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Subject: Two requests dated November 27, 2023, submitted to the Risk Management Agency (RMA) for a final agency determination for the 2019 crop year of section 20(d) of the Common Crop Insurance Policy (CCIP) Basic Provisions, published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, Subpart X.

Reference:

The relevant policy provisions are:

The 2019 CCIP Basic Provisions state, in relevant part

1. Definitions

Good farming practices - The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, including any adjustments for late planted acreage, which are those generally recognized by agricultural experts or organic agricultural experts, depending on the practice, for the area. We may, or you may request us to, contact FCIC to determine if production methods will be considered “good farming practices.”

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review

(d) With respect to good farming practices:

(1) We will make decisions regarding what constitutes a good farming practice and determinations of assigned production for uninsured causes for your failure to use good farming practices.

(i) If you disagree with our decision of what constitutes a good farming practice, you must request a determination from FCIC of what constitutes a good farming practice before filing any suit against FCIC.

(ii) If you disagree with our determination of the amount of assigned production, you must use the arbitration or mediation process contained in this section.

(iii) You may not sue us for our decisions regarding whether good farming practices were used by you.

(2) FCIC will make determinations regarding what constitutes a good farming practice. If you do not agree with any determination made by FCIC:

(i) You may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J; or

(ii) You may file suit against FCIC.

(A) You are not required to request reconsideration from FCIC before filing suit.

(B) Any suit must be brought against FCIC in the United States district court for the district in which the insured acreage is located.

(C) Suit must be filed against FCIC not later than one year after the date:

(1) Of the determination; or

(2) Reconsideration is completed, if reconsideration was requested under section 20(d)(2)(i).

The 2017 Good Farming Practice Determination Standards Handbook (FCIC-14060), which was applicable for the 2019 crop year, states, in relevant part:

2 Responsibilities

A. AIP Responsibilities

(1) The AIP will:

- (a) make an initial GFP decision in accordance with Paragraph 31 - AIP Duties; and
- (b) send written requests for GFP determinations along with the entire GFP decision file to the RMA RO serving the location of the insured acreage through the LC/GFP Database as directed in Paragraph 23 B - Requests for GFP determinations.

23 Requirements for an RMA GFP Determination

A. What Does Not Qualify for GFP Determination.

A GFP determination is used to determine whether a particular production practice meets the criteria set forth as a GFP. It is not to be used for situations that fall outside of the GFP authority and definition in the Basic Provisions. As such, RMA will not accept requests related to:

- (1) the amount of production or value assessed to crop acreage for uninsured causes of loss due to a failure to follow GFP;
- (2) the expansion of coverage to states, counties, crop, practices, types or varieties where coverage is not available;
- (3) establishing insurability;
- (4) the denial of requests for written agreements;
- (5) identifying or determining that an insured cause of loss was present; or
- (6) any other decisions related to a claim determination, including interpretations of policy and procedure.

B. Requests for RMA GFP Determinations

(1) If the Policyholder disagrees with the AIP's decision, the Policyholder may request a GFP determination within 30 calendar days of receipt of the AIP's GFP decision, through the AIP to the RO. It is the AIP's responsibility to forward a complete request file to the appropriate RO through the LC/GFP Database. A complete request must include:

- (a) the AIP GFP decision file, including both the complete underwriting file and the complete claim file, which will contain all material facts, written opinions, published material and supporting documentation provided by the Policyholder, any recommendations and research conducted by the AIP, the AIP analysis of the Policyholder's actions compared to the recommended practices, and the AIP decision letter; and
- (b) the Policyholder's written request, and any attachments provided with the request, if applicable.

(2) If the AIP cannot make a decision whether the production method is a GFP based on the information available (see Paragraph 31 A (5)(b)), the AIP may make a written request that the RO serving the location of the insured acreage make a GFP determination. It is the AIP's responsibility to forward a complete request file to the appropriate RO through the LC/GFP Database with an explanation of why they are requesting a GFP determination.

- (a) The AIP should include any extenuating circumstances which render the AIP unable to make the decision.
- (b) The RO must make a determination on whether production methods are GFP; however, the RO may ask for additional information from the AIP, as needed.

31 AIP Duties

A. GFP Decision Process

The AIP makes an initial decision of whether the production methods used by a Policyholder constitute GFP according to the terms of the policy and these procedures, and confirms the Policyholder carried out generally recognized GFPs. These procedures apply to all GFP

decisions, regardless of the origination of the review, i.e., RCO review requests, loss adjustment process, growing season inspection, etc., when the AIP or RMA has a reason to question whether GFP were followed by the Policyholder.

Interpretation Submitted

First Requestor's Interpretation:

The first requestor questions if the Approved Insurance Provider (AIP) determines that production methods set forth in the policyholder's organic plan are good farming practices and the policyholder did not actually utilize such methods in the production of the crop, is such an issue appropriate for a good farming practices determination?

Under section 20(d) of the CCIP Basic Provisions, the first requestor states if there is a dispute regarding whether a production method constitutes a good farming practice, such a dispute cannot be resolved through mediation or arbitration. Rather, the question must be submitted to the Federal Crop Insurance Corporation (FCIC) for a good farming practice determination. If the policyholder disagrees with the good farming practice determination rendered by FCIC, further resolution of the dispute will be through the reconsideration process established under 7 C.F.R. § 400.98 or judicial review. However, the good farming practice determination process only applies when the matter in dispute is whether a production method constitutes a good farming practice. When the AIP determines that a particular production method does constitute a good farming practice but that the policyholder simply failed to utilize that method in the production of the crop, there is nothing for FCIC to determine. Such a dispute involves a purely factual issue that is properly resolved through mediation or arbitration.

The first requestor states their interpretation is consistent with paragraph 23 of the Good Farming Practice Determination Standards Handbook, which states: "A GFP determination is used to determine whether a particular production practice meets the criteria set forth as a GFP. It is not to be used for situations that fall outside of the good farming practice authority and definition in the CCIP Basic Provisions. As such, RMA will not accept requests related to: ... (6) any other decisions related to a claim determination including but not limited to: ... (c) whether or not a production

method was used; ... or ... (e) whether or not a cause of loss impacted a production method.” In other words, the FCIC/RMA lacks authority to resolve disputes as to whether the policyholder utilized production methods that the AIP has determined meet the criteria as a good farming practice. Likewise, the FCIC/RMA lacks authority to resolve disputes as to whether the policyholder was prevented from utilizing certain production methods due to an insurable cause of loss. Such disputes must be resolved through mediation or arbitration in accordance with section 20(a) of the CCIP Basic Provisions.

Similarly, in FAD-102 the FCIC concluded that a good farming practice determination under section 20(d) of the CCIP Basic Provisions “only applies to whether or not the production methods in question utilized to produce the insured crop will be considered to be ‘good farming practices.’” Therefore, it is only where the AIP finds that a production method utilized by the policyholder does not meet the criteria of a good farming practice that a determination under section 20(d) would be appropriate or even possible.

The first requestor states if the AIP determines that production methods set forth in the policyholder’s organic plan are good farming practices but that the policyholder did not actually apply such methods in the production of the crop, such an issue is not appropriate for a good farming practice determination.

Second Requestor’s Interpretation:

The second requestor questions if after making a finding that a policyholder failed to employ necessary “good farming practices” and where a policyholder disagrees that the identified practices are “good farming practices,” can an AIP refuse to submit a policyholder’s request for a good farming practices determination to FCIC/RMA?

The second requestor believes the answer to that question is “No.” An AIP cannot refuse to forward a producer’s request for a good farming practices determination to RMA. There is no support in the crop insurance policy for a conclusion that an Approved Insurance Provider has the discretion to refuse to submit a “good farming practices” determination request to FCIC/RMA. The crop insurance policy and Federal Law provide a clear path for the resolution of “good farming practices” questions. Specifically, the policyholder “**must request a determination from FCIC of what constitutes a good farming practice.**” See section 20(d)(1)(i) of the CCIP Basic Provisions. It is the AIP’s responsibility to forward the policyholder’s

request for a “good farming practices” determination to RMA “along with the entire GFP decision file.” See paragraph 2A(1)(b) of the 2017 Good Farming Practice Determination Standards Handbook (FCIC-14060). This interpretation of the policy is supported by the Good Farming Practice Determination Standards Handbook which provides that **“the policyholder may request a GFP determination . . . through the AIP to the RO. It is the AIP’s responsibility to forward a complete request file to the appropriate RO.”** See paragraph 23B of the 2017 Good Farming Practice Determination Standards Handbook (FCIC-14060).

The second requestor seeks a Final Agency Determination that an AIP cannot refuse a good farming practice determination request, as there is no process for a policyholder to directly submit a “good farming practices” request to the Agency. Should the Agency fail to provide such a determination, it will be effectively gutting the well-defined process for handling “good farming practices” questions. AIPs must not be allowed to refuse properly submitted requests for “good farming practices” determinations. The above-referenced policy provisions provide an AIP no right to determine whether a good farming practice determination by FCIC/RMA is appropriate. Instead, it is the duty of the AIP to forward such requests to FCIC/RMA.

It must not be overlooked that Congress provided farmers with procedural due process rights regarding Good Farming Practice determinations in the Federal Crop Insurance Act (FCIA) at 7 U.S.C. § 1508(a)(3)(B). **“A producer shall have the right to a review of a determination regarding good farming practices** made . . . in accordance with an informal administrative process to be established by the Corporation.” *Id.* Importantly, congress provided for the “right to judicial review” and that this right applied “without exhausting” administrative review. The requestor respectfully suggests that FCIC/RMA has a responsibility to ensure that AIPs are not violating the statutory right of policyholders to review of an AIPs determination regarding good farming practices.

Final Agency Determination

FCIC agrees, in part, with both requestors’ interpretations.

AIPs may make decisions regarding what constitutes a good farming practice (GFP). Under section 20(d) of the CCIP Basic Provisions, AIPs will decide what constitutes a GFP. Under paragraph 23B of the 2017 Good Farming Practice Determination Standards Handbook (GFP Handbook), the policyholder has a right to request a GFP

determination from RMA, through the AIP, if they disagree with the AIP's decision. Where there is a question of whether a policyholder's production practice meets the criteria of a GFP, the AIP cannot refuse to submit a policyholder's request for a GFP Determination to RMA.

Under paragraph 31A of the GFP Handbook, the AIP also has initial authority to decide whether the policyholder used good farming practices. Paragraph 23A, provides examples of situations that fall outside GFP. For instance, RMA will not accept requests related to production or values for uninsured causes, or for establishing insurability. As a result, decisions regarding GFP's vary, and can be a case-by-case decision depending on specific factors in the AIP's decision. For example, an AIP may find that a producer's failure to follow their organic plan also constituted a failure to follow good farming practices. Alternatively, an AIP may find that a producer's failure to follow their organic plan resulted in other issues regarding insurability related to their policy, outside of a GFP determination.

In accordance with 7 C.F.R. § 400.766(b)(2), this FAD is binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. Any appeal of this decision must be in accordance with 7 C.F.R. § 400.766(b)(5).

Date of Issue: February 20, 2024