



United States
Department of
Agriculture

Risk
Management
Agency

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BULLETIN NO.: MGR-06-005

TO: All Reinsured Companies
All Risk Management Agency Field Offices
All Interested Parties

FROM: Eldon Gould /s/ *Eldon Gould* 4/24/2006
Administrator

SUBJECT: Florida Fruit Tree Policy and Asiatic Citrus Canker Losses;
CY-2006 and 2007

BACKGROUND:

The Florida Fruit Tree (FFT) policies provide coverage for citrus trees that are removed (*i.e.*, destroyed) because they were infected by or exposed to Asiatic Citrus Canker (ACC).

1. Crop Year 2006 –Section 10(a) of the 2006 crop year FFT Crop Provisions identifies ACC as an insured cause of loss as follows:

(4) Infection by or exposure to ACC resulting in a public order that identifies and orders the destruction of trees. (Emphasis added.)

Section 1 of the 2006 crop year FFT Crop Provisions define “public order” as:

Either an “Agreement to Destroy and Covenant Not to Sue” signed by you and by DPI or an “Immediate Final Order” issued by DPI, both of which identify citrus trees infected by or exposed to ACC and order their destruction. (Emphasis added.)

In the past, coverage attached through the issuance of Immediate Final Orders (IFO) by the Department of Plant Industry (DPI), an agency of the Florida Department of Agriculture and Consumer Services which issued public orders to destroy certain trees. Those IFOs were issued in compliance with State regulations. Funding and technical assistance were provided by the Animal and Plant Health Inspection Service (APHIS), an agency of the U. S. Department of Agriculture (USDA). DPI and APHIS jointly administered an ACC eradication program. Under the public orders, producers were required to remove the infected tree and all trees within 1,900 feet of the infected tree because such trees were considered exposed and likely to get ACC.



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However, hurricanes in 2004 and 2005 spread ACC so extensively that USDA determined that eradication was no longer a feasible goal. On January 10, 2006, USDA notified the State of Florida of its decision and that it would suspend further funding of the ACC eradication program.

DPI continued to issue IFOs for crop insurance purposes but revised the language such that they would no longer "order" removal of infected and exposed trees, but would only "recommend" it. This decision was made based on the unavailability of funds to enforce destruction orders not because destruction of the trees was no longer advisable. Based on these recommendations by DPI, producers continue to remove infected and exposed trees.

Some insureds who received IFOs with the new language had their ACC claims denied because their approved insurance providers (AIP) were concerned that they did not have sufficient authority to pay such claims because, although the trees were destroyed, their destruction was not "ordered" by DPI. Others, who are unable to obtain IFOs, were unable to file claims.

Subsequently, DPI recognized that the "recommend" language might not satisfy policy requirements and ceased issuing IFOs for ACC. Instead, it plans to issue Citrus Tree Destruction Verification certificates (Destruction Certificate), which verify that: (a) certain trees were infected by or exposed to ACC; (b) exposed trees were no more than one-hundred feet from the nearest infected tree; and (3) the identified trees have been removed.

There remain questions whether this Destruction Certificate is sufficient to allow the payment of an indemnity for ACC because such certification does not order the destruction of the trees. RMA sees this as a semantic distinction because the FFT policy was intended to cover trees destroyed because they were infected or exposed to ACC. Premium rates have based on the inclusion of ACC coverage. Further, the potential loss of coverage is not due to any action by the producer, the AIP, or the Risk Management Agency (RMA). It is simply due to a management decision by DPI, implemented after start of the 2006 crop year, to change the manner in which it operates. Because coverage will only be provided as intended by the policy and premiums have been set to cover such losses, the risk of loss is not increased by considering a Destruction Certificate as a public order.

2. Crop Year 2007 – The 2007 crop year policy materials were filed during the period that DPI employed the "recommend" language and contain the following statement in paragraph 10(a)(5) of the FFT Crop Provisions:

“In accordance with section 10(b), for citrus trees only, infection by or exposure to ACC resulting in a public order that identifies trees according to the limitations specified in the Special Provisions;”

The Special Provisions of Insurance provide the following:

“In accordance with Section 10(a)(5) of the Crop Provisions, citrus trees will be considered exposed to ACC if the distance from such trees to the nearest infected tree does not exceed the lesser of the distance recommended by DPI or 100 feet.”

Citrus producers continue to lose citrus trees to ACC, but for the 2007 crop years, the intent of the FFT policy – to provide risk management protection against loss of trees due to ACC – may again be frustrated by this discrepancy between policy language and changing field practices.

The FFT policy must be interpreted to provide the coverage the producer paid for. A semantic distinction should not be permitted to defeat such coverage. Considering Destruction Certificates as public orders that identify infected or exposed trees will not change or provide additional coverage. The policy will still be providing coverage for trees that have been identified by a governmental body as having been infected or exposed to ACC and destroyed as a result. Further, the policy has been rated to include such coverage. Therefore, the risk of loss has not been increased.

ACTION:

To assure delivery of intended risk management benefits to producers insured under the 2006 and 2007 crop year Florida Fruit Tree Crop Provisions, RMA will pay all applicable reinsurance benefits for ACC indemnities paid under those Crop Provisions for citrus trees that are verified to have been removed, subject to the following:

- A. **Trees Ordered Destroyed Before Or Shortly After January 10, 2006** – Claims for trees removed pursuant to a public order as defined in the 2006 Crop Provisions will be processed in accordance applicable Crop Provisions, regulations, and procedures.
- B. **Trees Recommended To Be Destroyed After January 10, 2006** – Trees removed pursuant to an IFO that recommends (instead of orders) their removal, which was issued prior to the date of this Bulletin, will be considered to have been ordered removed, and such claims will be processed in accordance with the applicable Crop Provisions, regulations, and procedures.
- C. **Trees Removed After January 10, 2006 For Which No IFO Is Issued** – Trees removed because they were infected by or exposed to ACC, but for which an IFO is not issued by DPI will be eligible for an indemnity if:
 1. The insured submits a DPI-issued Destruction Certificate or similar DPI-issued document identifying trees that were removed and that were positively identified as being either: (a) infected by ACC; or (b) exposed to ACC but no more than one-hundred feet from the nearest infected tree; and

2. All other requirements of the Crop Provisions, regulations, and procedures for the applicable crop year are satisfied.

D. Timing of Loss and Indemnity – Although no indemnity will be payable until the trees are actually removed from the unit, the date of an ACC loss will be the date when DPI completed its inspection of the insured trees and collection of the information upon which it based its determination that the trees were infected by or exposed to ACC.

DISPOSAL: This bulletin will remain in effect until December 31, 2008.