Asked and Answered

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February 2018 Edition

QUESTION 18-25

GRAPE CONTRACT LISTING TONS RATHER THAN ACRES

AIP QUESTION

We have a situation with an insured's grape contract where it lists the total amount of *tons* contracted and *not* the total amount of *acres*. Based on the Special Provision language this is acceptable however from an underwriting perspective, how would we determine if all acres were under contract based on a total tonnage figure listed? As an example, if we have 20 acres on a policy with a contract price listed and the contract states 40 tons are under contract, how would we determine if that tonnage amount would cover the 20 acres on the policy for all acres to have the contact price? We are thinking it could be handled the same way as Malt Barley: divide the contracted production by the approved yield to determine the contracted acres. Does that sound correct?

SP Statement:

Price

In accordance with section 3(d) of the Grape Crop Provisions, the price contained in your grape contract may be used for your price election. The contract price used will be the amount per ton specified in the contract without regard to incentives or discounts. If more than one contract price exists, the established price election will be the weighted average for all adjusted contract prices. In no case will the price be greater than the Maximum Contract Price provided in the Actuarial Documents for the applicable grape type/variety. Grapes may be insured using the contract price only if: 1) a written contract is in effect between the producer and a winery or a processor for the current crop year; 2) the contract states amount that will be paid per ton and number of tons or acres contracted; 3) a copy of the contract(s) is provided to us no later than the acreage reporting date; 4) all production from insurable acreage of the variety must be grown under a grape contract; and 5) acreage is insured at a buy-up level of coverage. In accordance with Section 15(d) of the Basic Provisions, the price used to compute your indemnity on unharvested acreage will be the price election minus the harvest costs amount as provided within the Prices Tab of these Actuarial Documents.

Grape Policy

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

(d) In addition to the definition of "price election" contained in section 1 of the Basic Provisions, a price election based on the price contained in your grape contract is allowed if provided by the Special Provisions. In the event any contract requires the use of a cultural practice that will reduce the amount of production from any insured acreage, your approved yield will be adjusted in accordance with section 3(f) and (g) to reflect the reduced production potential.

RMA RESPONSE

We consulted with policy and RO staff and here is their response:

The approach is fine. The AIP just needs to confirm: "all production from insurable acreage of the variety must be grown under a grape contract."

The AIP knows the contracted production (tons), insured acreage (ac) for the variety, and APH (tons/ac) for the variety. So if contracted production is equal to (or greater than) APH times insured acres, then the contract price can be used.

QUESTION 18-31

WFRP-CUT FLOWERS/TURF NURSERY GREENHOUSE CLARIFICATION

AIP QUESTION

If cut flowers and turf are listed as Commodities in the actuarial for that county, and neither are insurable under the nursery policy, would cut flowers and turf be considered nursery and greenhouse and be limited to $1 million expected revenue limit?

I understand that the Policy defines Nursery and greenhouse commodities as “Plants which are propagated or grown to be sold as plants, not including commodities produced by plants...”

Merriam-Webster defines plant as “any kingdom (Plantae) of multicellular eukaryotic mostly photosynthetic organisms typically lacking locomotive movement or obvious nervous or sensory organs and possessing cellulose cell walls”.

NCIS RESPONSE

Cut flowers and turf are not considered greenhouse/nursery commodities.

QUESTION 18-32

WFRP-LIVESTOCK DEATH COVERED?

AIP QUESTION

Would livestock be covered under the WFRP if the cattle were to die due to shipping fever?

NCIS RESPONSE

Several questions need to be answered and then I will most likely need to run this by RMA for a response.

Some questions to consider:

Is there other livestock insurance in place such as an animal mortality policy? Here's a link to Hartford's site explaining some possible coverages that they have available. https://www.thehartford.com/commercial-insurance-agents/industries-livestock I didn't conduct a lengthy search to see if there are other company products out there. Any payment under a mortality policy would likely need to be considered when determining revenue to count. Questions about payments from a mortality policy being revenue-to-count may have already been answered. I will need to check.

Did the cattle die before, during, or after transit. In other words, did they die while in control of the insured? Need to make sure who had the insurable interest.

Did the insured make adequate efforts to treat the animals? In other words, follow good farming practices?

The policy requires that losses of approved revenue be due to unavoidable natural causes that occur during the insurance period. If it can be documented that the loss of approved revenue was due to an unavoidable natural cause occurring during the insurance period along with the aforementioned considerations, then the resulting loss of revenue due to deaths from shipping fever appear to be covered. But again, I would want to run this by RMA after you find out more information.

AIP RESPONSE

I will check with the person asking the question and see if there are answers to your questions as I'm not sure if it was a hypothetical question or a real event that has happened. They weren't very clear in their inquiry. We were thinking that the loss needs to be tied to a weather event and since "shipping fever" appears to be brought on by physical factors rather than weather, our first thought was that it wouldn't be covered.   The language "natural cause" is what gave us pause in this thought process because a natural cause doesn't necessarily mean weather related events. It seemed like a grey area with no definitive answer.   Just from your comments below, it appears that there would have to be extensive documentation from the insured which makes perfect sense when you consider all the factors surrounding the disease and preventative measures that should be taken as well as treatment once the calf gets sick.

NCIS TO RMA

Received a follow up call on the conversation below and it a question that has been asked in the process of selling a policy. Please review my response and add any additional considerations that may have been discussed in your own conversations regarding livestock.

RMA RESPONSE

We agree with your response. The AIP must determine that the proper mitigating measures were taken to prevent the cause of death.

QUESTION 18-33

WFRP-LIVESTOCK IN RELATION TO EXPANDED OPERATION

AIP QUESTION

For Whole Farm Revenue Protection, can increasing the number of feeder calves on existing acreage be considered Expanded Operation?

Although the prospective insured is not physically expanding his acreage, I'm thinking that it would fall under increasing use of existing production capacity as stated in Section 49 of the Handbook.

NCIS RESPONSE

This seems more of a question of whether or not the existing capacity was fully utilized. I wouldn't think putting 150 cattle in a pen that a producer normally only has 100 in would not constitute an expanded operation. If the pen can hold 150 cattle and the producer only chose to feed 100, that's a management decision. Doesn't seem to meet the "physically" expanded criteria. The language referenced below with respect to the increase use of existing production capacity is for double cropping acreage that previously wasn't double cropped. Not sure how this can be applied to livestock. Did the prospective insured make changes to the operation that allows for the feeding of more livestock? If the answer is no, then I don't see that any production capacity was added. Each case would need to be evaluated individually, so it's hard to provide a blanket statement.

RMA RESPONSE

We agree with your response. If the producer did not make any physical change to his operation then this scenario would not be considered an expanding operation.

QUESTION 18-34

WFRP-PURCHASED FOR RESALE AND 50% LIMITATION

AIP QUESTION

Just following up on our conversation and when would livestock not be considered purchased for resale for growers who didn't actually raise the animal from birth.

Before sending to RMA, here's my take, but first some definitions from the policy.

Allowable revenue - Allowable revenue is farm revenue, specified by this policy and including applicable adjustments, from the production of commodities produced by your farm operation, **or purchased for further growth and development** by your farm operation, that the IRS requires you to report on farm tax records.

Commodities purchased for resale - Commodities not produced by your farm operation that are purchased to be added to your farm operation and then subsequently sold. **This does not include commodities purchased for further growth, development or maturity for later sale, or commodities purchased to replace production of your farm operation lost due to insurable causes.**

Commodity - Any agricultural product established or produced on your farm operation, except timber, forest, and forest products, and animals for sport, show, or pets.

Given the definition of commodity, I don't see for the purposes of the second sentence in the definition of "commodities purchased for resale" that livestock would be treated any differently than transplanted tomatoes. In the latest version of the handbook, Exhibit 4 was updated to include a unit of measure for Nursery/Greenhouse because without it, anything that a nursery was purchasing for further growth was being recorded as "purchased for resale." RMA stated that was not the intent.

There are three places in section 49 of the handbook that distinguishes between commodities purchased for resale or purchased for further growth. Also, in addition to "commodities purchased for resale," the definition of "allowable revenue" also distinguishes that there is a category of "purchased for further growth and development."

Interesting that in IRS publication 225 they have a resale example very similar to our conversation: Example. In 2016, you bought 20 feeder calves for $27,000 for resale. You sold them in 2017 for $35,000. You report the $35,000 sales price on Schedule F, line 1a, subtract your $27,000 basis on line 1b, and report the resulting $8,000 profit on line 1c.

Unfortunately I didn't find anything in the IRS publications to help us out since they're not concerned with a limitation that the WFRP policy is.

If the individual is actually taking ownership of the animals and providing inputs in an effort to put weight on the animals for future sale, I don't see how these animals can be applied to the 50% limitation.

I looked through all the materials presented in Savannah, but we never touched on livestock and when it is or isn't considered purchased for resale for purposes of determining the 50% limitation. Does this capture the essence of the discussion?

NCIS TO RMA

Apparently there's some confusion about the 50% limit on commodities purchased for resale and how it applies to livestock. Two schools of thought have emerged. 1) all livestock not born on a farm operation contribute to the 50% limit, and 2) livestock would never contribute to the 50% limitation.

I provided my thoughts above.

The originator of the concern is most interested in your interpretation of the 50% limitation as it applies to livestock.

RMA RESPONSE

Based on the definition of Commodities purchased for resale; if the commodity (livestock in this scenario) is not produced on the operation, rather purchased to feed out for growth, then it would not be considered PFR. However, in another scenario, if any commodity is purchased with the intent to turn it around for resale (say cut flowers, corn into a bin (not to replace a lost crop)) then those commodities would be considered PFR. I am sure there are many other scenarios out there that would apply and some that would not. Maybe that helps. I can partly agree with your immediate response below, without using the word “all and never.”

QUESTION 18-35

WFRP-QUESTION ON SCHEDULE F

AIP QUESTION

It is our understanding that if an application is received with incomplete information, an AIP may request verifiable records to substantiate revenue and expenses for the WFRP History report.

We have a situation where an agent is working with a potential insured who provided 5 years of Schedule Fs, but two of the Schedule Fs have only Gross Income (field 9) on them. There is no revenue detail nor are any farm expenses listed in Part II of the form. These are the forms that were submitted to the IRS.

Are these forms acceptable?

Policy

2 Responsibilities

D. Insured Responsibilities

The AIP must advise the insureds to:

(1) Provide farm tax records for each year in the five year whole-farm history period unless fewer years are required (the insured is a qualified BFR or did not file farm taxes due to circumstances beyond their control). Refer to subparagraph 21(1)(c)(vi) and (vii).
(2) Show additional tax records if necessary so the AIP can verify that farm taxes were filed. For example, if the farm operation includes a disregarded entity under IRS rules, the AIP may request other tax records to verify the entity information under which the entity's taxes were filed.
(3) Provide the necessary information to complete their Intended Farm Operation Report for the insurance period. Information from other Federal crop insurance plans of insurance the insured has may also be required by the AIP to use in underwriting the WFRP policy. This includes actual production histories and acreages.

Handbook

51 IRS Tax Forms and Verifiable Records and/or Direct Marketing Sales Records

A. IRS Tax Forms

(1) Copies of the applicable IRS tax form(s), such as Schedule F, Form 1040, Form 1120, Form 1041, Form 1065, Form 1102S, and Form 4835, must be provided to the AIP for each tax year in the whole-farm history period.

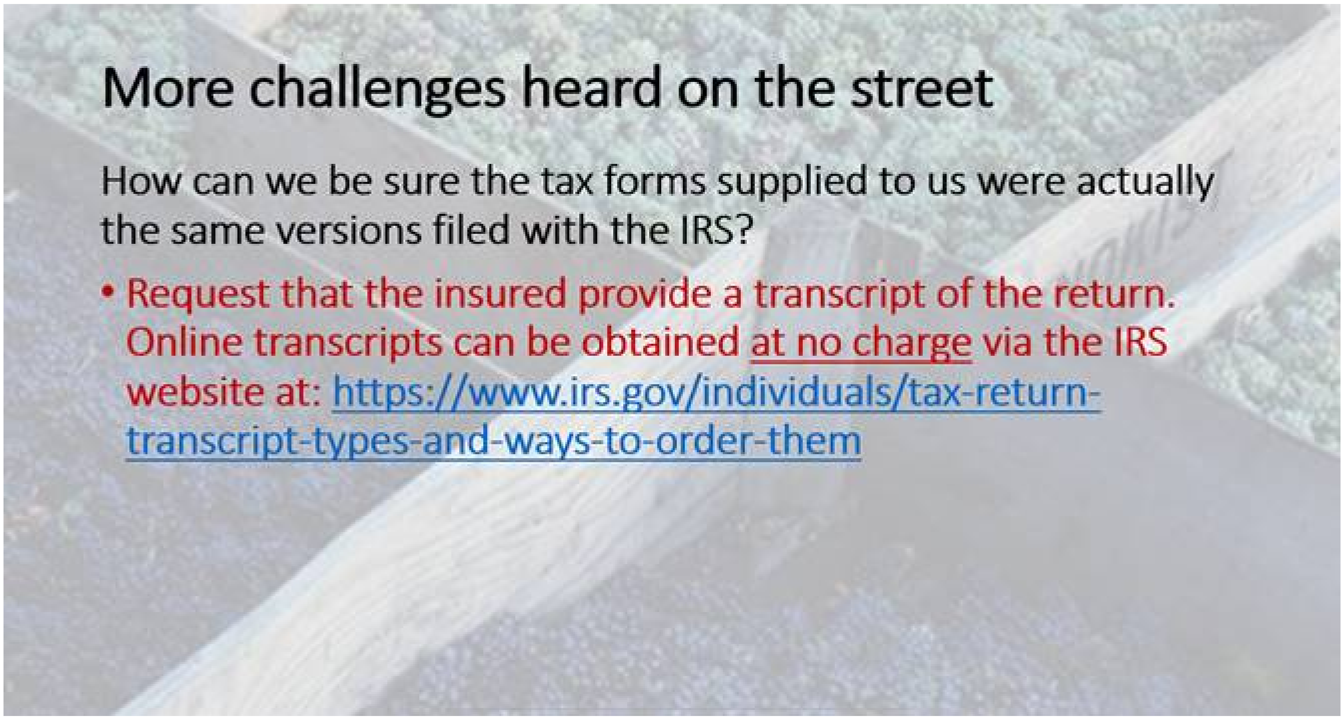
The AIP must request verifiable records and/or direct marketing sales records to verify the allowable revenue and allowable expenses on the Whole-Farm History Report when the AIP has reason to believe the farm tax form(s) do not provide adequate documentation of revenue or expenses for WFRP purposes. In such cases, the AIP must not accept any Whole-Farm History Report if the allowable revenue for any year cannot be verified through the requested verifiable records and/or direct marketing sales records.

NCIS RESPONSE

If I'm interpreting your question correctly, you are simply asking if the schedule F's for the two years in question are acceptable. The WFRP policy or handbook does not list as a responsibility of the AIP to determine if an insured filed their taxes correctly, but that they be able to verify from the documentation submitted sufficient information to underwrite the policy. There will be many instances where the information on the Schedule F cannot be transferred directly to WFRP without some adjustments that require supporting documentation.

Sections 44, 45, and 46 of the handbook specify that the Allowable Revenue and Expense worksheets have to be complete for every year in the whole-farm history. If these cannot be completed with the information provided, then the AIP should ask for more information. If sufficient information is not submitted necessary to underwrite the policy, then the AIP cannot issue the policy. Not sure what more I can add to the second paragraph in section 51 that you included below.

I've copied a slide from the presentation in Savannah that may be of some help if you suspect that the two years in question weren't the documents actually filed. Schedule F's don't actually get filed but the numbers do.



RMA RESPONSE

We agree with your response.

QUESTION 18-36

WFRP-WHEAT ZERO ACRE CAT POLICY – CLARIFICATION REQUEST

AIP QUESTION

I have an agent who is wanting to write a WFRP for 2018 that had a CAT Wheat policy that has zero acres. I understand that PM17-009, attached, was issued as a clarification but it only cites year 2017. I want to be sure that this clarification is also applicable for the 2018 policy year and succeeding years. Can this producer obtain a 2018 WFRP with an underlying zero acre Wheat CAT policy if he signs a cancellation for 2019 wheat prior to the SCD for the WFRP policy?

RMA RESPONSE

The memo referenced (PM -17-009) does not carry-over into the 2018 Policy year or subsequent years.