

**Risk Management Agency Interpretation of Federal Crop Insurance Crop Provisions:**

**Subject:** Request dated November 13, 2020, to the Risk Management Agency for an interpretation of how sections 17(a)(3), 18(a)(1), and 44(b)(1) of the 2018 Whole-Farm Revenue Protection (WFRP) Pilot Policy applies to the process of recalculating a commodity's expected value when it is determined the insured does not meet the requirements of a certified organic producer.

The relevant policy provisions provided by the requesters are sections 17(a)(3), 18(a)(1), and 44(b)(1):

**17. *Your Farm Operation Report***

(a) *On or before the sales closing date for each policy year, you must provide a completed Intended Farm Operation Report to include:*

...

(3) *If you have multiple types or practices of an intended commodity that have different values, you should enter the commodity on multiple lines with the appropriate expected values.*

**18. *Expected Value***

(a) *Expected values to use on the Farm Operation Report will be:*

(1) *The price of the commodity that you can expect to receive when the commodity is harvested and based on the following sources:*

(i) *If the commodity is under a marketing contract, the price will be the price contained in the marketing contract (see section 48 for detailed requirements regarding marketing contracts);*

(ii) *If the commodity was sold during the current insurance period prior to reporting your Intended Farm Operation Report, the price will be the price you received; or*

(iii) *The price that we agree best reflects the price you can expect to receive on your farm and for the market where your commodity will be sold, obtained from the most applicable following source for your farm:*

(A) *Prices reported by the Agricultural Marketing Service including Market News Reports, National Agricultural Statistics Service, Economic Research Service, or other government agency;*

(B) *The FCIC published price for the area where you normally sell the commodity;*

(C) *The average price you received for the three most recent years;*

(D) *Current local, average, cash bid price for the commodity in the area where you normally sell the commodity;*

(E) *The average price offered by at least two commercial buyers, one selected by you, and one selected by us; or*

(F) *Prices from a reliable third party source such as a commodity broker, crush district, packer/processor or marketing cooperative, and that we approve.*

...

(c) *The same commodity may have different expected values based on types or varieties, markets, planting seasons, or other reasons.*

(d) *Expected values must:*

(1) *Be reasonable, realistic and consistent with available local market information*

...

(4) *Exclude post-production operation expenses..."*

#### **44 Organic Commodities**

- (a) *Organic prices can be used as expected values for certified organic acreage, and for certified organic animals or animal products.*
- (1) *You may not use organic prices for commodities that are not certified organic.*
- ...
- (b) *By the Revised Farm Operation Reporting date, you must have, for certified organic acreage or organic animals or animal products, a valid certification in effect as shown on the National Organic Program website or you must have a written certification from a certifying agent (A certificate issued to an operator/tenant may be used to qualify the same acreage for a landlord or other similar arrangement.) The following items are required;*
- (1) *You must have a current certification if a claim is made. If your farm was certified organic previously but you have not received an updated organic certification, the previous certification may not be used at claim time. If you do not have the appropriate certificate at claim time, your insured revenue will be recalculated without the organic expected values;*

#### **Interpretation Submitted by Requestor(s)**

The first requester's interpretation is when a commodity is not under a marketing contract or otherwise sold during the current insurance period prior to the insured reporting the Intended Farm Operation Report (IFOR), section 18(a)(1) of the 2018 WFRP Pilot Policy allows the AIP to use a price on the IFOR that the AIP determines and agrees best reflects the price the insured can expect to receive for the market where the commodity will be sold. The first requester interprets section 18(a) to be applicable when expected values are required to be recalculated by the AIP pursuant to section 44(b)(1) of the 2018 WFRP Pilot Policy. In other words, when an AIP is required to recalculate expected revenue from an organic commodity to a conventional commodity as a result of the discovery during the claims process that the commodity was not certified as organic, the first requester interprets section 18(a) to allow the AIP to correct the price on the FOR to a price that the AIP determines and agrees best reflects the price the insured can expect to receive for the market where the commodity will be sold.

The first requester continues that, sources from which the AIP may determine the recalculated price would include prices reported by the insured on the FOR for the same commodity and practice and prices reported by the Agriculture Marketing Service. When determining the price using an Agriculture Marketing Service, the price used must exclude and/or deduct all post-production expenses, including but not limited to, in the case of apples, values for culls, pack out percentage and packing costs.

The second requester interprets section 44(b)(1) to mean that, when recalculating the expected value of an organic commodity because the insured did not offer an organic certificate at claim time, the resulting conventional commodity can be assigned a different price than similar conventional commodities on the FOR if the insured has a reasonable basis for its valuation—i.e., “different expected values based on types or varieties, markets, planting seasons, or other reasons.” This interpretation is made with reference to section 18(c), which permits the same commodity to “have different expected values based on types or varieties, markets, planting seasons, or other reasons.” Further, the second requester interprets section 44(b)(1) to mean that the policyholder controls recalculation as if it is made in the same manner as the initial FOR per section 17(a)(3); this calculation is acceptable so long as the expected value is “realistic and consistent with available local market information” and otherwise consistent with the policy.

**Federal Crop Insurance Corporation (FCIC) Determination**

FCIC agrees with the first requester's interpretation that section 18(a) of the 2018 WFRP Pilot Policy is applicable when a commodity's expected value must be recalculated as a result of section 44(b)(1). Furthermore, FCIC agrees that section 18(a)(1)(iii) must be used for the determination, if sections 18(a)(1)(i) and (ii) are not applicable. The expected value determination must also be based on the information available as of the date the Intended Farm Operation Report (IFOR) was submitted and, as stated in section 18(d)(4), exclude any post-production operation expenses.

FCIC disagrees with the second requester that section 44(b)(1) of the 2018 WFRP Pilot Policy allows the expected value of the initially reported organic commodity to be recalculated using a different conventional commodity value than that of a similar commodity on the IFOR. FCIC agrees that section 18(c) of the 2018 WFRP Pilot Policy does allow for a different expected value based on those reasons listed and in accordance with section 18(a), (d), and (f). FCIC disagrees with the second requester that section 44(b)(1) gives the policyholder control over recalculating the expected value. Although section 17(a)(3) states the same commodity should be listed on separate lines of the IFOR along with the appropriate expected value, if different, section 18(a)(1)(iii) states the AIP and policyholder must agree on the expected value using the sources listed within.

In accordance with section 33(a)(1) of the WFRP Pilot Policy, this FCIC interpretation is generally applicable and binding in any mediation or arbitration. In accordance with section 33(a)(1), any appeal of this interpretation must be in accordance with 7 C.F.R. part 11.