



United States
Department of
Agriculture

BULLETIN NO: MGR-08-012

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 7/15/2008
Administrator

SUBJECT: Emergency Loss Procedures for Crops Damaged by Midwest Flooding and Excess Precipitation

BACKGROUND:

Midwestern states have suffered from June flooding and excess precipitation. Damaging hail has also recently occurred. The Risk Management Agency (RMA) is authorizing emergency loss adjustment procedures to streamline certain loss determinations to accelerate the adjustment of losses and issuance of indemnity payments to crop insurance policyholders in affected areas.

ACTION:

RMA issued Bulletin No. MGR-08-009 to allow policyholders in the affected states to file their initial crop insurance acreage report until August 15, 2008. RMA has been asked if policyholders can also revise an initially filed crop insurance acreage report until August 15, 2008. Acreage reports initially submitted prior to the final acreage reporting date and those initially submitted after the published acreage reporting date based on the additional time allowed for producers to submit acreage reports as allowed by MGR-08-009, up until August 15, 2008 in certain areas, may only be revised in accordance with section 6(d) of the Common Crop Insurance Policy Basic Provisions.

The Pilot Biotech Yield Endorsement (BYE) Insurance Handbook, FCIC 20070, provides the two Pilot BYE certifications (BYE Seed Dealer Certification Statement and the BYE Insured's Certification Statement) and copies of the applicable seed invoices must be submitted on or before the acreage reporting date. RMA authorizes BYE policyholders in the affected areas who are filing their initial acreage report on or before August 15, 2008 under the authority of MGR-08-009, to submit the two required certifications and seed invoices along with their initially filed crop insurance acreage report.



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Policyholders who are filing their initial acreage report on or before August 15, 2008, under the authority of MGR-08-009 are authorized to file other required supporting documentation, such as processor contracts, with the initially filed acreage report.

RMA has received copies of notices recently issued by several State insurance departments in the Midwest. The notices were issued to all insurance companies within the respective States and did not specifically exclude Federal crop insurance business from the scope of the regulatory directives contained in the notices. The notices direct all insurance companies to modify certain procedures, such as those for premium collection, to accommodate policyholders who may have been adversely affected by the recent flooding. In some cases, the State directives specify actions that appear to be in conflict with certain 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.

Approved Insurance Providers (AIPs) are asking RMA to waive or modify the 2005 Standard Reinsurance Agreement (SRA), Appendix IV requirement for AIPs to conduct quality control reviews for claims of \$100,000 or more. This bulletin does not waive or modify the terms of the SRA, including the quality control provisions. AIPs are encouraged to promptly notify potentially affected policyholders of the requirement to review records supporting the guarantee and the claim before the claim is paid.

RMA hereby authorizes the use of the following emergency loss adjustment procedures for affected areas of: Iowa, Illinois, Indiana, Kansas, Minnesota, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin. 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.

- (1) For all claims using these emergency loss adjustment procedures the 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 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 flooding cannot communicate with their agents. AIPs are authorized to consider individual circumstances in accepting delayed Notices of Loss in accordance with the LAM. Delayed notices of loss because of flooding 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.
- (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 Federal Crop Insurance Corporation (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:
 - (a) On the entire unit:
 - (i) Complete the claim forms as appropriate based on the type of claim (Replant, 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 (Replant, 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 (refer to number 3).
 - (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 flooding:

(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 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 (Replant, Stage, or Final) and show no production to count.

(B) An appraisal worksheet is not required.

(C) Retain photographs showing the damaged crop in the claim file. Follow instructions in PAR 119 of the LAM for documentation by photographs or video.

(i) 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 required equipment to clear the debris based on the certified acreage from the crop insurance acreage report (refer to number 3).

(B) Complete the claim forms based on the type of claim (Replant, Stage, or Final) and show zero production to count for the affected field or subfield.

(C) An appraisal worksheet is not required.

(D) Retain photographs showing the damaged crop in the claim file.

(E) Document any field(s) or subfields that cannot be mechanically harvested with normal harvest equipment during the crop year, as follows:

(I) 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.

(II) In addition to (I) above, document the affected acreage by photographs or videos.

- (b) If the insured elects to hand harvest (such as handpick corn) the claim cannot be finalized at this time since any production harvested will be counted as production to count for the unit.
- (c) 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.
- (d) For any fields or subfields in a unit that can be cared for and harvested, follow the instructions in (6) above.

DISPOSAL DATE:

This bulletin will remain in effect until 2008 claims are completed in the flood-affected States.