



Final Agency Determination: FAD-311

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Subject: A request dated May 24, 2022, was submitted to the Risk Management Agency (RMA) for a final agency determination for the 2019 crop year of section 11(b) of the Tobacco Crop Provisions, published at 7 C.F.R. §457.136. This request is pursuant to 7 C.F.R. § 400, Subpart X.

Reference:

The relevant policy provisions and handbook procedures are:

The Tobacco Crop Provisions (17-0071) state, in the relevant part:

11. Duties In The Event of Damage or Loss.

(b) If you have filed a notice of damage, you must leave all tobacco stalks and stubble in the unit intact for our inspection. The stalks and stubble must not be destroyed until we give you written consent to do so or until 30 days after the end of the insurance period, whichever is earlier.

The 2019 Tobacco Loss Adjustment Standards Handbook states, in the relevant part.

¶1. Insurability

¶*****

(9) In accordance with section 11 of the Tobacco CP, the insured must leave all tobacco stalks and stubble in the unit intact for the AIP's inspection. The stalks and stubble must not be destroyed until the AIP (not the agent) gives written consent to do so, or until 30 days after the end of the insurance period, whichever is earlier. Refer to (c) below regarding when the AIP's can provide consent to destroy the stalks and stubble prior

to an AIP inspection.

Interpretation Submitted

First requestor's interpretation:

The first requestor interprets section 11(b) of the Tobacco Crop Provisions to mean the stubble is not to be destroyed until the approved insurance provider (AIP) gives written consent to do so or until 30 days after the end of the insurance period, whichever is earlier. The first requester contends whether or not the post-harvest field work (e.g., discing) of a field constitutes "destruction" of the stalks and stubble for purposes of section 11(b) of the Tobacco Crop Provisions is a question of fact as each situation can be unique. The type of implements and equipment used, the technique utilized, and the temperature of the soil, and extent and depth of the work certainly has an impact. The key here, they note, is the term "destroyed."

Recognizable and discernable parts of the respective stalks and stubble can still remain in the field depending on the depth and extent of the field work that has taken place. The intent of section 11(b) is to allow the company loss adjuster the ability to look at the tobacco crop and determine if the crop was harvested or not. Simply stating that the crop has had field work performed and hence is "destroyed" would not be accurate or complete. The first requestor admits their example of discing is certainly not a preferred action prior to inspection, but to automatically designate the crop as "destroyed" for this purpose is a hyper-technical and incorrect interpretation. Rather, this is a factual determination that has to be made on a field-by-field basis, which is why the adjuster is required to perform an inspection at each individual location.

The first requestor also notes the relevant dictionary definitions of the words "intact" and "destroyed," most relevantly including (1) Intact is defined by *Vocabulary.com* as, "constituting the undiminished entirety; lacking nothing essential especially not damaged"; (2) *Macmillan* as, "not harmed, damaged, or lacking any parts"; (3) *The Free Dictionary* as, "Remaining sound, entire, or uninjured; not impaired in any way. Having all physical parts"; (4) *Britannica Dictionary* as, "not broken or damaged having every part."

Second requestor's interpretation:

The second requestor interprets section 11(b) of the Tobacco Crop Provisions to mean there should be no field work that damages or diminishes the stalks and

stubble until the AIP gives written consent or until 30 days after the end of the insurance period, whichever is earlier. The policy specifies that stalks and stubble must be left “intact” and “not be destroyed until the AIP gives written consent to do so or until 30 days after the end of the insurance period, whichever is earlier.” The second requestor also notes relevant dictionary definitions of the words “intact” and “destroyed,” including *Merriam-Webster* defining “intact” as, “untouched especially by anything that harms or diminishes.” Similarly, “intact” is defined by *Dictionary.com* as, “not altered, broken, or impaired; remaining uninjured, sound or whole; untouched; unblemished.”

Final Agency Determination

FCIC agrees with the second requestor’s interpretation of section 11(b) of the Tobacco Crop Provisions and disagrees with the first requestor’s interpretation. Both requestors make note of the definition of “intact” which, across each cited source, refers to the object wholistically remaining as it was. Thus, any post-harvest field work that physically alters the tobacco stalks or stubble prior to the AIP giving written consent cannot be considered leaving intact and will be considered destroyed without consent in accordance with 11(b) of the Tobacco Crop 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: July 07, 2022