice (GFP) Decisions, Determinations, and Reconsiderations

**United States
Department of
Agriculture**

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BACKGROUND:

Section 508(a)(3)(B)(i) of the Federal Crop Insurance Act states: “A producer shall have the right to a review of a determination regarding good farming practices... in accordance with an informal administrative process to be established by [FCIC]”. The Common Crop Insurance Policy Basic Provisions (Basic Provisions), issued on June 27, 2003, more clearly defines the process by which GFP determinations are to be made. Further, section 20(d) of the Basic Provisions allows producers to seek reconsideration of GFP determinations before they bring suit. Section 20(d) states that requests for GFP reconsiderations are to be made “in accordance with the review process established for this purpose and published at 7 CFR part 400, subpart J.” However, questions remain as to how GFP decisions, determinations, and reconsiderations are to be requested and made.

It is the approved insurance provider’s (AIP) responsibility to make a decision of whether (1) production methods that were used by the producer, or will be used by the producer, are considered GFP in accordance with the terms of the policy, and (2) that the producer followed GFP for the insured unit in question. This will typically occur during the loss adjustment process.

The Basic Provisions defines GFP as:

The production methods utilized to produce the insured crop and allow it make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, including any adjustments for late planted acreage, which are: (1) for conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by the organic agricultural industry for the area or contained in the organic plan. We [AIP] may, or you [producer] may request us to, contact FCIC to determine whether or not production methods will be considered to be “good farming practices.”



The Risk Management Agency Administrators
And Oversees All Programs Authorized Under
The Federal Crop Insurance Corporation

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The Risk Management Agency (RMA) administers GFP reconsiderations on behalf of FCIC. This bulletin provides guidance on how to handle requests for GFP decisions, determinations, and reconsideration.

The Basic Provisions defines Agricultural experts as:

Persons who are employed by the Cooperative State Research, Education and Extension Service or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought.

Agricultural experts currently approved by RMA include persons employed by the Cooperative Extension System, the agricultural departments of States and universities, and persons certified by the American Society of Agronomy (ASA) as Certified Crop Advisers and Certified Professional Agronomists, persons certified by the National Alliance of Independent Crop Consultants (NAICC) as Certified Professional Crop Consultants and persons certified by the American Society for Horticultural Sciences as Certified Professional Horticulturists.

For the organic agricultural industry, in addition to those listed above, agricultural experts include staff for the Appropriate Technology Transfer for Rural Areas – National Sustainable Agriculture Information Service www.attra.ncat.org.

A significant source of information on sustainable agriculture and organic farming practices can be found at Sustainable Agriculture Research and Education www.sare.org.

Persons certified by other certification programs may be recognized as agricultural experts by RMA if their participant's research or occupation is related to the specific crop or practice for which such expertise is sought. In the future, RMA will announce additional recognized experts on the RMA Website www.rma.usda.gov. Contact the RMA Deputy Administrator for Insurance Services at RMA.RMSD@rma.usda.gov for more information.

An agricultural expert approved by RMA who provides a written opinion or recommendations for crop insurance purposes should provide the written opinion or recommendations on letterhead or include evidence of their certification, as appropriate.

This bulletin does not apply to emerging crop disease issues. In such cases, RMA will issue specific instructions identifying the emerging crop disease and the GFP procedures that will be applied.

ACTION:**I. GFP Decisions Made by AIPs**

- A. The AIP must make a decision whether production methods used by a producer constitute GFP under the Basic Provisions and if the producer carried out those GFP. In deciding if the producer carried out a GFP, the AIP may ask producers to establish that they have complied with policy provisions and followed GFP. In doing so, producers must provide the AIP with all the relevant facts relating to their agronomic situation, including but not limited to, receipts, farm records, third party verification, etc. as requested. To decide if a production method constitutes a GFP, the AIP may ask the producer to provide, as applicable, published material relating to the production method or a written opinion directly from an agricultural expert:
1. Regarding whether the production method used by the producer would meet the standards contained in paragraph B.3.
 2. Recommending the production methods that would meet the standards contained in paragraph B.3.
 3. If a written opinion is obtained, a statement disclosing any familial or other business relationship the expert has with the producer, AIP, agent or loss adjuster.
- B. Producers should consult with their AIP regarding any opinion or information obtained from an agricultural expert to determine if such information or opinion constitutes sufficient documentation to support that the practice in question qualifies as a GFP as defined in the Basic Provisions. Producers should also consult directly with their AIP regarding whether the recommended GFP is otherwise compliant with the terms of the Basic Provisions. Such GFP decisions will be based on:
1. The agronomic situation of the producer, which includes material facts about the production methods that were used or will be used to produce the crop as well as weather and climate factors, pest or disease risks, etc. that affect the crop; and
 2. The opinion from at least one agricultural expert in one of the following forms:
 - a. Published material or a written opinion regarding whether the production method used by the producer, or production methods recommended by the agricultural expert, meet the standards contained in paragraph B.3. If an agricultural expert provides a written opinion, a statement must be included regarding any familial or other business relationship between the expert and the approved AIP, agent, loss adjuster or producer.

3. Whether the production method used by the producer will:
 - a. Allow the insured crop to make normal progress toward maturity;
 - b. Produce at least the yield used to determine the production guarantee or amount of insurance, including any adjustments for late planted acreage;
 - c. Not reduce or adversely affect the yield; and
 - d. Be generally recognized for the area or is contained in the organic plan, as applicable.
 4. The recommendation of at least one additional agricultural expert if:
 - a. The expert providing an opinion has a business relationship with the producer, such as providing of advice and/or sale of inputs to the producer's operation, or is employed by a firm that has provided such advice or inputs;
 - b. The agricultural expert providing an opinion has a familial relationship with the producer or approved AIP, loss adjuster or agent or will benefit financially from the outcome of the opinion as a result of some other business relationship other than disclosed amounts paid to provide a written opinion in a timely manner; or
 - c. The written opinion is not supported by published documentation.
 5. For the AIP to render a decision, all information required in subsection B. must be provided by the producer to the AIP upon request.
- C. With respect to the AIPs decision of whether a production method may be a considered GFP:
1. The production method will not be considered an approved GFP if:
 - a. The production method fails to meet the standards in paragraph B.3.;
 - b. There are no published materials supporting the recommendation or opinion of the agricultural expert, unless two or more agricultural experts specifically support the production method as meeting all the criteria in B.3.; or

- c. The AIP decides that there is a genuine dispute between agricultural experts or between an agricultural expert and the published materials and the AIP cannot confirm that the practice in question is a GFP.
 2. When deciding if there is a genuine dispute among agricultural experts or between the opinion of the agricultural expert and published materials, the AIP should take into consideration the following factors:
 - a. Whether there is long standing general agreement among experts in an area that the practice in question is a GFP for the particular agronomic circumstances pertinent to the producer, but a minority of experts disagree;
 - b. Whether the producer can prove that he/she or similarly situated producers have used the production method in question in the same manner over an extended period and produced levels consistent with the APH yield;
 - c. Whether the opposing opinion or published materials are more general in applicability to the specific crop, area, or practice than the opinion or materials relied on by the producer;
 - d. Whether the opposing opinion or published materials are issued by an expert whose experience is less directly applicable to the specific practice, area, or crop than the opinion or materials relied on by the producer;
 - e. Whether the opposing opinion or published materials are not supported by substantiated scientific or experiential data to a substantially equivalent degree than the opinion or materials relied on by the producer; or
 - f. Whether other relevant factors would lead a reasonable person to conclude that one expert opinion or set of published materials is more applicable, credible, or reliable than the other.
- D. If the agricultural expert is not qualified to render an objective, unbiased opinion of the production methods, crop, or areas at issue, the opinion cannot be considered in the GFP decision or determination.
- E. If the AIP decides that the production methods meet all the requirements in paragraph B.3. based on the opinion or published materials from the agricultural expert and no condition in paragraph C. exists, the AIP shall consider the production methods as a GFP.
- F. GFP decisions apply to all the shareholders on the acreage for which a decision is made.

G. GFP decisions provided by an AIP to a producer must:

1. Be in writing and dated;
2. State the facts relating to the production method obtained from the producer;
3. Contain or reference the published materials or any written opinions or recommendation or state the opinion or recommendation of any agricultural expert;
4. State whether the production method does or does not meet the requirements in paragraphs B.3. and C.; and
5. Inform the producer of the right to request a GFP determination from the RMA Regional Office within 30 days from the date of the written GFP decision. The producer must request a GFP determination from the RMA Regional Office before requesting reconsideration to the Deputy Administrator for Insurance Services.

H. With respect to a decision of an AIP that the producer has not followed a GFP, in accordance with the Basic Provisions, for established, generally recognized GFP, only the AIP can decide that the producer failed to follow the GFP and can assign production or value as uninsured causes of loss for such failure.

I. Economics are not a valid consideration in an AIP deciding if a production method is a GFP or if a producer is justified in not following GFP. Accordingly, to the extent that a producer fails to follow the recommendations of agricultural experts or published materials because the producer does not want to or cannot afford to incur the costs associated with following such recommendations, the costs associated with following such recommendations are greater than the value of the crop, or the producer is unable to obtain financing, or other such economic rationale, the production method may not be disqualified from being a GFP and the producer may not be excused from following a GFP.

J. If a producer disagrees with the AIP's decision of whether a production method is a GFP, the producer can seek a GFP determination from the RMA Regional Office as described below.

II. GFP Determinations Made by the RMA Regional Office

A. After the AIP has completed the process in section I above, and if the producer disagrees with the AIP's decision, or if the AIP cannot make a decision that the

production method is a GFP based on available information provided and in accordance with the process outlined in section I, the producer or the AIP may request in writing that the RMA Regional Office serving the location of the insured acreage make a GFP determination.

1. Such determination will be made according to the standards in section I. B. and C. and based on information provided to the AIP by the producer, published material and written opinions provided by the producer and by the AIP and other generally available published material identified by the RMA Regional Office.
- B. The AIP must send the request to the RMA Regional Office serving the location of the insured acreage, and include the GFP decision file, which contains all material facts, written opinions, published material and supporting verification provided by the producer and recommendations and research conducted by the AIP. The AIP must identify who is requesting the GFP determination and include the producer's written request, if applicable.
- C. If the RMA Regional Office determines that the request file is complete, then:
1. RMA may contact agricultural experts who have provided written opinions or who have prepared published materials to clarify their opinions.
 2. A written GFP determination will be made by the RMA Regional Office and will be sent to the requesting party (with a copy to the AIP or producer, as appropriate) by certified mail or overnight delivery.
 3. The RMA Regional Office will reject and return to the AIP any incomplete GFP determination request file. If this happens, the AIP may resubmit the written request to the RMA Regional Office when it is complete.

III. Reconsideration of GFP Determinations

- A. In accordance with section 20(d) of the Basic Provisions, if the producer disputes the RMA Regional Office GFP determination, the producer may seek reconsideration from RMA of the RMA Regional Office GFP determination in accordance with 7 C.F.R. § 400.98 as follows:
1. In the reconsideration process, RMA will determine if a request for reconsideration complies with the requirements of 7 C.F.R. § 400.98 and is in response to a written RMA Regional Office GFP determination. In determining if a request for reconsideration may be processed, RMA will not accept reconsideration requests that are outside the reconsideration authority for GFP and related to:

- a. The amount of production or value assessed to crop acreage for uninsured causes of loss due to failure to follow GFP;
 - b. The expansion of coverage to States, counties, crop, practices, types, or varieties where coverage is not available;
 - c. Establishing insurability;
 - d. The denial of requests for written agreements;
 - e. Identifying or determining that an insured cause of loss was present.
2. If the request does not meet the criterion stated in section III.A.1., RMA will notify the producer in writing that the request is not accepted, including the reason for non-acceptance, and will provide a copy of such communication to the AIP.
 3. If the request meets the criterion stated in section III.A.1., RMA will:
 - a. Notify the AIP and RMA Regional Office of the request for reconsideration and request a copy of the GFP decision and determination file. This file shall include published material, opinions or recommendations from agricultural experts, and the material facts pertaining to the producer's agronomic situation that were considered in the original GFP decision made by the AIP and the GFP determination made by the RMA Regional Office.
 - b. Apply reconsideration decisions to all the crop acreage insured under policies with other shareholders using the same production method for the crop (e.g., companion policies such as landlord/tenant operations, a producer with a policy as an individual entity and a separate policy for a partnership or corporation, etc.) RMA may issue one reconsideration decision for multiple requests on the same acreage, crop, and production method in the same crop year or for producers who are grouped together because they are making the same request.
 - c. Inform in writing each producer, identified or grouped in subparagraph b. above regarding the reconsideration decision.
- B. For a decision of whether the GFP determination was properly made by an RMA Regional Office, RMA will evaluate the information provided to the AIP by the producer and the basis for the AIP's original GFP decision and RMA Regional Office determination in accordance with the standards contained in section I. B. and C.

- C. Reconsideration decisions will be in writing, signed by the RMA Deputy Administrator for Insurance Services, and sent by certified mail or overnight delivery to the insured. A copy of the reconsideration decision will be sent to the AIP.
- D. Any reconsideration decision issued by RMA is not retroactive and may not be used to reopen claims that were settled in crop years prior to the crop year in question.
- E. Written reconsideration decisions issued by RMA that upholds the original GFP decision made by the AIP will include a notice of the producer's right to sue FCIC in United States district court and will state that the producer cannot bring suit against the AIP for such GFP determination or reconsideration made by the RMA Regional Office or RMA Deputy Administrator for Insurance Services respectively.

DISPOSAL DATE:

This Manager's Bulletin is for the purpose of transmitting information and will expire when rescinded or upon publication of procedures in the Code of Federal Regulations.