

[Final Agency Determination: FAD-269](#)

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Subject: This issuance replaces FAD-269 published on RMA's website on September 19, 2016. The revised issuance is needed to clarify that the insured must obtain written consent from the approved insurance provider before any plant material that is damaged is destroyed, sold or otherwise disposed of. The previous FAD did not clearly convey that the written consent must only be obtained on damaged plant material. The original request was dated August 19, 2016, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 crop year regarding the interpretation of section 11(a) of the Nursery Crop Provisions, published at 7 C.F.R. § 457.162. This request is pursuant to 7 C.F.R. part 400, subpart X.

Background:

Referenced policy and procedure related to the request:

Section 11(a) of the Nursery Crop Provisions states, in relevant part, the following:

11. Duties in the Event of Damage or Loss.

(a) In addition to your duties contained in Section 14 of the Basic Provisions,

(1) You must obtain our written consent prior to:

(i) Destroying, selling or otherwise disposing of any plant inventory that is damaged;

(b) Failure to obtain our written consent as required by section 11(a)(1) will result in the denial of your claim.

Interpretation Submitted

The requestor interprets section 11(a)(1) to mean that an insured's act of cutting down damaged field grown plant material and putting it in another location before notifying the insurance provider and obtaining its written consent constitutes "destroying" or "otherwise disposing of" plant inventory requiring the insurance provider to deny the claim.

The requestor submits that its interpretation is consistent with the prior interpretation by the Federal Crop Insurance Corporation (FCIC) in Final Agency Determination FAD-169 where the FCIC determined that if an insured removes nursery material from the nursery after damage has occurred but before obtaining the insurance provider's written consent to do so, any claim for damage to the plant material removed must be denied.

It is further the requestor's interpretation that the extent of damage to the plant material is immaterial to the insured's duty to notify the insurance provider and obtain its written consent prior to cutting down diseased plant material as mandated by section 11(a)(1)(i) and the Basic Provisions, and that notice and written consent of the insurance provider is always required before an insured is permitted to cut down diseased plant material and remove it. It is the requestor's interpretation that under every circumstance (whether the plant material is minimally damaged or completely damaged) the insured must, before cutting down and removing diseased plant material, notify the AIP and obtain its written consent to take said action. In other words, section 11(a)(1)(i) prohibits an insured from destroying or otherwise disposing of any plant inventory, regardless of the extent of injury suffered by the plant material, that is damaged prior to notifying and obtaining the written consent of the AIP. "Damage" is defined in the Basic Provisions as "[i]njury, deterioration, or loss of production of the insured crop due to insured or uninsured causes." Consistent with section 11(a)(1)(i) and the definition of "Damage," if the plant material suffers any injury or deterioration, no matter how great or small, an insured must notify the insurance provider and obtain its written consent before cutting down the damaged plant material.

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FCIC agrees with the requestor. The insured must get written consent from the approved insurance provider before any plant material that is damaged is destroyed,

sold or otherwise disposed of. The purpose of this provision is to allow approved insurance providers the opportunity to evaluate the extent of damage before any action is taken by the insured. Once the crop is destroyed, sold or otherwise disposed of, it is impossible for the approved insurance provider to determine the extent of damage for the purposes of loss adjustment. Therefore, the extent of the damage is immaterial to the insured's duty to notify the approved insurance provider of the damage and await its written consent to destroy, sell or otherwise dispose of the crop. Under section 11(b) of the Nursery Crop Provisions, failure to obtain written consent before any plant material that is damaged is destroyed, sold or otherwise disposed of mandates denial of the claim.

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: January 17, 2017