

## **Final Agency Determination: FAD-296**

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**Subject:** Request dated May 5, 2020, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2017 crop year regarding the interpretation of section 11(d) of the Pear Crop Provisions, published at 7 C.F.R. § 457.111. This request is pursuant to 7 C.F.R. § 400, subpart X.

### **Background:**

The Basic Provisions states, in relevant part:

#### **11. Insurance Period.**

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(b) Coverage ends on each unit or part of a unit at the earliest of:

- (1) Total destruction of the insured crop;
- (2) Harvest of the insured crop;
- (3) Final adjustment of a loss on a unit;
- (4) The calendar date contained in the Crop Provisions or Special Provisions for the end of the insurance period;
- (5) Abandonment of the insured crop; or
- (6) As otherwise specified in the Crop Provisions.

(c) Except as provided in the Crop Provisions or applicable endorsement, in addition to the requirements of section 11(b), coverage ends on any acreage within a unit once any event specified in section 11(b) occurs on that acreage. Coverage only remains in effect on acreage that has not been affected by an event specified in section 11(b).

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

## Your Duties:

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### (b) Notice provisions:

(1) For a planted crop, when there is damage or loss of production, you must give us notice, by unit, within 72 hours of your initial discovery of damage or loss of production (but not later than 15 days after the end of the insurance period, even if you have not harvested the crop).

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The Pear Crop Provisions states, in relevant part:

## **10. Duties in the Event of Damage or Loss.**

(b) In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(1) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

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(3) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest if you previously gave notice in accordance with section 14 of the Basic Provisions, so that we may inspect the damaged production. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and included as production to count.

## **11. Settlement of Claim.**

(d) Any pear production not graded or appraised prior to the earlier of the time pears are placed in storage or the date the pears are delivered to a packer, processor, or other handler will not be considered damaged pear production and will be considered production to count.

## **13. Fresh Pear Quality Adjustment Endorsement.**

(b) If the fresh pear production is damaged by an insured cause of loss, and if eleven percent (11%) or more of the harvested and appraised production does not grade at least U.S. Number 1 in accordance with the United States Standards for Grades of Summer and Fall Pears, or United States Standards for Grades of Winter Pears, as applicable, the amount of production to count will be reduced as follows:

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### **Interpretation Submitted**

Two interpretations were submitted with this request:

#### First requestor's interpretation:

The first requestor interprets section 11(d) of the Pear Crop Provisions to mean that any damaged pears which were not graded or appraised prior to the placement in storage will not be considered damaged and will be considered production to count when adjusting the loss.

The first requestor contends that section 11(d) of the Pear Crop Provisions applies to section 13 of the Pear Crop Provisions (Fresh Pear Quality Adjustment Endorsement). Because the Pear Crop Provisions considers the pears that were not graded as "not damaged," no indemnity would be due under the Fresh Pear Quality Adjustment Endorsement.

This interpretation is consistent with section 14 of the Common Crop Insurance Policy Basic Provisions (Duties in the Event of Damage or Loss), section 10 of the Pear Crop Provisions (Duties in the Event of Damage or Loss), and section 11(b) of the Common Crop Insurance Policy Basic Provisions (Insurance Period).

#### Second requestor's interpretation:

The second requestor contends that the interpretation of the provisions provided by the first requestor applies to a situation where the grower/producer knows or has good reason to know that a pear crop was damaged prior to placement in storage.

The second requestor interprets that the policy provisions are silent and are not applicable when a grower/producer has no knowledge of latent crop defect before placement in storage. The policy does not deny coverage for nor address an unknown latent pear defect.

## **Final Agency Determination**

The Federal Crop Insurance Corporation (FCIC) agrees with the first requestor's interpretation of section 11(d) of the Pear Crop Provisions. In accordance with section 11(b)(2) of the Basic Provisions, insurance ends at the harvest of the insured crop; therefore, the Pear Crop Provisions do not provide coverage for production once the insured crop is placed in storage. If pear production is not graded or appraised prior to the earlier of the time pears are placed in storage or the date the pears are delivered to a packer, processor, or other handler, it is not possible to determine whether the damage occurred during the insurance period or after the end of the insurance period.

Additionally, as provided in section 14(b) of the Basic Provisions, when there is damage or loss of production, the producer must give the insurance company notice, by unit, within 72 hours of initial discovery of damage or loss of production (but not later than 15 days after the end of the insurance period, even if you have not harvested the crop). In accordance with section 11(d) of the Pear Crop Provisions, any production that is not graded or appraised prior to the placement in storage will be considered production to count when adjusting the loss. Section 11(d) of the Pear Crop Provisions is applicable to pears insured under the Fresh Pear Quality Adjustment Endorsement.

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:*** July 21, 2020