



United States
Department of
Agriculture

BULLETIN NO: MGR-08-016

Risk
Management
Agency

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Stop 0801
Washington, DC
20250-0801

TO: All Approved Insurance Providers
All Risk Management Agency Offices
All Other Interested Parties

FROM: Eldon Gould /s/ *Eldon Gould*
Administrator

9/26/2008

SUBJECT: Emergency Loss Procedures for Crops Damaged by Tropical Storm Fay in Florida or, Hurricane Gustav in the States of Louisiana and Mississippi or, Hurricane Ike in the States of Arkansas, Louisiana, and Texas

BACKGROUND:

Tropical Storm Fay in the State of Florida, Hurricane Gustav in the States of Louisiana and Mississippi, and Hurricane Ike in the States of Texas, Louisiana, and Arkansas have caused catastrophic damage to crops in the affected areas.

The Risk Management Agency (RMA) is authorizing emergency loss adjustment procedures that will streamline certain loss determinations on specific crops in these States to accelerate the adjustment of losses and issuance of indemnity payments to crop insurance policy holders in the affected states.

ACTION:

RMA hereby authorizes the use of emergency loss procedures contained in this bulletin (MGR-08-016) to apply to the previously identified States. Application of the emergency procedures is limited to those situations where the catastrophic nature of the losses due to insured perils is such that not authorizing these emergency loss procedures would result in unnecessary delays in processing claims.

This bulletin also contains RMA's previous stated positions on regulatory directives issued by the State departments of insurance.



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

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State Insurance Department Regulatory Directives

The insurance departments in the affected states may issue regulatory directives to all insurance companies within the respective States directing the insurance companies to modify certain procedures, such as those for premium collection, to accommodate policyholders who may have been adversely affected by the recent tropical storm or hurricanes. The notices, if released, may not specifically exclude Federal crop insurance business from the scope of the regulatory notices contained in the notices. This may cause the State directives to specify actions that would appear to be in conflict with certain Federal Crop Insurance Corporation (FCIC) procedures.

Section 506(l) of the Federal Crop Insurance Act (Act) (7 U.S.C. § 1506(l), states:

State and local laws or rules shall not apply to contracts, agreements, or regulations of the Corporation or the parties thereto to the extent that such contracts, agreements, or regulations provide that such laws or rules shall not apply, or to the extent that such laws or rules are inconsistent with such contracts, agreements, or regulations.

Further, the regulations found at 7 C.F.R. § 400.352(a) state that no State or local governmental body has the authority to promulgate rules or regulations, pass laws or issue policies or decisions that directly or indirectly affect contracts, or actions authorized by the Act unless such authority is specifically authorized by this regulation or FCIC. As of this time, FCIC has not granted this authority to any State or local governmental body. Therefore, any State or local laws that conflict with any term of the policy, the regulations published at 7 C.F.R. chapter IV, or the Act, are not applicable to Federal crop insurance policies.

Use of Emergency Loss Adjustment Procedures

- (1) For all claims using these emergency loss adjustment procedures, the Approved Insurance Provider (AIP) must submit all information through the Data Acceptance System (DAS) for Appendix III record types 21 and 22 with a simplified claim flag of "F."
- (2) AIPs must retain documentation in each claim folder for which this emergency loss procedure is applied citing:
 - (a) Emergency loss procedures applied in loss determinations are authorized by this bulletin;
 - (b) All of the individual insured's crop conditions in the unit (s) are catastrophic and directly due to an insured peril resulting from one of the named storms listed above, occurring during the insurance period;
 - (c) The insured peril affecting the crop;

- (d) The use of existing loss adjustment procedures would result in unnecessary delays in claim processing.
- (3) Insureds are required by policy provisions to report damage within 72 hours. Many insureds affected by the tropical storm or hurricanes cannot communicate with their agents. AIPs are authorized to consider individual circumstances in accepting delayed Notices of Loss in accordance with the Loss Adjustment Manual (LAM). Delayed notices of loss because of the tropical storm or hurricanes or other natural disaster affecting communications and transportation do not require completion of the special report required by the LAM. Document such in the narrative of the Production Worksheet or on an attachment if more room is needed.
- (4) AIPs may use reported acres certified on the crop insurance acreage report as determined acres for claim purposes unless:
 - (a) Acceptable measured acres as defined in the LAM are readily available (e.g., acreage measured during a previous inspection, insured provides an acreage measurement record).
 - (b) Based on visual observations* at the time of loss adjustment, it is determined the certified acreage appears unreasonable. If the acreage appears unreasonable, it must be determined according to LAM procedures.

*** NOTE: Current FCIC - issued procedures do not require the use of Farm Service Agency (FSA) documents such as aerial photos, FSA-578, etc., to verify crop acreage or share.**

- (5) If the crop is destroyed or damaged to the extent the crop will not survive or can never be harvested:
 - (a) On the entire unit:
 - (i) Complete the claim forms as appropriate based on the type of claim (Stage or Final), and show zero production to count.
 - (ii) An appraisal worksheet is not required.
 - (b) On part of the unit, field, or subfield:
 - (i) Estimate the destroyed acreage in the field or subfield based on the certified acreage from the crop insurance acreage report (refer to number 4).

- (ii) Complete the claim forms based on the type of claim (Stage or Final), and show zero production to count for the destroyed field or subfield.
 - (iii) An appraisal worksheet is not required.
- (6) If the crop is not destroyed:
 - (a) A minimum number of three (3) representative samples per unit are required without regard to the size of acreage if the damage is consistent. If there are more than three fields or subfields within the unit and the damage is consistent, only one (1) representative sample per field or subfield is required. AIPs must note such on the Production Worksheet.
 - (b) Estimate the acreage in the field(s) or subfield(s) based on the certified acreage from the crop insurance acreage report.
 - (c) Record the harvested or appraised production on the applicable Appraisal or Production Worksheet.
- (7) If the crop is not destroyed but the crop cannot be cared for or mechanically harvested with normal harvest equipment during the crop year because of debris from the tropical storm or hurricanes:
 - (a) If it is determined that the debris cannot be feasibly removed from the field(s) in time to properly care for the crop and/or harvest the crop, and the insured elects not to hand harvest or use specialized equipment to harvest the crop, OR the equipment required to clear the debris from the field(s) will result in destroying the crop:
 - (i) On the entire unit:
 - (A) Complete the claim forms as appropriate based on the type of claim (Stage or Final) and show no production to count.
 - (B) An appraisal worksheet is not required
 - (ii) On part of the unit, field, or subfield:
 - (A) Estimate the crop acreage of the field or subfield that cannot be mechanically harvested or acreage of the crop that will be destroyed by equipment required to clear the debris, based on the certified acreage from the crop insurance acreage report.

- (B) Complete the claim forms based on the type of claim (Stage or Final) and show zero production to count for the affected field or subfield.
 - (C) An appraisal worksheet is not required.
- (b) Document any field(s) or subfields that cannot be mechanically harvested with normal harvest equipment during the crop year, as follows:
- (A) Thoroughly explain in the narrative or on an attached Special Report why it is not feasibly possible to remove the debris by harvest time or if the debris could be removed, why the required equipment to remove the debris will destroy the crop.
 - (B) In addition to (A) above, document the affected acreage by photographs or videos. Follow instructions in PAR. 119 of the LAM for photograph or video documentation.
- (c) If the insured elects to hand harvest (such as handpick corn) the claim cannot be finalized until hand harvesting is completed since any production harvested will be counted as production to count for the unit.
- (d) If the insured elects to not hand harvest, such as handpick corn, or use specialized harvesting equipment, a Certification Form must be completed and signed by the insured as instructed in PAR. 85 H (2) (e) of the LAM, stating what the insured's intentions for the crop are.
- (e) For any fields or subfields in a unit that can be cared for and harvested, follow the instructions in (6) above.

In addition to the above, the answers to specific crop questions received from AIPs are answered as follows:

Soybeans:

The required soybean seed count appraisal specified in the Soybean Loss Adjustment Standards Handbook may be waived if:

- an appropriate field sample has been properly obtained by the adjuster and submitted for grading by a licensed grain grader,
- the graded field sample is determined to qualify for quality adjustment,

- the AIP verifies no elevator will accept the production, and determines the production has zero market value, and
- determines the crop production is destroyed in a manner acceptable to the AIP.

Refer to PAR. 96 J of the LAM for additional information on zero market value.

Cotton:

The required cotton stalk inspection specified in the American Upland and Extra Long Staple Cotton Loss Adjustment Standards Handbook may be waived or combined with the final inspection.

Rice:

Salt water intrusion on unharvested rice due to storm surge is a covered peril.

Sugarcane:

The required representative samples specified in the Sugarcane Loss Adjustment Standards Handbook are reduced as stated in number (6) above.

Wheat (2009):

Prevented Planting due to salt water intrusion that occurred prior to the sales closing date as verified by the AIP, is a covered peril to carry-over insureds. It is not a covered peril for new policy holders. In addition, planting wheat under this condition is strongly discouraged as such planting could be considered failure to follow good farming practices.

DISPOSAL DATE:

This bulletin will remain in effect until 2008 claims are completed in the States identified in this bulletin as affected by Tropical Storm Fay, Hurricane Gustav, or Hurricane Ike.