

## **Final Agency Determination: FAD-307**

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**Subject:** Two requests dated September 22, 2021, and September 27, 2021, submitted to the Risk Management Agency (RMA) for a final agency determination of section 37(c) of the Common Crop Insurance (CCIP) Basic Provisions, published at 7 C.F.R. §457.8. These requests are pursuant to 7 C.F.R. § 400, Subpart X.

### **References:**

*The relevant policy provisions and handbook procedures are:*

*The CCIP Basic Provisions:*

#### **1. Definitions.**

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**Certified organic acreage** - Acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards in accordance with 7 CFR part 205.

**Certifying agent** - A private or governmental entity accredited by the USDA Secretary of Agriculture for the purpose of certifying a production, processing or handling operation as organic.

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**Organic crop** - An agricultural commodity that is organically produced consistent with section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

**Organic farming practice** - A system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205.

**Organic plan** - A written plan, in accordance with the National Organic Program published in 7 CFR part 205, that describes the organic farming practices that you and a certifying agent agree upon annually or at such other times as prescribed by the certifying agent.

**Organic standards** - Standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 et seq.) and 7 CFR part 205.

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### **37. Organic Farming Practices.**

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(c) On the date you report your acreage, you must have:

(1) For certified organic acreage, a written certification in effect from a certifying agent indicating the name of the entity certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (A certificate issued to a tenant may be used to qualify a landlord or other similar arrangement);

(2) For transitional acreage, a certificate as described in section 37(c)(1), or written documentation from a certifying agent indicating an organic plan is in effect for the acreage; and

(3) Records from the certifying agent showing the specific location of each field of certified organic, transitional, buffer zone, and acreage not maintained under organic management.

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*General Standards Handbook (GSH)*

## **Section 4: Organic Practice**

### **Paragraph 871 Conditions of Insurance**

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## **C. Deadlines for Documentation**

The policy gives the AIPs permission, if warranted, to ask for records related to a planted crop. This includes crops grown under an organic practice.

The insured must have, on the date acreage is reported, a current organic plan, organic certificate (written certificate), or documentation from a certifying agent indicating an organic plan is in effect.

(1) Insureds who have an organic certificate are not required to have an updated organic certificate by the ARD when:

(a) the certifying agent has not, for the current crop year, inspected the certified organic farming operation in order to issue an updated organic certificate. Therefore, at claim notice, the insured must provide the most current effective organic certificate; or

(b) the certifying agent did not reissue an organic certificate to the certified organic farming operation when the organic plan was updated. However, all crops and legal descriptions and additional updates; such as, changes in practices or production methods, procedures and inputs from previous crop year's organic plan, must be identified on the current crop year's organic plan.

(2) If the insured:

(a) is a new insured and receives an organic certificate after the ARD, the acreage cannot be insured under the organic practice for the current crop year, but the acreage can be insured under a conventional practice (see B above). However, the following crop year the acreage must be insured under an organic practice.

(b) has certified organic acreage with an organic certificate, but the certifying agent did not reissue an organic certificate when the organic plan was updated, the most current organic certificate is considered valid.

## **872 Organic Practice Requirements**

### **A. Certified Organic Acreage Requirements**

(1) The current organic plan and organic certificate in effect must be from a certifying agent. The documentation must show the:

- (a) name of the person certified, or certified operation's name, farm, or business name (all legal names);
- (b) address(es), including a physical address if the mailing address or legal address is not the physical location of certified organic farming operation;
- (c) telephone number, and if applicable website;
- (d) effective date (the date when the current or initial certifying agent first certified the farming operation);
- (e) issue date of certification (or certificate);
- (f) certificate number;
- (g) type of commodities certified refer to Examples in (4) below; and
- (h) name, address, website, and telephone number of the certifying agent.

The "Types of commodities" certified as stated in section 37(c)(1) of the BP are considered to be "Crops" or "Livestock". To qualify [see BP] for this portion of the requirements for the certified organic coverage, the certificate must list the name of the crop(s) (not livestock, wild crops, or processed products) on the organic certificate.

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(3) An organic certificate issued to an organic grower (for example: the landlord) may be used to qualify the same acreage for an operator/tenant or other similar arrangement; if the:

- (a) landlord and the operator/tenant have a share arrangement; or
- (b) the operator/tenant has their own organic certificate from other organic acreage they own/manage, and lease organic acreage from a landlord who has an organic plan and certificate for that acreage.

In situations as described above, it may be in the best interest of the applicable insured or landlord to confer with the certifying agent before the applicable ARD deadline.

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## **873 Maintaining Organic Records**

### **A. Recordkeeping Requirement**

In accordance with the OFPA and NOP standards, an insured must maintain records that fully disclose all activities in sufficient detail and in a format that can be readily understood, audited, and available for inspection. In addition, these records must be maintained for a period of five years.

If the insured has a split farming operation, the insured must maintain and provide separate records for each type of practice used in the farming operation; e.g., certified organic, transitional, and conventional practices.

### **B. Record Specifications**

(1) At acreage reporting, the insured must have available:

- (a) for certified organic acreage, an organic plan and an organic certificate.
- (b) for transitional acreage, an organic plan or documentation from a certifying agent that indicates an organic plan is in effect.

(2) The insured must have:

- (a) records specific to the organic farming operation as written in Para. 872A;
- (b) records that are current and sufficiently document all practices, procedures, and inputs used by the organic farming operation;
- (c) records, e.g., aerial or GIS maps, from the organic farming operation that show the exact location of each field for certified organic, transitional, buffer zone, and conventional acreage not maintained under an organic practice.
- (d) records of acreage and production applicable to the certified organic farming operation that:
  - (i) fully disclose all activities and transactions (including activities for transitional and conventional acreage);
  - (ii) contain a current on-site field inspection. If the insured provides a copy of the certifying agent's on-site inspection report, the AIP should use this inspection report as additional documentation in their reviews; and

(iii) contain information for the certified organic, transitional, and conventional acreage not in production.

First Requestor's Interpretation:

The first requestor believes that, in order to insure newly leased land that was not previously part of the policyholder's farming operation as certified organic acreage, the policyholder must have a current organic certificate as well as "records from the certifying agent" reflecting the specific location of the newly leased land and indicating that such land is certified organic for the current crop year. In addition, the first requestor interprets section 37(c)(1) and (3) of the CCIP Basic Provisions that such documentation must be in possession of the policyholder and available for inspection by the Approved Insurance Provider (AIP) no later than the acreage reporting date (ARD) set forth in the Special Provisions (SP). Thus, unless the organic certificate expressly references the newly leased land, the policyholder must have additional records from the certifying agent demonstrating that the added land is certified organic acreage. An organic plan may be used to establish the added land as certified organic acreage **only if** the organic plan lists the added land (by specific location) as certified organic acreage **and** the policyholder has written documentation that the plan has been approved by the certifying agent for the current crop year. Simply furnishing a copy of an organic plan developed by another producer is insufficient to establish that the acreage listed in that plan is certified organic. By the ARD, the policyholder must also have written documentation from the certifying agent that the organic plan has been approved for the current crop year. Absent such documentation, the added land cannot be insured as certified organic acreage.

The RMA has addressed a similar issue in the Organic and Transitional Practices FAQs published on the RMA website:

"What if I am certified organic but I am adding additional acres to my certification?

For the additional acreage to be considered certified organic for the current crop year, you must have, by the Acreage Reporting Date: 1) your organic certificate and 2) records from the certifying agent such as your organic plan, showing the additional acreage as certified organic."

The first requestor argues in order to insure added land as certified organic acreage, it is incumbent on the policyholder to have, by the ARD, “records from the certifying agent such as your organic plan” showing that the added land is “certified organic.” The phrase, “**records from the certifying agent**” infers that the organic plan utilized to establish the certification of the acreage has been approved by the certifying agent. The mere fact that the policyholder (or its landlord, where appropriate) has prepared and submitted an organic plan listing the added land to the certifying agent is of no consequence. The acreage listed in the organic plan only becomes certified when the plan is approved by the certifying agent. Thus, the use of an organic plan to establish organic certification of added acreage presupposes that there is also documentation of plan approval from the certifying agent.

The first requestor believes that the policy contemplates that an organic plan must be approved by the certifying agent to be effective. The term “organic plan” is defined in section 1 of the CCIP Basic Provisions as “a written plan, in accordance with the National Organic Program published in 7 CFR 205, that describes the organic farming practices that **you and a certifying agent agree upon** annually or at such other times as prescribed by the certifying agent,” (emphasis added). Similarly, the NOP regulations define “organic system plan” as “a plan of management of an organic production or handling operation **that has been agreed to by the producer or handler and the certifying agent** and that **includes written plans concerning all aspects of agricultural production or handling** described in the Act and the regulations in subpart C of this part” (7 C.F.R. 205.2) (emphasis added). In other words, a proposed plan submitted to the certifying agent does not qualify as an “organic plan” under the policy. To be effective, the plan must be agreed to and approved by the certifying agent.

The first requestor interprets the first sentence in section 37(c)(1) of the CCIP Basic Provisions, that any written certification of organic practices provided by the certifying agent must be “**in effect**,” meaning that it must be current, or in effect for the crop year in question. In addition, GSH Paragraph 872A requires that there be a “**current** organic plan and organic certificate” issued by “a certifying agent” (emphasis added). The purpose of requiring a current certificate and organic plan is to establish that the acreage has in fact been determined by a certifying agent to meet the requirements of the NOP for the crop year for which coverage is provided. Both the policy and the GSH state that certification must be established for each

field/unit in the farming operation that will be insured under an organic practice. According to section 37(c)(3) of the CCIP Basic Provisions, the policyholder must have “records from the certifying agent showing the specific location of each field” that has been “certified organic.” Likewise, GSH Paragraph 872A(1)(b) requires documentation from the certifying agent showing a physical address for each location included in the certified organic farming operation. Thus, a particular field is not insurable as certified organic acreage unless the policyholder can provide documentation from a certifying agent that the field is covered by the policyholder’s (or, in the appropriate case, its landlord’s) organic certificate.

The first requestor summarizes, for newly added land to be insured as certified organic acreage, the policyholder must, by the ARD, possess a current organic certificate and documentation from the certifying agent sufficient to establish that the added land has been certified organic for the crop year in question. Otherwise, such land cannot be insured as certified organic acreage.

#### Second Requestor’s Interpretation:

The second requestor’s interpretation of section 37(c) of the CCIP Basic Provisions is that an organic producer can insure newly leased organic land so long as that policyholder has an organic certificate and records from a certifying agent showing the location of the newly leased land that is managed for organic production. Section 37(c) contains no further requirements for the insurability of added organic acreage. It must not be overlooked that an organic policyholder cannot compel its organic certifier to “approve” an organic plan by the acreage reporting date established for crop insurance purposes. Once an organic certificate is issued to an operator, the operator must comply with the rules of the NOP at 7 C.F.R. 205.406 and undergo an annual organic inspection.

#### **Final Agency Determination**

FCIC agrees in part with the first requestor. For newly added acreage not previously included in an approved organic certificate, an organic plan can be used to establish newly added acreage as insurable under the certified organic practice only if the organic plan shows the specific location of each field to be certified organic and has been agreed upon between the policyholder (or landlord, where procedures allow) and the certifying agent before the ARD. The organic certificate or plan reflects the agreement between the policyholder and certifying agent when it is certified or the



issued certificate or plan is in effect by the ARD. A policyholder preparing and submitting an organic plan that lists the added land to the certifying agent is insufficient for organic insurance. Before it is certified or in effect, the certificate or plan may reflect practices and acreage from previous crop years that are merely proposed, but have not been certified for newly added acres. This is consistent with the organic procedures in the GSH, subparagraph 871C(1)(b) which requires all crops and legal descriptions and additional updates such as, changes in practices or production methods, procedures and inputs from previous crop year's organic plan, be identified on the current crop year's organic plan. The preamble to the CCIP Basic Provisions requires that the procedures (handbooks, manuals, memoranda and bulletins), as issued by FCIC and published on RMA's website at <http://www.rma.usda.gov/> or a successor website, are used in the administration of this policy, including the adjustment of any loss or claim submitted hereunder.

FCIC disagrees with the second requestor that if the policyholder has an organic certificate and records from the certifying agent showing the location of the newly leased land that is managed for organic production, the certificate does not need to be approved by the ARD. Even though the timing of the organic certificate issuance is outside of the policyholder's control, the organic certificate or plan is the NOP regulatory requirement to sell organic production. FCIC relies upon NOP regulations to ensure organic production is appropriately valued for crop insurance purposes. The fact that the policyholder cannot compel the certifying agent to issue an organic certificate or plan by the acreage reporting date does not preclude participation in the Federal crop insurance program, but it can prevent production from being insured as organic under the rules of the NOP. There is simply no other supporting material available—apart from an organic certificate issued by an agent or a plan in effect by ARD—to establish that added land is in fact certified as organic.

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 of Issue:*** December 16, 2021