

Final Agency Determination: FAD-318R

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Subject: Two requests dated November 27, 2023, and December 13, 2023, submitted to the Risk Management Agency (RMA) for a final agency determination (FAD) for the 2019 crop year of section 20(a) of the Common Crop Insurance Policy (CCIP), Basic Provisions, published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, Subpart X.

Reference:

The relevant policy provisions are:

The 2019 CCIP Basic Provisions state, in relevant part

1. Definitions

Good farming practices - The production methods utilized to produce the insured crop and allow it to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, including any adjustments for late planted acreage, which are those generally recognized by agricultural experts or organic agricultural experts, depending on the practice, for the area. We may, or you may request us to, contact FCIC to determine if production methods will be considered “good farming practices.”

20. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review

(a) If you and we fail to agree on any determination made by us except those specified in section 20(d) or (e), the disagreement may be resolved through mediation in accordance with section 20(g). If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), except as provided in sections 20(c) and (f), and unless rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

(1) All disputes involving determinations made by us, except those specified in section 20(d) or (e), are subject to mediation or arbitration. However, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.

(i) Any interpretation by FCIC will be binding in any mediation or arbitration.

(ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.

(iii) An interpretation by FCIC of a policy provision is considered a determination that is a matter of general applicability.

(iv) An interpretation by FCIC of a procedure may be appealed to the National Appeals Division in accordance with 7 CFR part 11.

(d) With respect to good farming practices:

(1) We will make decisions regarding what constitutes a good farming practice and determinations of assigned production for uninsured causes for your failure to use good farming practices.

(i) If you disagree with our decision of what constitutes a good farming practice, you must request a determination from FCIC of what constitutes a good farming practice before filing any suit against FCIC.

(ii) If you disagree with our determination of the amount of assigned production, you must use the arbitration or mediation process contained in this section.

(iii) You may not sue us for our decisions regarding whether good farming practices were used by you.

Interpretations Submitted

The requestors ask if the question of whether a policyholder's production methods constitute "good farming practices" is outside the scope of an arbitrator's authority as defined in the crop insurance policy.

First Requestor's Interpretation:

The first requestor interprets section 20(a) of the CCIP Basic Provisions to exclude questions as to "good farming practices" from the scope of the crop insurance policy's arbitration clause. Put simply, the first requestor asks for a final agency determination that an arbitrator does not have the authority to make a determination as to what farming practices constitute "good farming practices." There is a process for the resolution of "good farming practices" questions and this process does not include arbitration. Specifically, section 20(d)(1)(i) of the CCIP Basic Provisions provides that *"if you disagree with our decision of what constitutes a good farming practice, you must request a determination from FCIC of what constitutes a good farming practice."* The first requestor suggests that FCIC/RMA must make all final decisions as to whether production methods constitute "good farming practices." An individual arbitrator has no authority, according to the policy language, to venture into such decision-making.

The first requestor states the policy and guiding law indicate that the question of whether the production methods used by policyholder were "good farming practices" is a question for the FCIC/RMA, not a private arbitrator. It cannot be overlooked that Congress provided farmers with procedural due process rights regarding good farming practice (GFP) determinations in its Federal Crop Insurance Act (FCIA) at 7 U.S.C. § 1508(a)(3)(B). "A producer shall have the right to a review of a determination regarding good farming practices made . . . in accordance with an informal administrative process to be established by the Corporation." *Id.* Importantly, Congress provided for the "right to judicial review" and that this right applied "without exhausting" administrative review. The first requestor respectfully suggests that an arbitrator lacks authority to decide questions of good farming practices.

The first requestor states GFP determinations are specifically excluded from the scope of the arbitration agreement under section 20(a)(1) of the CCIP Basic Provisions. Section 20 of the CCIP Basic Provisions specifically excludes determinations regarding the propriety of farming practices from an arbitrator's authority, regardless of what conclusion is reached.

Second Requestor's Interpretation:

The second requestor states if there is a dispute regarding whether a production method constitutes a GFP, such a dispute cannot be resolved through mediation or arbitration. Rather, the question must be submitted to the FCIC for a GFP determination. If the policyholder disagrees with the GFP determination rendered by FCIC, further resolution of the dispute will be through the reconsideration process established under 7 C.F.R. § 400.98 and/or judicial review. However, the GFP process only applies when the matter in dispute is whether a production method constitutes a GFP. When the Approved Insurance Provider (AIP) determines that a particular production method constitutes a GFP and that the policyholder failed to utilize that method in the production of the crop, there is nothing for FCIC to determine. Such a dispute involves a purely factual issue that is properly resolved through mediation or arbitration.

Final Agency Determination

FCIC agrees in part with both requestors' interpretations. FCIC agrees that GFP determinations are specifically excluded from the scope of the arbitration agreement under section 20(a)(1) of the CCIP Basic Provisions. If the policyholder disagrees with an AIP's GFP decision, they must request a GFP determination from FCIC, not an arbitrator, as a means of resolving the dispute.

FCIC disagrees with the second requestor's statement that "when the AIP determines that a particular production method constitutes a GFP and that the policyholder failed to utilize that method in the production of the crop, there is nothing for FCIC to determine." There could be mutually exclusive production practices (for example, different methods of weed control or different methods of irrigation), that are each independently considered a GFP. In such cases, the failure to follow one method, does not definitively mean the policyholder failed to follow another method that could also be considered a GFP.

Additionally, GFP determinations are not to be used for situations that fall outside of the GFP authority and definition in the Basic Provisions. FCIC does not accept requests related to establishing the amount of production or value assessed due to failure to follow a GFP, expanding coverage, establishing insurability, verifying if a cause of loss was present, and other decisions related to a claim determination. For example, an AIP may find that a policyholder's failure to follow production methods listed in their organic plan resulted in an insurability determination for their policy, outside of a GFP determination. These matters fall within the scope of the arbitration agreement under section 20(a)(1) of the CCIP Basic Provisions.

In accordance with 7 C.F.R. § 400.766(b)(2), this FAD is binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. Any appeal of this decision must be in accordance with 7 C.F.R. § 400.766(b)(5).

Date of Issue: June 9, 2024

This FAD was originally issued February 20, 2024, and was revised to add the second requestor's interpretation and FCIC's interpretation.