

Final Agency Determination: FAD-239

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Subject: Request dated June 16, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 crop year regarding the interpretation of section 12(a) of the Common Crop Insurance Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. part 400, subpart X.

Background:

Referenced policy and procedure in request:

Section 12(a) of the Basic Provisions states:

12. Causes of Loss.

Insurance is provided only to protect against unavoidable, naturally occurring events. A list of the covered naturally occurring events is contained in the applicable Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

(a) Any act by any person that affects the yield, quality or price of the insured crop (e.g., chemical drift, fire, terrorism, etc.);

Section 11(a) of the Processing Tomato Crop Provisions states:

11. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions:

(a) Insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions, including:

(i) Excessive moisture that prevents the harvesting equipment from entering the field or that prevents the timely operation of harvesting equipment; and

(ii) Abnormally hot or cold temperatures that cause an unexpected number of acres over a large producing area to be ready for harvest at the same time, affecting the timely harvest of a large number of such acres or the processing of such production being beyond the capacity of the processor, either of which causes the acreage to be bypassed;

(2) Fire;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply, if due to a cause of loss contained in sections 11(a)(1) through (7) that occurs during the insurance period.

Paragraph 281Q (3) of the 2014 Loss Adjustment Manual (LAM) Standards Handbook states:

281. Controversial Claim: Uninsured Causes of Loss

Q. Other Causes of Loss Not Insured Against:

(3) Quarantine (e.g., Karnal Bunt in wheat or Plum Pox Virus in Peaches), unless the CP or SP insure loss of production (or trees) due to required destruction of the crop under a State or Federal quarantine.

Interpretation Submitted

The crop insurance contract for processing tomatoes is governed first by the Processing Tomato Crop Provisions and then by the Basic Provisions. Section 12 of the Basic Provisions states that, "Insurance is provided only to protect against unavoidable, naturally occurring events." Section 11(a) of the Processing Tomato Crop Provisions defines these events as adverse weather conditions, fire, insects, plant disease, wildlife, earthquake, volcanic eruption, or failure of the irrigation supply. Furthermore, section 12(a) of the Basic Provisions specifically exclude losses due to "Any act by any person that affects the yield, quality or price of the insured crop (e.g., chemical drift, fire, terrorism, etc.)." Paragraph 281Q(3) of the 2014 LAM states that quarantine is not a covered cause of loss unless the Crop Provisions or Special Provisions insure loss of production (or trees) due to required destruction of the crop under a State or Federal quarantine.

If an insect, disease, or weed infestation is found in a processing tomato field which was issued an order of quarantine and is subsequently mandated to destroy the insured crop, although the insect, disease, or weed infestation is naturally occurring, it did not directly cause damage to the insured crop. Rather the damage was caused by the affirmative compliance with the mandated destruction and not by the insect, disease, or weed infestation in and of itself. Therefore, there is no coverage for this cause of loss under the crop insurance policy.

Final Agency Determination

FCIC agrees in part with the requestor. Quarantine is not a covered cause of loss. Therefore, mandatory destruction of the insured crop prior to harvest as a result of a quarantine alone does not qualify as an insurable cause of loss under the policy. However, simply because a crop must be destroyed, due to quarantine, does not mean that the producer may not be owed an indemnity. An insect, disease, or weed infestation that was not due to insufficient or improper application of control measures could still cause damage to the crop and this is a covered cause of loss.

Therefore, if a policyholder had an insurable cause of loss due to insects, disease, or weed infestation that damaged the crop, the policyholder could receive an indemnity on only the amount of damage resulting from the insured causes regardless of whether they are required to destroy the insured crop due to quarantine.

In accordance with 7 C.F.R. § 400.765(c), this Final Agency Determination 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. § 400.768(g).

Date of Issue: July 31, 2015