

Risk Management Agency Interpretation of Federal Crop Insurance Corporation Provisions:

Subject: Request dated December 16, 2020, to the Risk Management Agency for an interpretation for the 2017 and 2018 policy years in the determination of whether Sections 10(a)(4) and (b)(5) excludes revenue received from an entity that is not a cooperative as allowable revenue or if it is considered “other revenue” and allowable.

The relevant policy provisions provided by the requestor are sections 10(a) and (b):

10. Allowable Revenue

(a) Allowable revenue for WFRP purposes is limited to the revenue from:

...

(4) Other revenue, including Federal and State gasoline or fuel tax credit or refund (line 8 of Schedule F) or fuel tax credits or refunds if reported on this line). Include all revenue directly related to the production of commodities that the IRS requires you to report, including, but not limited to:

(i) Revenue from bartering (This amount will be determined in accordance with IRS rules.); and

(ii) Payments from buyers of commodities for bypassed acreage (These are payments made to you in accordance with a marketing contract between you and a buyer for not harvesting your crop)

(b) Allowable revenue specifically excludes:

(1) Revenue from any post-production operations;

(2) Net gain from commodity hedging or speculation;

(3) Revenue from commodities in which you do not have an insurable interest;

(4) Revenue earned from custom hire or rental activities;

(5) Cooperative distributions that are not directly related to the sale of an insured commodity;

(6) Revenue earned as an animal contract grower;

(7) Revenue from wages, salaries, tips and cash rent;

(8) Revenue from government agricultural programs, including the Non-insured Assistance Program (NAP), and federal crop disaster payments;

(9) Revenue from uninsurable commodities, such as, animals for show or sport, timber, forest and forest products, and controlled substances;

(10) Crop insurance indemnities, prevented planting payments from other FCIC policies, and replant payments;

(11) CCC loans repaid (except those repaid by a third party buyer);

(12) Value assigned for uninsured cause of loss or abandoned acreage; and

(13) Accrual adjustments for beginning and ending accounts receivable and inventories.

Interpretation Submitted by Requestor(s)

The submitter’s interpretation is that revenue received from a company that is not a cooperative is not to be excluded from allowable revenue under Section 10(b) of the policy and are to be treated as “other revenue” under Section 10(a)(4) of the policy so they count toward the insured’s allowable revenue.

The submitter states this interpretation is supported by the plain language of the policy. Section 10(b)(5) clearly applies to distributions from “cooperatives.” A payment or distribution from a company which is not a “cooperative” does not qualify under Section 10(b)(5) as revenue that is to be excluded from allowable revenue. If such payments were to be excluded from allowable revenue under Section 10(b)(5) of the policy, the requirement that the distribution be from a “cooperative” would be meaningless. The policy was written such that only “cooperative distributions that are not directly related to the sale of an insured commodity” are excluded from allowable revenue. The policy does not say that all “distributions that are not directly related to the sale of an insured commodity” are excluded from allowable revenue. The payment must be from a cooperative to qualify for treatment under Section 10(b)(5).

The submitter continues that the revenue received from a company which is not a cooperative do not qualify as revenue that is to be excluded under the other Section 10(b) subparts. The revenue is not “revenue from post-production operations;” it is not “net gain from commodity hedging or speculation;” it is not “revenue from commodities in which you do not have an insurable interest;” it is not “revenue from custom hire or rental activities;” it is not “revenue earned as an animal contract grower;” it is not “revenue from wages, salaries, tips, and cash rent;” it is not “revenue from government agricultural programs, including the Non-insured Assistance Program (NAP), and federal crop disaster payments;” it is not “revenue from uninsurable commodities, such as, animals for show or sport, timber, forest and forest products, and controlled substances;” it is not “crop insurance indemnities, prevented planting payments from other FCIC policies, and replant payments;” it is not “CCC loans repaid (except those repaid by a third party buyer);” it is not “value assigned for uninsured cause of loss or abandoned acreage;” and it is not “accrual adjustments for beginning and ending accounts receivable and inventories.”

The submitter states that because the revenue received from a company that is not a cooperative does not fit within any of the thirteen categories of revenue to be excluded from allowable revenue under Section 10(b) of the policy, the bin bonus payments are to be treated as “other revenue” under Section 10(a)(4) and must be included in the allowable revenue calculation.

Federal Crop Insurance Corporation Determination

FCIC agrees with the submitter’s interpretation that section 10(a)(4) of the 2017 and 2018 WFRP Pilot Policies allows revenue received from an entity that is not a cooperative which is directly related to the production of a commodity to be treated as Allowable Revenue if the revenue received is not otherwise excluded within section 10(b) of the 2017 and 2018 WFRP Pilot Policies.

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.