

Federal Crop Insurance Corporation Provisions:

Subject: A joint request dated November 5, 2021, submitted to the Risk Management Agency for a Federal Crop Insurance Corporation (FCIC) interpretation of section 30(b) of the 2018 Whole-Farm Revenue Protection (WFRP) Pilot Policy.

The relevant policy provision is:

30. Other Insurance.

(b) Any other crop insurance policy authorized under the Act you purchase that covers commodities insured under this policy will become the primary insurance and any indemnity payment received from such policy(s) will be included as revenue-to-count under this policy.

7. Record Retention and Access to Insured Commodities and Records

(b) By signing the application for insurance authorized under the Act or by continuing insurance for which you have previously applied, you authorize us or USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to insurance authorized under the Act, to obtain records relating to the planting, replanting, lease, ownership, share, production, inputs, harvesting, disposition, or marketing contract agreements of the insured commodity from any person who may have custody of such records, including but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, landlords, and accountants. You must assist in obtaining all records we or any employee of USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to insurance authorized under the Act, requests from third parties.

Interpretation Submitted by Requestor(s)

First Requestor's Interpretation:

The first requestor interprets section 30(b) of the 2018 WFRP Pilot Policy to mean that when an insured has a WFRP claim and also had an actual production history claim on another crop insurance policy authorized under the Act that covers commodities under the WFRP plan of insurance, because the other policy is primary, the contents of all information on the Production Worksheet/Proof of Loss of the other policy, whether a part of the form or written on the form, including, but not limited to the signature of the insured certifying the correctness and completeness of the contents of that information, are relevant, applicable, and binding on the insured relative to the adjusting of the WFRP claim to the extent that the insured signed the Production Worksheet/Proof of Loss of the other policy's claim.

Second Requestor's Interpretation:

The second requestor interprets section 30(b) of the 2018 WFRP Pilot Policy to mean the WFRP protections are in addition to, and excess, over other coverages covering the same commodity for the same crop year. Further, section 30(b) states that should any indemnity payments be made for the same crop year for the same commodity, the other payment is primary and the WFRP indemnity is excess. The second requestor interprets this to mean, only the amount of any primary indemnity payment is included as revenue-to-count in the WFRP policy worksheet. The second requestor does not interpret section 30(b) to require or allow incorporation of other information from a separate worksheet submitted for a separate loss as a basis to deny a WFRP claim.

Federal Crop Insurance Corporation Determination

FCIC disagrees with the first requestor's interpretation of section 30(b) of the 2018 WFRP Pilot Policy. FCIC agrees with the second requestor's interpretation of section 30(b). FCIC interprets section 30(b) to mean that another policy authorized under the Act, purchased by the insured that insures any commodity also covered under WFRP, is the primary insurance for that commodity. If the insured receives an indemnity payment from the other policy, authorized under the Act, the indemnity payment will be included as revenue-to-count for a WFRP claim.

However, relative to the first requestor's interpretation, FCIC interprets section 7(b) of the 2018 WFRP Pilot Policy to mean any record associated with another policy authorized under the Act, that provides coverage for any commodity insured under WFRP, including but not limited to the Production Worksheet/Proof of Loss from the other policy, may be relevant to adjusting a loss under WFRP. FCIC also interprets section 7(b) to mean that an AIP is authorized to request and review records from the insured relating to commodities insured under WFRP and the other policy.

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.