Federal Crop Insurance Corporation Interpretation

Subject: Request dated September 29, 2023, submitted to the Risk Management Agency (RMA) for a Federal Crop Insurance Corporation (FCIC) interpretation of section 3(a)(6) of the 2020 Whole-Farm Revenue Protection (WFRP) Pilot Policy.

Reference:

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

3. Qualifying Person Criteria and Insurance Eligibility.

(a) To be considered a qualifying person, you must:

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(6) Derive not more than 50 percent of expected revenue from commodities purchased for resale.

The relevant procedures from the 2020 WFRP Pilot Handbook are:

48. Intended Farm Operation Report

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(4) The expected value provided on the IFOR for a commodity that was purchased for resale must not include the cost, or other basis, of the commodity. Refer to exhibit 18 for guidelines on determining expected value.

***Important**: If the insured derives more than 50 percent of total expected revenue from commodities purchased for resale, they are not eligible for WFRP insurance.*

148 Commodities Purchased for Resale

(1) Eligibility requirements at SCD limit expected revenue derived from commodities purchased for resale to 50 percent of the total expected revenue. However, changes may occur during the policy year that result in the farm being over the limit when the RFOR is submitted.

(2) If the expected revenue from commodities purchased for resale reported on the RFOR is greater than 50 percent of the total expected revenue, the expected revenue for commodities purchased for resale will be limited to no more than the amount of expected revenue from commodities the insured will produce on their farm operation (including expected revenue from commodities lost due to insurable causes). All revenue earned will be considered RTC. To determine if an insured has more than the allowed amount of revenue from commodities purchased from resale:

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First Requestor's Interpretation

The first requestor's interpretation states that in determining whether an applicant or policyholder satisfies the so-called 50 percent rule set forth in section 3(a)(6) of the 2020 WFRP Pilot Policy, the Approved Insurance Provider (AIP) must rely only on the Allowable Revenue as allocated and stated on the applicant or policyholder's Schedule F, specifically Line 1c and Line 2 of the Schedule F, or as reported on the WFRP Allowable Revenue Worksheet. If supporting records, such as income statements or trial balances, indicate that revenue generated by good purchased for resale and grown on the farm operation differ by percentage from the percentage reflected by the revenue reported on Line 1c and Line 2 of the Schedule F, the AIP still must utilize the Schedule F to determine Allowable Revenue for purposes of the 50 percent rule in section 3(a)(6). The revenue as reported in the supporting records does not supersede or supplant the revenue as stated on the Schedule F. In sum, either the Schedule F forms are reliable, or they are not.

Second Requestor's Interpretation

The second requestor disagrees with the first requestor's interpretation that the AIP "must" rely solely on the Schedule F to determine whether an applicant meets the 50 percent requirement in Section 3(a)(6) ("50 percent Rule") of the 2020 WFRP Pilot Policy. The second requestor interprets the 50 percent rule eligibility determination is not based solely on how the tax preparer classified the revenue on the Schedule F. Specifically, the second requestor believes there are situations when the tax preparer may have placed all or a significant part of the insured's revenue in Line 1 (resale) even though the revenue was in fact from produce raised. The Schedule F is completed for the IRS and the method used by the tax preparer may not match the format required for the WFRP Allowable Revenue Worksheet.

The second requestor interprets the starting point for determining if an applicant meets the 50 percent rule is the Schedule F. However, the AIP must also look at an applicant's supporting documentation, such as income statements, trial balances, and invoices for sales in conjunction with the Schedule F to confirm if the insured is eligible for insurance under the 50 percent rule. This is consistent with WFRP Handbook subparagraph 51(A), which states that the AIP must request verifiable records or direct marketing sales records when it has questions about the tax forms.

The second requestor believes the AIP cannot look solely to the insured's Schedule Fs, ignoring supporting documentation when determining eligibility under Section 3(6). Section 44(4) of the WFRP Handbook further states that adjustments to revenue for WFRP purposes must be verified using verifiable records or direct marketing sales records. The second requestor interprets that the AIP is, therefore, not confined to only looking at the insured's Schedule F forms to determine whether an insured has derived more than 50% of expected or allowable revenue from commodities purchased for resale.

The second requestor believes that the 50 percent rule is relevant to the year the insured is seeking coverage. The language in Section 3(a)(6) stating "Derive not more than 50 percent of expected revenue from commodities purchased for resale," amplifies that it is for the upcoming growing season for which the insured is seeking coverage. The second requestor interprets section 3(a)(6) of the 2020 WFRP Pilot Policy that it is the Intended Farm Operations Report, not the past Schedule Fs, that is important for determining whether the insured meets the 50 percent rule and is eligible for WFRP for any given growing season. Specifically, subparagraph 48(4) of the WFRP Handbook (Intended Farm Operation Report) states that if the insured for a given policy year intends to have more than 50 percent of his revenues from commodities purchased for resale, then the insured is not eligible for

WFRP for that year. Accordingly, the Intended Farm Operation Report is also relevant to determining eligibility based under Section 3(6) of the 2020 WFRP Pilot Policy.

The second requestor interprets that the AIP cannot cancel a policy based on the 50 percent rule after the AIP has reviewed the supporting documentation from the insured and has acknowledged that the supporting documentation established that the insured met all the eligibility requirements, including the 50 percent rule, and is eligible WFRP coverage. The second requestor also believes that an AIP that has issued a WFRP Policy to an insured knowing that there was no violation of the 50 percent rule for the initial year and subsequent years cannot ignore the reality of the insured's operations as evidenced by supporting documentation and cancel the Policy by claiming that the amount on Line 1 of the Schedule F for any given year shows that the insured does not meet the 50 percent rule. Furthermore, the second requestor believes that the AIP cannot inform the insured it is canceling for one reason and then years later claim it was based on the revenue in Line 1 of the Schedule F and the 50 percent rule.

Finally, the second requestor believes that a Schedule F is reliable, contrary to the AIP's assertion, even if the revenue from produce raised is placed on Line 1. This is particularly true where the Schedule F covers 100% of the farming operation (Section 3(a)(4)) and is consistent with the insured's sales and purchase invoices, income statements, trial balances, and other supporting documents. In short, the second requestor believes that the Schedule F is a tax document, and the AIP has a duty to verify and understand the information as it relates to eligibility for WFRP coverage, including the 50 percent rule.

Federal Crop Insurance Corporation Interpretation

FCIC disagrees with both requestors' interpretation that the determination required by section 3(a)(6) of the 2020 WFRP Pilot Policy is made utilizing the insured's historical Schedule Fs.

FCIC agrees with the second requestor's interpretation that the eligibility requirement of section 3(a)(6) of the 2020 WFRP Pilot Policy is determined using the Intended Farm Operation Report in accordance with subparagraphs 48(4), 148(1), and 148(2) of the 2020 WFRP Pilot Handbook. Additionally, FCIC interprets subparagraphs 48(4), 148(1), and 148(2) as the determination for section 3(a)(6) is made at the sales closing date using total expected revenue from the Intended Farm Operation Report and if changes occur during the policy year that increase the expected revenue from commodities purchased for resale above the 50 percent limit, then the amount of expected revenue will be capped using the calculation in subparagraph 148(2).

Furthermore, FCIC agrees with the second requestor that an AIP cannot cancel the WFRP policy if it is determined the insured met the eligibility requirements under section 3(a)(6) at the time the Intended Farm Operation Report was submitted (typically the sales closing date) and then later the insured's Schedule F for the current policy year reveals that more than 50 percent of their revenue was earned from commodities purchased for resale. However, sections 15(j), 15(k), and 15(l) of the 2020 WFRP Pilot Policy allow the AIP to revise or adjust an insured's coverage or indemnity based on the information provided by the insured.

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: November 22, 2023