

Federal Crop Insurance Corporation Interpretation

Subject: Request dated December 12, 2023, submitted to the Risk Management Agency (RMA) for a Federal Crop Insurance Corporation (FCIC) interpretation of Section 22(a) 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.*

(a) *You must provide us with a notice of loss within 72 hours of your initial discovery that any commodity insured under this policy has been damaged by a cause of loss that could result in a loss of production or reduction in value or that your allowable revenue for the policy year could fall below the insured revenue:*

(c) *You must notify us and obtain our consent before you abandon, dispose of, or destroy any damaged or undamaged insured commodities, or sell a commodity for any reason other than its intended purpose or to someone other than a disinterested third party.*

First Requestor's Interpretation

The first requestor interprets Section 22(a) of the 2020 WFRP Pilot Policy to mean that the Approved Insurance Provider (AIP) must pay a claim due to loss in market price when an insured timely notifies the AIP that a decline in market price and interprets this provision to require payment of such claim even if a separate Cause of Loss (COL), for which the insured did not provide timely notice (i.e., severe adverse weather), affected the crop and prevented its harvest.

The first requestor also interprets Section 22 to provide that when a crop suffers a loss caused by two independent insured COLs, the loss is covered when notice of one COL is timely and the AIP can accurately determine the amount and COL. It is the first requestor's interpretation that if a potential loss of revenue is timely noticed, the fact that another covered COL was not timely noticed does not defeat coverage.

Second Requestor's Interpretation

The second requestor interprets Section 22(a) of the 2020 WFRP Pilot Policy to require that a policyholder provide timely notice of all COLs and, in particular, Section 22(a)(2) requires timely notice of loss if the policyholder is unable to market the insured crop or has such a loss of production that the policyholder decides to not harvest the crop. The fact that the insured provided timely notice that the crop experienced a loss due to a decline in price does not excuse the failure to provide notice under Section (a)(2). Moreover, Section 22(d) provides that the failure to "comply with any of the notice requirements of this section," meaning Section 22, will result in the loss for which notice was not provided to be deemed "due solely to uninsured causes." Therefore, if a commodity that experiences a decline in price and a weather-related loss that results in the crop being unmarketable or a significant loss of production, the failure to provide timely notice of weather damage will result in the loss being attributed to uninsured causes.

Moreover, Section 22(a) cannot be interpreted in a vacuum and compliance with section 22(a) does not excuse a policyholder's failure to comply with other provisions of Section 22, including Section 22(c), which applies to the abandonment or other disposal of the insured crop and the policyholder's duty to obtain the company's consent before abandoning a crop.

Federal Crop Insurance Corporation Interpretation

FCIC disagrees with the first requestor's interpretation of Section 22(a) of the 2020 WFRP Pilot Policy to mean that an AIP must pay a claim based on the timeliness of a notice of loss. FCIC interprets Section 22(a) to mean the insured has a responsibility to provide a notice of loss to the AIP within 72 hours of when they first noticed damage that could result in a loss of production or a reduced value to any insured commodity on their farm operation.

FCIC agrees with the second requestor's interpretation that Section 22(a) requires an insured to provide timely notice of all COLs and the fact that a timely notice of loss was provided for one COL, does not negate the requirement to provide timely notices for all COLs. Furthermore, FCIC agrees with second requestor's interpretation of Section 22(c) that an insured must notify the AIP and obtain consent before abandoning or destroying an insured commodity.

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