

Final Agency Determination: FAD-319R

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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 definition of “good farming practices” from section 1 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

(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.

The 2017 Good Farming Practice Determination Standards Handbook (FCIC-14060), which was applicable for the 2019 crop year, states, in relevant part:

22 General Bases for [Good Farming Practices or “GFP”] Decisions

The purpose of the GFP provisions is to ensure that a Policyholder’s production methods

do not adversely affect the quantity and/or quality of the production. Consider any practice that could affect the amount and quality of the crop, from ground preparation

through harvest. In the case of perennials, consider practices from post-harvest of the

previous crop year through harvest of the current crop year that could affect the amount

and quality of the crop. Policyholders are responsible for establishing that the farming

practice in question was a good farming practice.

All GFP evaluations, including decisions made by the AIP, determinations made by the

RO, or reconsideration determinations approved by the Deputy Administrator for Insurance Services, must consider the items in 22A.

A. Bases for GFP Decisions

Base GFP determinations on the following:

(1) Agronomic situation of the Policyholder, including:

- (a) material facts about the production methods that were used or will be used to produce the crop;
- (b) weather and climate factors;
- (c) pest or disease risks; and
- (d) other factors affecting the crop.

(2) Expert opinion

You must use the opinion from at least one agricultural expert, who meets the standards in Paragraph 21- Agricultural Experts, regarding the production method(s) used by the Policyholder to support the decision. The opinion must be in one of the following forms:

- (a) Published material; or
- (b) A written opinion or recommendation which complies with the following:
 - (i) An agricultural expert who provides a written opinion or recommendation on farming practices should submit it on letterhead or include evidence of their certification, as appropriate.
 - (ii) A statement disclosing any familial or other business relationship the expert has with the Policyholder, AIP, agent, or loss adjuster is required.
 - (iii) If the agricultural expert is not qualified to render an objective, unbiased opinion of the production methods, crop, or areas at issue, the opinion cannot be considered in the GFP decision or determination.

(3) Additional expert opinions, if required;

The recommendation of at least one additional agricultural expert is required if:

- (a) the expert providing an opinion has a business relationship with the Policyholder, such as providing advice and/or sale of inputs to the Policyholder's operation, or is employed by a firm that provided such advice or inputs;
- (b) the expert providing an opinion has a familial relationship with the Policyholder, loss adjuster, or agent, or will benefit financially from the outcome of the opinion (other than disclosed amounts paid to provide a written opinion); or
- (c) the written opinion is not supported by published documentation.

(4) Review of the production method;

(a) Determine whether the production method(s) used by the Policyholder conforms with the requirements of the policy held. For example, does the production method:

- (i) allow the insured crop to make normal progress toward maturity;
- (ii) produce at least the yield used to determine the production guarantee or amount of insurance, including any adjustments for late planted acreage;
- (iii) not reduce or adversely affect the yield; or
- (iv) stand as a generally recognized good farming practice by agricultural experts or organic agricultural experts, depending on the practice, for the area.

31 AIP Duties

A. GFP Decision Process

The AIP makes an initial decision of whether the production methods used by a Policyholder constitute GFP according to the terms of the policy and these procedures, and confirms the Policyholder carried out generally recognized GFPs. These procedures apply to all GFP decisions, regardless of the origination of the review, i.e., RCO review requests, loss adjustment process, growing season inspection, etc., when the AIP or RMA has a reason to question whether GFP were followed by the Policyholder.

Interpretations Submitted

The requestors question whether an Approved Insurance Provider (AIP) can determine that production methods listed in a policyholder's "organic plan" are necessary "good farming practices" without consulting or referencing organic agricultural experts in the area.

First Requestor's Interpretation:

The first requestor believes the answer to this question is no, an AIP cannot make a good farming practice (GFP) determination based solely upon the conclusion that a certain production method was included in an organic plan. "Good farming practices" is defined in the CCIP Basic Provisions and applicable federal regulations. GFPs are only those production methods which are recognized by agricultural

experts for the area. An AIP cannot ignore the plain definition of “good farming practices” and cannot make a determination that a production method was a necessary GFP simply because the production method was listed in an organic plan. To make a determination as to “good farming practices” necessary for purposes of insurability, an AIP must base such a determination on expert opinion. The listing of a production method in an “organic plan” does not automatically make this production method a necessary “good farming practice.” This is extremely important for policyholders as losses resulting from a failure to follow GFPs are uninsurable. Decisions as to whether production methods are “good farming practices” must be made in accordance with the policy to ensure consistent application throughout the country.

The first requestor believes their interpretation is consistent with other guidance from RMA for the 2018 crop year. Pursuant to the 2017 Good Farming Practices Handbook, it is the duty of the AIP to make an “initial” GFP decision. This handbook makes clear the “bases for GFP decisions” in paragraph 22 and specifically states that an AIP “must use the opinion from at least one agricultural expert.” It is expressly provided in both the language of the crop insurance policy and in the corresponding handbook that an AIP must base a “good farming practices” decision on expert opinion. This is a departure from prior crop insurance policy language. The first requestor asks FCIC to make clear that AIPs cannot simply conclude that a production method is a “good farming practice” just because it was listed in an organic plan.

Specifically, this request relates to the 2019 CCIP Basic Provisions (19-BR). This is an important point as the language of the CCIP Basic Provisions was modified in November of 2017 to amend the definition of “good farming practices.” Prior to November of 2017, “Good Farming Practices” were defined as follows:

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. . . which are: . . . (2) for organic farming practices, those generally recognized by organic agricultural experts for the area or contained in the organic plan.

7 C.F.R. § 457.8 § 1 “Definitions” (2016)[emphasis added].

According to the first requestor, the CCIP Basic Provisions were explicitly changed to avoid the conclusion that GFPs were those “contained in the organic plan.” Prior to the 2018 CCIP Basic Provisions, there was a specific policy provision that held “good farming practices” to be those production methods “contained in the organic plan.” However, the policy was changed in November of 2017 and in the “Summary of Changes” for the 2018 CCIP Basic Provisions, RMA noted the change to the definition of “good farming practices.” In the CCIP Basic Provisions there exists no provision stating that organic “good farming practices” can be summarily considered to be those production methods listed in the organic plan. This change makes sense as the “organic plan” is simply a plan submitted for purposes of the National Organic Program and not some agreement with RMA or any private crop insurance provider. The organic plan is just that, a plan for organic production. The plan can change over the course of a crop year. A policyholder’s failure to use all of the production methods listed in the organic plan does not necessarily result in any adverse action by the National Organic Program nor can it result in a summary determination that there was a failure to employ good farming practices by a policyholder. Per 7 C.F.R. § 205.2, the organic plan is “a plan of management of an organic production or handling operation.” Notably, the organic regulations include no delineated process or specific requirement for the “approval” or “denial” of an organic system plan. The first requestor asks that FCIC make clear that the organic plan is not determinative of the question of whether production methods constitute “good farming practices.”

Second Requestor’s Interpretation:

The second requestor believes an AIP can determine that production methods listed in a policyholder’s “organic plan” are “good farming practices” without consulting or referencing organic agricultural experts in the area. A GFP decision by the AIP is only required when there is reason to question whether a particular production method constitutes a GFP. This is made clear by paragraph 31A of the 2017 Good Farming Practice Determination Standards Handbook.

The second requestor states there is no reason to question whether a particular production method constitutes a GFP because the AIP is not required to consult with an agricultural expert or organic agricultural expert (as the case may be).

The second requestor states requiring the AIP to obtain verification from an expert that each production method carried out by the policyholder constitutes a GFP—even in instances where the AIP agrees that a production method constitutes a

GFP—would mandate consultation with an agricultural expert or organic agricultural expert in the adjustment of virtually every loss. Consider a typical harvest claim where the grower suffers a shortfall in production or revenue due to adverse weather conditions. The opposing view would require the AIP to retain an agricultural expert to verify that each production method employed by the producer constitutes a GFP even when the loss inspection reveals no reason to question the grower's production methods. The second requestor states neither the policy nor loss adjustment procedures dictate such an absurd result. The need for agricultural experts or organic agricultural experts arises only when there is a need for a GFP decision, and that need arises only when the AIP has reason to question whether a particular production method constitutes a GFP.

The second requester would agree that, based on the current (post-2017) GFP definition in the CCIP Basic Provisions, a production method set forth in the organic plan no longer automatically qualifies as a GFP. Effective for 2018 and succeeding crop years, the definition of "good farming practices" was amended to eliminate the automatic qualification of production methods "contained in the organic plan." In the implementing regulation, the FCIC noted that the change was made for clarification purposes because an organic plan "does not necessarily provide a comprehensive list of GFPs." See 82 FR 55723, 55724 (Nov. 24, 2017). Nevertheless, if the second requestor agrees (and has no reason to dispute) that a production method set forth in the organic plan qualifies as a GFP, there is no requirement that the AIP obtain the opinion of an organic agricultural expert to support that finding. Again, the need for a GFP decision by the AIP only arises when the AIP has reason to question whether a particular production method constitutes a GFP. Such a need does not arise when a production method contained in the organic plan clearly meets the GFP standard. The second requestor states a GFP determination process only applies when the matter in dispute is whether a production method constitutes a GFP. When the AIP determines that a particular production method does constitute a GFP but that the policyholder simply failed to utilize that method in the production of the crop, no purpose would be served in consulting an organic agricultural expert.

Final Agency Determination

FCIC agrees in part with the second requestor's interpretation. AIPs are not required to consult agricultural experts or organic agricultural experts on every claim submitted by a policyholder. However, an AIP's GFP decision must be based on the written opinion and/or published materials by at least one agricultural expert or

organic agricultural expert for the area.

FCIC disagrees with the second requestor's statement that "when the AIP determines that a particular production method does constitute a GFP but that the policyholder simply failed to utilize that method in the production of the crop, no purpose would be served in consulting an organic agricultural expert." As established in FAD-318, 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. Reliance solely upon one factor is insufficient in evaluating a policyholder's production methods for a GFP decision.

For example, a policyholder's organic plan may be a first level source of information for the specific operation and crop/acreage, when making a GFP decision, but it is not considered an exhaustive list of all production practices that could be GFPs. An AIP must consider all information and documentation set forth in paragraphs 22A and 31A of the 2017 Good Farming Practice Determination Standards Handbook.

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.