

Federal Crop Insurance Corporation Interpretation

Subject: Request dated December 18, 2023, submitted to the Risk Management Agency (RMA) for a Federal Crop Insurance Corporation (FCIC) interpretation of Section 4(b) of the 2020 Whole-Farm Revenue Protection (WFRP) Pilot Policy.

Reference:

The relevant policy provision is:

4. *Life of Policy, Termination, and Cancellation.*

- (b) *This is a continuous policy and will remain in effect for each succeeding policy year following the acceptance of the original application until canceled by you or us in accordance with the terms of the policy. In accordance with section 5, FCIC may change the coverage provided from year to year.*

33. *Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.*

- (h) *Except as provided in section 33(i), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of insured revenue established or which should have been established under the policy, except for interest awarded in accordance with section 34.*

First Requestor's Interpretation

The first requestor interprets Section 4(b) of the 2020 WFRP Pilot Policy to mean that if an arbitrator determines that an Approved Insurance Provider's (AIP) cancellation was improper and the insured was wrongfully informed they were not qualified for a WFRP Pilot Policy, then the first requestor believes that the appropriate remedy would be to reinstate the WFRP Pilot Policy for each succeeding insurance year following the original application year, provided that the insured can establish they remained qualified and would have applied for a WFRP Pilot Policy, given the fact that it is a continuous policy. Furthermore, the first requestor interprets that the arbitrator is authorized to determine that WFRP coverage would have been established for the years in which the insured was prevented from applying for coverage because the AIP wrongfully cancelled the policy, and the insured was improperly told they were not qualified for the WFRP Pilot Policy. In other words, the first requestor interprets that but for the AIP's improper cancellation, the insured would have maintained a continuous WFRP Pilot Policy.

The first requestor also believes the above interpretation is consistent with Section 33 of the WFRP Pilot Policy which allows an insured to arbitrate a decision of an AIP. Specifically, Section 33(h) provides that in the event an award or settlement of money damages is awarded in mediation, arbitration, appeal, or review, the monetary award cannot exceed the amount of "insured revenue established or which should have been established under the Policy." This section does not, however, state that the arbitrator, mediator, or court does not have authority to make factual findings in a dispute where the issue relates to improper cancellation of a WFRP Pilot Policy. The first requestor believes

an arbitrator can make a factual finding that a policy was improperly cancelled by the AIP and award reinstatement of the policy for the amount of coverage that “should have been established” but for the improper cancellation of the policy. The first requestor also believes the arbitrator can award damages for the years the policy should have been in effect; however, the amount of the award cannot exceed the amount of the “insured’s revenue established or which should have been established under the policy.”

Second Requestor’s Interpretation

The second requestor interprets Section 4(b) of the 2020 WFRP Pilot Policy to be wholly irrelevant to the scope of an arbitrator’s authority under the WFRP Policy. An arbitrator’s authority is established, as well as limited, by Section 33 of the WFRP Policy, captioned “Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review.”

The second requestor interprets that Section 33(h) does not authorize an arbitrator waive or vary any policy provision, including those related to establishing coverage and the submission of reports, Schedule F forms, and supporting records. For this reason, the second requestor interprets that an arbitrator does not have the authority to order an AIP to provide coverage retroactively. The second requestor acknowledges that the arbitrator may make a finding of fact that the AIP erred in voiding or canceling the policyholder’s coverage, but the arbitrator may not waive the terms of WFRP Pilot Policy, including, but not limited to Section 15 of the WFRP Pilot Policy, and order the AIP to provide coverage retroactively without regard to the policyholder’s non-compliance with the policy.

In addition, the second requestor interprets that Section 33(h) must be read in the context of the WFRP Pilot Policy rather than as a stand-alone provision, and, for this reason, must be interpreted consistently with the policy’s Preamble. Likewise, a policyholder’s right to an indemnity is dependent upon its compliance with the policy. To this end, Section 23(d) of the WFRP Policy states that the Insurer will pay an indemnity only if the Insured has complied with the terms of the policy. The second requestor interprets that Section 33(h) does not permit the arbitrator to waive Section 23(d).

The second requestor continues that under Section 33(h) and as stated by FCIC in prior interpretations related to the scope of an arbitrator’s authority, an arbitrator is limited to the awarding of contract damages. To this end, the phrase “no award...can exceed the amount of insured revenue established or which should have been established under the policy,” refers only to contract damages under a WFRP Pilot Policy that was in effect between the AIP and the policyholder. The arbitrator may not award so-called equitable damages, which would include, for example, waiving the requirements of the WFRP Pilot Policy and awarding a policyholder coverage by estoppel.

Finally, the requestor states that damages awarded by an arbitrator in the absence of a valid policy between an AIP and a policyholder are not contract damages. Such damages are, instead, compensatory damages awarded to represent the indemnity due but for the improper cancellation of the WFRP Policy. Under the plain meaning of Section 33(h), the second requestor interprets it to mean that neither an arbitrator nor a court has the authority to award compensatory damages under the WFRP Pilot Policy.

Federal Crop Insurance Corporation Interpretation

FCIC disagrees with both requestors’ interpretations of Section 4(b) of the 2020 WFRP Pilot Policy. FCIC interprets Section 4(b) to mean that the WFRP policy is a continuous policy and remains in effect each succeeding policy year until cancelled by the AIP or the insured. However, the insured

must meet the requirements within the WFRP policy, such as Section 15, for it to remain in effect for each succeeding year.

FCIC also disagrees with both requestors' interpretation that Section 33(h) provides any authority to an arbitrator. FCIC interprets Section 33(h) only to limit the amount of an award or settlement under the 2020 WFRP Pilot Policy and does not provide any authority to an arbitrator or mediator.

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: March 8, 2024