

Risk Management Agency Interpretation of FCIC Provisions:

Subject: Request dated December 29, 2020, to the Risk Management Agency for an interpretation of the 2017 Whole-Farm Revenue Protection (WFRP) Pilot Handbook regarding whether subparagraph 49(4) allows an insured to establish an expected yield for a commodity based solely on the highest annual yield(s) of an underlying FCIC plan of insurance.

The relevant handbook procedure provided by the requestor is subparagraph 49(4):

49. Revised Farm Operation Report

...

- (4) *When a commodity is insured under WFRP and another FCIC plan of insurance, the acreage and expected yield reported on the Farm Operation Report should generally be the same as the acreage and yield for the commodity covered under the other FCIC plan of insurance. Any difference of acreage and yield between the two plans of insurance must be justified, reasonable, and documented. If any difference is not justified, reasonable, and documented, refer to section 15 in the WFRP policy.*

Interpretation Submitted by Requestor(s)

The requestor's interpretation of subparagraph 49(4) of the 2017 WFRP Pilot Handbook is that an insured provides adequate records to support expected value yields where an insured timely submits yield numbers with an WFRP Policy Application that identifies actual production yields obtained and documented in its history. The actual yields documented in the insured's Production History constitutes "Verifiable records." The WFRP Policy defines Verifiable records to be in relevant part: "Contemporaneous records provided from a disinterested third party, such as records from a warehouse, processor, packer, broker, input vendor, etc., or by measurement of farm-stored commodities..." Yields actually attained in prior years (even if for a single year), in the insured's farming operation, and on specific units within its farming operation, can provide the requisite justification that expected yields are reasonable and adequately documented based on the review of the insured's entire application and when coupled with additional factors such as changes in farming practices, production practices, increased acreage with producing crops, all that may affect the insured's farm operation in the current years over to previous years. A documented change in production practices may justify excluding, or placing less emphasis on, yields realized prior to the change in production practices.

The requestor states, it is not reasonable to impose an artificially low ten year average for commodities where the grower has changed farming practices designed to increase yields, changed locations for rotational crops to higher yielding locations, and where recent production yields implementing these changes confirm, as documented in the grower's Actual Production History (APH), that the grower has actually produced at the level being requested in the expected yields in the Farm Operation Report submitted with the application. The most recent information reflecting changes by the grower may justify the requested WFRP expected yield that exceed the average APH approved yield under a different plan of insurance.

The requestor's interpretation is that the WFRP Policy vests with the Approved Insurance Provider (AIP) the discretion to review and evaluate the expected values requested, the information included in the insured's production history and all additional factors prior to approving an insured's requested values. Neither the 2017 WFRP Policy nor the 2017 WFRP Pilot Handbook quantifies, or requires,

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that expected approved expected value must be an average or a representative average of prior years. To the contrary, Section 17(a)(1) of the WFRP Pilot Policy provides that the expected yield reported by the insured “should reflect what your farm can reasonably produce given changes in your farm operation, availability of irrigation water supply, or any other changes that may affect your farm in the insured year compared to previous years.” A documented change in production practices may justify excluding, or placing less emphasis on, yields realized prior to the change in production practices. Paragraph 49(4) of the 2017 WFRP Pilot Handbook provides that a commodity’s expected WFRP yield should “generally be the same” as the approved yield under the other plan of insurance and further require that any difference between the two be “justified, reasonable, and documented.”

The RMA website described the WFRP Policy, for the 2017 Crop Year, as follows: “Whole-Farm Revenue Protection (WFRP) insurance provides coverage against the loss of revenue that you expect to earn, . . . during the insurance period under one insurance policy.” The RMA website further described the WFRP Policy to include: “[p]rovisions to adjust the insurance guarantee to better fit expanding operations.” Directly addressing how the WFRP Policy is adjusted to “better fit” an insured’s expanding operations the RMA website explains:

Subject to AIP approval, producers may now qualify for to increase their insurance guarantee by up to 35 percent of their average revenue history if their farm has had physical growth of some kind. Physical growth can be increased acreage, the addition of something like a greenhouse, changes to varieties or planting patterns, or any other production capacity change. Producers interested in this increased coverage must provide information to the crop insurance agent showing that physical expansion has occurred and what the resulting increased revenue is expected to be..

The requester believes this targeted language expressly allows for a difference between an insured’s historical APH under a different plan of insurance and expressly allows an insured to request and receive approval for increased yields for expected production. The yield used to establish the guarantee and liability for WFRP purposes is intentionally different from that of an underlying FCIC policy which is based exclusively on an approved APH yield established pursuant to federal regulations published at 7 C.F.R. Part 400, Subpart G. Yields under these policies is based on a strict average. Neither the WFRP Policy nor related Handbook requires yields be based on an “average.” To mandate an average yield or representative average would completely eliminate the intended difference in the WFRP Policy that allows, where approved by an AIP, for increased revenue protection based on expected yields.

The requester posits that the presence of a yield in an APH database demonstrates that an insured, in its documented growing history under Federal Programs, has produced an insurable commodity at the level being requested, and may be part of the requisite documentation to constitute “justification, reasonableness, or documentation” of that yield, even if the yield history is for a single year.

Federal Crop Insurance Corporation Determination

FCIC disagrees with the requester’s interpretation on subparagraph 49(4) of the 2017 WFRP Pilot Handbook. FCIC interprets subparagraph 49(4) to mean 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. The existence of a higher yield(s) within the APH database, alone, is not considered justification that the WFRP expected yield should differ from the approved yield of the underlying FCIC plan of insurance.

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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.