

Risk Management Agency Interpretation of Federal Crop Insurance Corporation Provisions:

Subject: Request dated April 5, 2021, to the Risk Management Agency (RMA) for an interpretation regarding whether subparagraphs 48(2)(d) and (e) of the 2018 Whole-Farm Revenue Protection (WFRP) Pilot Handbook requires the expected yield of a commodity reported on the Farm Operation Report to match the approved yield used to determine the guarantee another FCIC plan of insurance, if the commodity is also insured under that other Federal Crop Insurance Corporation (FCIC) plan of insurance.

The relevant handbook procedures provided by the requestor are subparagraphs 48(2)(d) and (e):

48. *Intended Farm Operation Report*

- (2) *The Intended Farm Operation Report will include a list of all intended commodities the insured plans to produce during the year. The following apply to the Intended Farm Operation Report:*

- (d) *If a commodity reported on the Intended Farm Operation Report is also insured by another FCIC policy, then the expected yield for the commodity reported on the Intended Farm Operation Report should be compared to the approved yield(s) used to determine the guarantee under the other FCIC plan of insurance to determine if the yield reported by the insured is reasonable. Expected yields on commodities that do not have underlying coverage by another FCIC policy should be reflective of what the farm can reasonably expect to produce based on average yields.*

Careful consideration must be given when perennial crops with underlying coverage under another FCIC policy have insurable trees or vines that were planted/set out, grafted, or dehorned in the orchard, vineyard, grove or bog and an insured reports a yield greater than the average yield for the underlying coverage. Blocks where expected yields are adjusted from what is reported on the underlying coverage due to planting, grafting, dehorning, etc. should be recorded on the Expected Value and Yield Source Document Certification Worksheet separately. Refer to paragraph 22 for information on Pre-Acceptance Inspections.

In all cases, it is the AIP's responsibility to make sure the yields are realistic and supported with documentation as detailed within the Expected Value and Yield Source Document Certification Worksheet. Refer to exhibit 20.

- (e) *Expected yields must be realistic and consistent with available information and not be established using:*
- (i) *The highest yield or combination of higher yields; or*
 - (ii) *University yield trial data or university crop budget reports.*

Interpretation Submitted by Requestor(s)

The requestor interprets subparagraph 48(2)(d) of the 2018 WFRP Pilot Handbook to require the Approved Insurance Provider (AIP) to make sure the yields reported by the insured on the Intended Farm Operation Report (IFOR) are realistic and supported with documentation as detailed in the Expected Value and Yield Source Document Certification Worksheet. The requestor also interprets that, in connection with any such review, where a commodity reported on the IFOR is also insured by another FCIC policy, the AIP must compare the expected yield for the commodity reported on the IFOR to the approved yield(s) used to determine the guarantee under the other FCIC plan of insurance. Subparagraph 48(2)(e) specifically requires the expected yields to be realistic and consistent with available information and not be based on the highest yield or combination of higher yields. The requestor also interprets paragraph 48 to require the WFRP expected yield(s) to match approved yield(s) on the same commodity which are used to determine the guarantee under the other FCIC plan, absent the insured providing supporting documentation as detailed within the Expected Value and Yield Source Document Certification Worksheet that the AIP agrees supports any variance. The requestor also states that neither, explanations by the insured as to why some years yields were better or worse, nor the opinions of an insureds crop advisor justify the use of higher yields, without providing detailed documentation based on past production practices and any changes to the production practices during the insurance period that the AIP agrees demonstrates a higher or lower expected yield. The requestor further interprets paragraph 48 to allow the AIP to use FCIC published transitional yields in the county where the commodity is produced for expected yields when the commodity is uninsurable under the FCIC plan because of a lack of sufficient production history.

The requestor refer to an earlier interpretation where FCIC interpreted a similar provision in 2017 WFRP Pilot Handbook [subparagraph 49(4)] and determined that “the expected yield of a commodity should be the same as the approved yield of the underlying FCIC policy, if applicable, unless an insured provides documentation justifying a difference in expected yield from the FCIC policy”. FCIC specifically rejected the idea that the existence of higher yields within the database would justify the difference between WFRP expected yields and approved yields in the underlying FCIC plan of insurance.

The requestor also refers to exhibit 18 of the 2019 and 2020 WFRP Pilot Handbooks, where FCIC provided further clarification on this issue. According to those handbooks, when a commodity is insured under another FCIC plan of insurance and the insured “cannot provide detailed documentation based on their past production practices and any changes to the production practices during the insurance period the AIP agrees demonstrates a higher or lower expected yield,” the expected yield for that commodity will be the “average approved yield for all units on the farm’s policy offered under the Act that provides individual yield coverage.” The requestor believes that although not in effect during crop year 2018, these later-adopted procedures offer guidance as to the relationship between yields under other plans of insurance and those proposed as acceptable WFRP expected yields.

The requestor further interprets subparagraph 48 of the 2018 WFRP Handbook, as read in conjunction with Section 9(g) of the 2018 WFRP Pilot Policy, to allow the AIP to compare the expected yield for the commodity reported on the IFOR to the approved yield(s) used to determine the guarantee under the other FCIC plan of insurance and to make corrections to and reduce the expected yields any time the AIP determines that the expected yields on the IFOR are not comparable to the yields on the other FCIC plan of insurance and not otherwise supported by post production documentation, including during the application process, during reviews or audits or in connection with loss adjustments after a claim has been turned in.

Federal Crop Insurance Corporation Determination

FCIC agrees with the requestor's interpretation of subparagraph 48(2)(d) and (e) of the 2018 WFRP Pilot Handbook. It is the responsibility of the AIP to ensure the expected yield(s) reported on the insured's IFOR are realistic and supported with documentation as required on the Expected Value and Yield Source Document Certification Worksheet. FCIC also agrees that absent documentation supporting an expected yield of a commodity reported on the insured's IFOR is different than another FCIC plan of insurance providing coverage for the same commodity, the expected yield on the IFOR must match the yield used to determine the guarantee for the other FCIC plan of insurance.

In accordance with section 33(a)(1) of the WFRP Pilot Policy, this FCIC interpretation is generally applicable and binding in any mediation or arbitration. In accordance with section 33(a)(1), any appeal of this interpretation must be in accordance with 7 C.F.R. part 11.