

Risk Management Agency Interpretation of FCIC Provisions:

Subject: Request dated September 25, 2020, to the Risk Management Agency for an interpretation regarding whether sections 49(a), (b), & (c) of the 2018 Whole-Farm Revenue Protection (WFRP) Pilot Policy and subparagraph 71(3)(a) & (b) of the 2018 WFRP Pilot Handbook allows for consideration of documentation that was not timely provided by an insured to the Approved Insurance Provider (AIP) per the deadlines in the policy.

The relevant policy provisions provided by the requestor are sections 49(a), (b), & (c):

49. Expanded Operations

- (a) *If you can show us your farm operation has physically expanded during the insurance period or lag year by adding production capacity to your farm operation (e.g., by adding land or an addition of a greenhouse), increasing use of existing production capacity (e.g., by double-cropping existing land or beginning production on high density orchards), or making physical alterations to existing production capacity (e.g., by adding irrigation to existing land or beginning production on certified organic acreage) we may at our discretion approve your farm operation as an expanding operation (we will not consider crop rotation or planting a higher value commodity without changes to your existing production capacity to be physical expansion. For example; if you planted more of your existing land to a high value commodity during the insurance period than in previous years, but did not otherwise change the production capacity of your farm operation, we will not approve your farm operation as an expanding operation). If so:*
- (1) *You must provide verifiable records that we agree are sufficient to determine the amount of revenue an expansion can be expected to generate during the insurance period;*
 - (2) *We will determine the amount of revenue from the expansion approved for the purpose of determining your expanding operation factor; and*
 - (3) *If more than one expansion is applicable to your farm operation, we will determine the amount of revenue approved for each expansion separately.*
- (b) *If your farm operation is expanding during the current insurance period you must provide all required records no later than the date you are required to submit your Revised Farm Operation Report.*
- (c) *If an expansion of your farm operation occurred in your lag year:*
- (1) *You must provide all required records by the later of the sales closing date or the first day of your insurance period; and*
 - (2) *We will determine the amount of revenue from the expansion based on information applicable to the insurance period. For example, the expected value for each commodity will be based on the price in the current year, regardless of the price of the commodity at the time the expansion occurred.*

The relevant handbook procedures provided by the requestor are subparagraphs 71(3)(a) & (b):

71 Revenue

...

- (3) *Expanded operation average revenue will be calculated for all applicants/insureds when the insured provides documentation indicating their operation is physically expanding either by adding production capacity to their farm operation (i.e., by adding land or an addition of a greenhouse), increasing the use of existing production capacity (e.g., by double-cropping existing land or beginning production on high density orchards), or making physical alterations to existing production capacity (e.g., by adding irrigation to existing land or beginning production on certified organic acreage) and is approved by the AIP. If so:*
- (a) *The insured must provide verifiable records that the AIP agrees are sufficient to determine the amount of revenue an expansion can be expected to generate:*
 - (i) *For a farm operation that is expanding during the current insurance period, by the date on which the insured is required to submit their Revised Farm Operation; or*
 - (ii) *For a farm operation where the expansion occurred during the lag year, by the later of the SCD or the first days [sic] of their insurance period.*
 - (b) *The AIP will determine the amount of revenue from the expansion, using information applicable to the current insurance period (i.e., expected value), approved for the purpose of determining the expanding operation factor;*

Interpretation Submitted by Requestor(s)

The requestors' interpretation is that an expanding operation may not be approved by the AIP unless, by the applicable deadline set forth in section 49(b) or (c) of the WFRP Policy, the insured provides verifiable documentation that: (1) supports a physical expansion of the farm operation; and (2) is sufficient to determine the amount of revenue the expansion can be expected to generate. For an expansion occurring during the current insurance period, the deadline for the submission of such documentation is the date on which the insured is required to submit its Revised Farm Operation Report (i.e., the Acreage Reporting Date set forth in the Special Provisions of Insurance). For an expansion that occurred during the lag year, the deadline for the submission of such documentation is the later of the sales closing date (as set forth in the Special Provisions of Insurance) or the first day of the insurance period (as defined in the WFRP Policy).

In the same vein, the AIP cannot approve an expanding operation based on documentation provided after the applicable deadline. That is, if an operation expands during the current insurance year but the insured fails to provide verifiable documentation to support the expansion by the date on which the Revised Farm Operation Report is due, an expanding operation based on the current year's expansion cannot be approved. Likewise, if an expansion occurred during the lag year but the insured fails to provide verifiable documentation to support the same by the later of the sales closing date or the first day of the insurance period, an expanding operation based on the lag year expansion cannot be approved. Moreover, if an expanding operation is approved for the current year and/or lag year based on timely-provided documentation but, after the expiration of the deadline, the insured provides documentation to ostensibly support an additional expansion, an expanding operation based on the

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additional expansion cannot be approved. (None of this would preclude the AIP from revising the expanding operation factor based on a determination that information or documentation originally provided was not verifiable.)

Based on the above, documentation provided for the first time after a claim for indemnity has been submitted or during the dispute resolution process will not support an expanding operation and cannot be considered by the AIP in determining whether to approve an expanding operation or (if an expanding operation has been approved on the basis of timely documentation) an additional expanding operation. Where an insured initiates arbitration to challenge the AIP's determinations regarding an expanding operation, the arbitrator must consider only such documentation and information that was timely provided by the insured to the AIP.

Federal Crop Insurance Corporation Determination

FCIC agrees with the requestors' interpretation that an insured must provide verifiable documentation supporting their farm operation expansion by the dates specified in sections 49(b) and (c) of the 2018 WFRP Pilot Policy and subparagraph 71(3)(a) of the 2018 WFRP Pilot Handbook. As stated, for a current year expansion, it is the date in which the Revised Farm Operation Report must be submitted and, for a lag year expansion, it is the later of the sales closing date or the insured's first day of insurance. Documentation submitted after either date specified may not be accepted. Likewise, an expanding operation may not be considered for which verifiable documentation is not provided by the date specified.

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.