

Final Agency Determination: FAD-302

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Subject: Request dated March 18, 2021, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2018 crop year regarding the interpretation of section 14(d)(1) of the Common Crop Insurance Policy Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, subpart X.

Background:

Referenced policy related to this request:

The 2018 Basic Provisions state, in relevant part:

1. Definitions.

Abandon - *Failure to continue to care for the crop, providing care so insignificant as to provide no benefit to the crop, or failure to harvest in a timely manner, unless an insured cause of loss prevents you from properly caring for or harvesting the crop or causes damage to it to the extent that most producers of the crop on acreage with similar characteristics in the area would not normally further care for or harvest it.*

The Basic Provisions state, in relevant part:

14. Duties in The Event of Damage, Loss, Abandonment, Destruction, or Alternative Use of Crop or Acreage.

Your duties:

(a) In case of damage or loss of production or revenue to any insured crop, you must protect the crop from further damage by providing sufficient care.

(d) Consent:

(1) You must obtain consent from us before, and notify us after you:

(i) Destroy any of the insured crop that is not harvested[.]

Interpretation Submitted

This request seeks interpretation of the policy language regarding the destruction or abandonment of the crop under Paragraph 14(d)(1) of the Basic Provisions (18-BR) which requires an insured to obtain written consent prior to taking action to destroy any portion of the insured crop or otherwise abandoning any portion of the insured crop. The requestor notes the term “Destroy” as used in Paragraph 14(d)(1) is not defined within the Basic Provisions; thus, it seeks this interpretation.

The requestor believes the intent of the policy language is to require the insured to maintain the integrity of the crop in its current form so the approved insurance provider has the opportunity to view the crop in the condition it was in when the damage was first identified so the approved insurance provider (AIP) can make its best effort to verify an insured cause of loss occurred in order to remain compliant with the policy terms and conditions as well and procedures dictated by the Risk Management Agency and/or the Federal Crop Insurance Corporation.

The requestor further believes an act to “destroy” the crop need not be a physical act such as the crushing or burying of the produce, but rather, an act to “destroy” a crop would include any action that would allow the condition of the crop to deteriorate from the condition it was in at the time the crop damage was discovered. Thus, an act to “destroy” the crop would include placing the crop on the ground with no protection from weather or animals after the grain or fruit was removed from the plants on which it was grown.

The requestor states in the event the insured notices or should have noticed damage to the crop before or during the harvest, the insured must continue to care for the crop in such a way that the crop’s condition does not deteriorate before the AIP grants written consent to destroy the crop. Destruction of the crop includes any act or failure to act to maintain the crop in the condition it was in at the time the claimed damage was noticed and is not limited to a physical act of destruction, including but not limited to crushing, burning, or burying of the crop, but rather includes the failure to maintain the crop in the same condition it was in when the claimed damage was noted. Thus, any act to destroy a crop may include the failure to protect the crop from further deterioration due to animal or weather damage, or in the instance of perishable produce by refrigeration. Placing the crop produced on

the ground without protection from the elements and wildlife, unless such outdoor storage is a normal farming practice for the crop in question, is considered the same as destroying the crop within the meaning of the section 14(d)(1) of the Basic Provisions and written consent from the AIP to do so must be obtained by the insured before doing so.

Final Agency Determination

The FCIC agrees that section 14(d)(1) of the 2018 Basic Provisions requires written consent from the AIP to destroy a crop.

The FCIC disagrees with the requestor's interpretation of the meaning of destroy, destruction, or abandonment, because it cannot be applied to all crops covered by the Basic Provisions. Individual crop provisions should be relied upon for crop-specific inferences. For example, while section 14(d)(1) of the Basic Provisions specifies the insured's responsibility to obtain consent prior to destroying the crop, the Cranberry Crop Provisions provide a separate and distinct definition for "abandon." In addition, when determining if the crop has been destroyed by the insured, the AIP must consider the actions or inactions of the insured taken after the suspected loss was noticed; factors outside the insured's control such as weather, and Good Farming Practices for the crop.

In accordance with 7 C.F.R. § 400.766(b)(2), 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. § 400.766(b)(5).

Date of Issue: April 28, 2021