

**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 requester's interpretation of subparagraph 49(4) of the 2017 WFRP Pilot Handbook is that an insured cannot simply pick and choose among yields from particular years and/or units to justify a WFRP expected yield that exceeds the average Actual Production History (APH) approved yield for all units. 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." Consequently, a documented change in production practices may justify excluding, or placing less emphasis on, yields realized prior to the change in production practices. However, an expected yield for a commodity that is based on nothing more than the best years and/or units in the APH database is neither reasonable nor realistic.

The requester states paragraph 49(4) of the 2017 WFRP Pilot Handbook provide 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 yield is utilized to establish guarantees and liability. The yield used to establish the guarantee and liability for purposes of the underlying FCIC policy is an approved APH yield established pursuant to federal regulations published at 7 C.F.R. Part 400, Subpart G. Per these regulations, the APH approved yield is not based on the single highest yield in the APH database(s) or an average of only higher yields from the APH database(s). Therefore, a WFRP expected yield based on nothing more than the highest single annual yield or combination of single annual higher yields shown in the APH database(s) is not "generally the same" as the approved APH yield under the other plan of insurance.

In addition, the requester continues that the mere presence of a yield in an APH database does not, in and of itself, constitute "justification, reasonableness, or documentation" of that yield. Neither AIPs nor agents are necessarily in possession of the actual production records needed to substantiate a yield found in an APH database. In many cases, such yields are based solely on the insured's annual production report, certified by the insured but without any other documentation provided by the insured or verification by the agent or AIP.

The 2017 WFRP Handbook requires that any difference between the WFRP expected yield and the approved yield used in the other plan of insurance be “justified, reasonable, and documented.” Simply pointing to a single annual yield in a database is not an explanation of a difference between the WFRP expected yield and the APH approved yield. Without the provision of other documentation (by the deadlines established in the WFRP policy for providing such information) that justifies the difference between the yields with such difference being reasonable, a WFRP expected yield that differs from the APH approved yield cannot stand.

The requester provides as further evidence that the above are the appropriate interpretations of the referenced procedures, the FCIC incorporated explicit language to this effect as part of the handbooks effective for the 2018 and succeeding crop years. In subparagraph 48(2)(d) of the 2018 WFRP Pilot Handbook, the FCIC declared that, when a commodity is insured under another FCIC plan of insurance, the expected yield reported on the Farm Operation Report “should be compared to the approved yield(s) used to determine the guarantee under the other FCIC plan of insurance to determine if the yield reported by the insured is reasonable.” Additionally, the FCIC included a specific requirement in subparagraph 48(2)(e) of the updated handbook that expected yields “be realistic and consistent with available information and not be established using ... [t]he highest yield or combination of higher yields.”

In Exhibit 18 of the 2019 and 2020 WFRP Pilot Handbooks, the FCIC provided further clarification. According to those handbooks, when a commodity is insured under another FCIC plan of insurance and the insured “cannot provide detailed documentation based on their past production practices and any changes to the production practices during the insurance period the AIP agrees demonstrates a higher or lower expected yield,” the expected yield for that commodity will be the “average approved yield for all units on the farm’s policy offered under the Act that provides individual yield coverage.” Although not in effect during crop year 2017, these later-adopted procedures offer guidance as to the relationship between yields under other plans of insurance and those proposed as acceptable WFRP expected yields.

As expressed above, the requester submits that, under both the plain meaning of the terminology used in the 2017 WFRP Pilot Policy and Handbook and subsequent clarifications in the 2018 and 2019 Handbooks, it is not appropriate for an insured to support an expected WFRP yield by simply showing the yield exists somewhere in an APH database of the underlying policy. Likewise, absent further justification or explanation, an insured cannot base the WFRP yield on only the best yields from certain years and/or units. In determining what is “reasonable, justified, and documented,” the AIP may consider detailed documentation that sets forth past production practices and any changes in production practices that would justify a disparity between the WFRP expected yield and the approved yield under the other plan of insurance. In the absence of such documentation, the fact a producer has obtained a certain yield only in particular units and/or years is not sufficient to establish that such a differential is reasonable and justified.

### **Federal Crop Insurance Corporation Determination**

FCIC agrees with the requester’s interpretation that subparagraph 49(4) of the 2017 WFRP Pilot Handbook to mean that an insured cannot simply pick and choose among yields from particular years and/or units to justify a WFRP expected yield that exceeds the average Actual Production History (APH) approved yield for all units. FCIC interprets subparagraph 49(4) to mean the expected yield of a commodity for WFRP should be the same as the approved yield of the underlying crop-specific FCIC policy, if applicable, unless an insured provides documentation justifying a difference in

## FCIC Interpretation of Procedure

expected yield from the crop-specific FCIC policy. FCIC agrees 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 crop-specific FCIC plan of insurance.

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.