

Federal Crop Insurance Corporation Interpretation

Subject: Requests dated December 29, 2023, submitted to the Risk Management Agency (RMA) for a Federal Crop Insurance Corporation (FCIC) interpretation of Section 22(d)(1) of the 2020 Whole-Farm Revenue Protection (WFRP) Pilot Policy.

Reference:

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

22. *Your Duties in the Event of Damage or Loss.*

(d) If you fail to comply with any of the notice requirements of this section:

(1) We will consider any loss on the portion of the commodity (damaged acres or other applicable unit of measure for the commodity) for which you failed to provide notice to be due solely to uninsured causes with the expected revenue of the lost commodity included as revenue-to-count, unless we determine that we have the ability to accurately determine the amount and cause of loss; and

First Requestor's Interpretation

The first requestor seeks an interpretation of Section 22(d)(1) of the 2020 WFRP Pilot Policy as it relates to an Approved Insurance Provider's (AIP) denial of coverage for some but not all tracts within an orchard that suffered damage from the same weather-related cause of loss and for which an insured submitted a claim or claims. The first requestor interprets this Section to mean that it requires notice to the AIP such that it may determine the "amount and cause of loss" and that if the AIP pays claims relative to multiple tracts within the same orchard, it did so because the AIP was able to determine the cause and amount of loss. The first requestor further interprets this Section to mean that when an AIP determines that coverage is owed for weather-related losses that impacted several tracts within an orchard, it must pay for the losses to *all* the tracts within the same orchard because it has necessarily determined the cause of the loss and is able to determine the amount of loss the various tracts suffered as well. The first requestor believes that this Section does not allow AIPs to selectively pay claims for losses to adjacent tracts within an orchard when the cause of loss to all the tracts within the orchard is the same and the AIP has determined that the cause of loss is covered under the WFRP Pilot Policy and paid multiple claims.

The first requestor also requests an interpretation as to whether an AIP's custom and practice regarding on-farm inspections should be considered when determining whether an AIP may deny coverage based on a purported inability to "accurately determine the amount and cause of loss[.]" The first requestor interprets this Section to mean that when an insured does not give notice within 72 hours of a weather-related loss, the claim will be covered unless the AIP cannot determine the amount of the loss by, among other things, "inspect[ing] damaged acreage or commodities" and "remov[ing] samples and determine the extent of damage," Section 22(b)(2). The first requestor further interprets this Section to provide that when the AIP is sufficiently able to investigate, it may not deny a weather-related claim based on the timeliness of the insured's notice of loss. The first requestor further interprets this Section to mean that if the AIP has established a custom and practice of not conducting on-farm inspections or to otherwise investigate weather-related losses in person, and if the insured may consult other data, including historical weather information and other contemporaneous weather-

related losses in a given area, then the AIP is able to “accurately determine the amount and cause of loss,” rendering a notice of loss’s timing an improper basis on which to deny coverage.

Second Requestor’s Interpretation

The second requestor does not interpret that Section 22(d)(1) of the 2020 WFRP Pilot Policy to be relevant to determining whether an indemnity is due on a particular tract, particularly where tracts within an orchard, for example, contain different varieties of crops that mature at different times and, therefore, react differently to adverse weather. It is for this reason, that different tracts have separate APH databases. The second requestor further interprets that because an AIP must verify that damage resulted from an insurable cause of loss, the AIP cannot simply assume that all tracts were damaged equally. The second requestor interprets that instead, the AIP must verify that each tract and variety within the tract was damaged by a weather-related incident. The second requestor continues with their interpretation that if the policyholder only provides notice of damage to certain tracts and this limited notice prevents the company from verifying damage on those tracts for which notice was not provided, the policyholder has not complied with Section 22 and is not entitled to an indemnity.

The second requestor believes that “custom and practice,” which are not terms of the 2020 WFRP Pilot Policy, are irrelevant to the interpretation and application of Section 22(d). The Preamble of the WFRP Pilot Policy states that the terms and conditions may not be waived or varied by the Company, so the requirements of Section 22 apply to a loss regardless of the manner in which prior losses may have been adjusted.

Section 22(d) of the 2020 WFRP Pilot Policy states that the failure to provide timely notice will result in the loss being deemed the result of uninsured causes “unless we determine that we have the ability to accurately determine the amount and cause of loss....” The second requestor interprets this phrase to mean that it is the AIP, not the policyholder, who determines whether the AIP is able to adjust the loss. Further, the second requestor also interprets Section 22(d) to require that the company verify two conditions – an insurable cause of loss and an amount of loss. If the AIP concludes that untimely notice prevents it from verifying the cause of loss, the amount of loss, and that the extent of the resulting damage was due from an insured cause of loss, then Section 22(d) applies. Merely verifying that a weather event occurred on a particular date in a particular area fails to meet the AIP’s loss adjustment duties under applicable policy and procedure.

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FCIC disagrees with the first requestor’s interpretation of the 2020 WFRP Pilot Policy to mean that an indemnity is due on all tracts of a farm operation if the insured provides timely notice of a Cause of Loss (COL) on some of the tracts and did not provide timely notice on other tracts within the farm operation. FCIC also disagrees with the first requestor’s interpretation that past “custom and practices” of loss determinations of the AIP indicate the ability for the AIP to determine a current loss. FCIC further disagrees with the first requestor’s interpretation that the timing of an insured’s notification is an improper basis to deny coverage on the portion of the commodity for which the insured failed to provide timely notice.

FCIC agrees with the second requestor’s interpretation that it is the AIP’s responsibility to determine whether they can accurately determine the amount and cause of loss for the portion of the commodity for which timely notice was not given under section 22(d)(1).

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