

### **Federal Crop Insurance Corporation Interpretation**

**Subject:** Request dated December 12, 2023, submitted to the Risk Management Agency (RMA) for a Federal Crop Insurance Corporation (FCIC) interpretation of Section 33(a) of the 2020 Whole-Farm Revenue Protection (WFRP) Pilot Policy.

**Reference:**

The relevant policy provision from the 2020 WFRP Pilot Policy is:

**33. *Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.***

(a) *If you and we fail to agree on any determination made by us, except those specified in this section 33(d) or (e), the disagreement may be resolved through mediation in accordance with section 33(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 33(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.*

\*\*\*\*

(c) *Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 33(b)(3). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.*

\*\*\*\*

(f) *...If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.*

### **First Requestor's Interpretation**

The first requestor seeks an interpretation of Section 33(a) regarding who bears the burden to prove coverage defenses in an arbitration. The first requestor interprets Section 33(a) to mean that pursuant to AAA Rule 32(a), "Conduct of Proceedings" ("[t]he respondent shall ... present evidence to support its defense"), an insurer bears the burden of proving any coverage defenses that it asserts or asserted, including a purported inability to "accurately determine the amount and cause of loss." The first requestor further interprets this Section to mean that an insured cannot be required in an arbitration to establish that an Approved Insurance Provider (AIP) was able to accurately determine the amount and cause of loss; instead, the burden to show that an AIP could not accurately determine the amount and cause of loss is on an AIP.

### **Second Requestor's Interpretation**

Section 33(a) states that the rules of the AAA apply "except as provided in sections 33(c) and (f)..." To this end, Section 33(f) provides that in arbitration, "the terms of this policy, the Act, and the regulations published at 7 C.F.R. chapter IV, including the provisions of 7 C.F.R. part 400, subpart P,

are binding.” The second requestor contends that the burden of proof is established by Section 33(f) and the terms of the WFRP Policy rather than the AAA’s rules. Moreover, in accordance with, section 23(d) of the WFRP Policy states that the AIP will pay an indemnity only if the insured has complied with the terms of the policy. Therefore, the second requestor interprets that the insured has the burden of proving that it complied with the policy, including providing the AIP with all notices, records and information needed to determine the amount and cause of loss.

### **Federal Crop Insurance Corporation Interpretation**

FCIC disagrees with both requestors. FCIC interprets Section 33(a) of the 2020 WFRP Pilot policy to mean that any disagreement between the insured and the AIP may be resolved by mediation, and if the disagreement is not resolved through mediation, then the disagreement must be resolved through arbitration. Furthermore, FCIC interprets Section 33(a) to mean that if the disagreement enters arbitration, the arbitration must be conducted in accordance with the rules of AAA, except when Sections 33(c) or 33(f) apply. FCIC interprets Section 33(c) to apply only after a decision has been rendered by the arbitrator and gives both the insured and the AIP right to seek a judicial review of such decision. FCIC interprets the relevant part of Section 33(f) to mean that if there is a conflict between the rules of AAA and the WFRP Pilot Policy, then the WFRP policy will prevail.

Regarding the requestors’ interpretation of which party bears the burden of proof, FCIC does not interpret any provision within the 2020 WFRP Pilot Policy including Sections 33(a), (c), or (f), to address the burden of proof issue. Therefore, because the 2020 WFRP Pilot policy is silent on burden of proof, the AAA rules apply. As a courtesy, FCIC is providing a rule from the 2022 Arbitration Rules and Mediation Procedures, but we note that the AAA is the best source for up-to-date information on its procedures.

Rule 33(a) of the 2022 Arbitration Rules and Mediation Procedures:

- (a) *The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.*

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

**Date of Issue:** February 28, 2024