



## **Final Agency Determination: FAD-321**

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**Subject:** A joint request dated March 25, 2024, submitted to the Risk Management Agency (RMA) for a final agency determination (FAD) for the 2022 crop year of section 14(c) of the Apple Crop Provisions, published at C.F.R. §457.158. This request is pursuant to 7 C.F.R. § 400, Subpart X.

### **Reference:**

The Common Crop Insurance Policy Basic Provisions (CCIP Basic Provisions) state, 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.*

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

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*Our Duties:*

*(i) We recognize and apply the loss adjustment procedures established or approved by the Federal Crop Insurance Corporation.*

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The Apple Crop Provisions state, in relevant part:

*11. Duties in the Event of Damage or Loss*

*(a) In accordance with the requirements of section 14 of the Basic Provisions, you must leave representative samples in accordance with our procedures.*

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

*(1) You must notify us at least 3 days prior to the date harvest should have started if the crop will not be harvested.*

*(2) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.*

*(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, or immediately if damage is discovered during harvest. 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.*

#### **14. Optional Coverage for Fresh Fruit Quality Adjustment**

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*(c) Any apple production not graded or appraised prior to the earlier of the time apples are placed in storage or the date the apples are delivered to a packer, processor, or other handler will not be considered damaged apple production and will be considered production to count under this option.*

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FAD-296 (July 2020):

The request, dated May 5, 2020, was for a Final Agency Determination (FAD) regarding the interpretation of section 11(d) of the Pear Crop Provisions, published at 7 C.F.R. 457.111. The determination states, in part:

*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.*

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## **Interpretation Submitted**

### First Requestor's Interpretation:

The first requestor interprets section 14(c) of the Apple Crop Provisions to mean that any damaged apples which were not graded or appraised prior to harvest will not be considered damaged and will be considered production to count when adjusting the loss.

The first requestor believes that because the Apple Crop Provisions considers the apples that were not appraised as "not damaged" no indemnity would be due.

The first requestor states this interpretation is consistent with section 14 of the CCIP Basic Provisions (Duties in the Event of Damage or Loss), section 11 of the Apple Crop Provisions (Duties in the Event of Damage or Loss), and section 11(b) of the Common Crop Insurance Policy Basic Provisions (Insurance Period).

Finally, the first requestor states this interpretation is consistent with FCIC's determination issued in FAD-296 which presented a similar issue involving a fresh fruit crop.

### Second Requestor's Interpretation:

The second requestor interprets section 14(c) of the Apple Crop Provisions to mean that upon due notice to the insurer of a claimed insurable loss, it is the insurer's duty and responsibility to assess, when on site, damaged apples and appraise according to custom and practice in the industry thus allowing for indemnity under the Fresh Apple Quality Adjustment Endorsement.

### **Final Agency Determination**

FCIC agrees with the first requestor's interpretation of section 14(c) of the Apple Crop Provisions. In accordance with section 11(b)(2) of the CCIP Basic Provisions, insurance ends at the harvest of the insured crop; therefore, the Apple Crop Provisions do not provide coverage for production once the insured crop is delivered to a packer, processor, or other handler. In accordance with section 14(c) of the Apple Crop Provisions, any production that is not graded or appraised prior to the end of the insurance period will be considered production to count when adjusting the loss.

FCIC does not agree with the second requestors' interpretation of section 14(c) of the Apple Crop Provisions. Section 14(c) of the Apple Crop Provisions does not establish the insurer's duties in the event of damage or loss. Rather, section 14(i) of the CCIP Basic Provisions provides that the insurer must apply the loss adjustment procedures established or approved by the FCIC. The loss adjustment procedures for the Apple Crop Insurance Program approved by the FCIC are published in the 2022 Loss Adjustment Manual Standards Handbook (FCIC-25010-2) and the 2017 Apple Loss Adjustment Standards Handbook (FCIC-25030-2).

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 Issued:** April 16, 2024