



# A Gleaning Guide for Farmers

Farmers can collect crop insurance and remain protected against liability while allowing gleaning

## WHAT IS GLEANING?

The USDA defines gleaning as “the collection of wholesome food and distribution for those in need,”<sup>1</sup> which provides a means by which excess produce can be picked by nonprofits and consumed by those who lack access to sufficient nutritious food. When farmers produce crops that are not harvested for market and would otherwise be tilled under (often because the crops would not be economically profitable to harvest or the farmers are unable to harvest the crops due to lack of capacity), they can contact gleaning organizations to collect the food and provide it to those who need it.

## WHY ALLOW GLEANING?

Gleaning provides a bridge between two major issues: food loss and food insecurity. In the United States, farms account for 21% of all food loss and waste.<sup>2</sup> Many crops are at risk of becoming food waste if they have cosmetic issues—such as being misshapen or an unusual size—that make them difficult to sell, or if a farmer is left with a surplus of a certain crop. While so much food goes to waste, there is also an astonishing number of Americans facing food insecurity. In 2020, 38.3 million Americans lived in food-insecure households.<sup>3</sup> Gleaning helps to address both of these issues by allowing volunteers to step in to rescue nutritious produce from farms, preventing it from going to waste, and providing nutritious produce to those who may typically find these foods unaffordable and inaccessible. Additionally, gleaning can be a cost savings mechanism to farmers as a farmer allowing gleaning does not have to cover harvest costs, packing house expenses, transportation costs, or marketing costs, as they would if they harvested the crops themselves and then donated the finished product.

## GLEANING AND CROP INSURANCE

### DOES CROP INSURANCE ALLOW FOR GLEANING? YES!

The USDA Risk Management Agency (RMA) permits and encourages farmers to donate damaged crops for gleaning while still allowing them to receive insurance compensation for their lost crops.<sup>4</sup> The government’s two primary programs to provide disaster assistance to producers who suffered weather-related crop losses, the Federal Crop Insurance Corporation (FCIC) and the Noninsured Crop Disaster Assistance Program (NAP), administered by the USDA Farm Service Agency, permit farmers to allow gleaning on their farms while still collecting insurance indemnity payments and compensation for crop losses on noninsured crops (NAP). However, FCIC and NAP guidelines both limit certain aspects of the gleaning process, and it is critical farmers comply with these guidelines to receive their insurance compensation. According to those guidelines:

- » Gleaning is only compatible with crop insurance when it is done by a 501(c)(3) nonprofit.
- » To receive insurance compensation, the producer cannot receive any compensation in exchange for the crops.<sup>5</sup> However, farmers are still able to receive insurance payments if they are reimbursed for non-crop items, such as labor for harvesting or transporting gleaned crops.<sup>6</sup>
- » Before allowing gleaning the producer must have the fields inspected by a qualified Commodity Credit Corporation loss adjuster who will approve the insurance claim and keep a record of the quantity of crops gleaned.<sup>7</sup>

## **GLEANNING AND TAX INCENTIVES**

### **CAN FARMERS FILE FOR AN ENHANCED TAX DEDUCTION FOR DONATED FOOD? YES!**

Farmers can still collect crop insurance if they file for the enhanced tax deduction for donated food. As with other food donations, farmers that allow gleaning of their crops can receive an enhanced tax deduction for donating food to a nonprofit organization.<sup>8</sup> Under the Protecting Americans from Tax Hikes (PATH) Act, food donations are eligible for an enhanced tax deduction equal to the lesser of either twice the basis value of the donated food or the basis value of the donated food plus one half of the food's expected profit margin if sold at fair market value.<sup>9</sup> The RMA guidance states that "situations not to be considered compensation for the crop include state tax credits and other state and federal tax advantages for donating gleaned commodities."<sup>10</sup>

## **GLEANNING AND LIABILITY**

### **ARE FARMERS LIABLE IF GLEANERS GET INJURED ON THEIR LAND? NO!**

Farmers may be concerned about liability for volunteers who get injured on their land. However, this concern is misplaced, as farmers are protected by federal law, under the Bill Emerson Good Samaritan Food Donation Act. Section D of the Act provides that a person who allows gleaning for donations will not be subject to civil or criminal liability that arises due to the injury or death of the gleaner while on the farmer's property.<sup>11</sup>

### **ARE FARMERS LIABLE IF SOMEONE GETS SICK FROM THE CROPS GLEANED FROM THEIR LAND? NO!**

Farmers are protected from liability for good faith donations of food made to nonprofit organizations that feed the hungry under the Bill Emerson Good Samaritan Food Donation Act.<sup>12</sup> Certain food donation standards apply under the Emerson Act:

- » Persons and gleaners: Persons (including farmers)<sup>13</sup> and gleaners shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of food that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals.<sup>14</sup>
- » Nonprofit organizations: Nonprofit organizations shall not be subject to civil or criminal liability arising from the nature, age, packaging, or condition of food that the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution to needy individuals.<sup>15</sup>





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## Endnotes

1. RISK MGMT. AGENCY, GLEANING CROPS, U.S. DEP'T OF AGRIC., (Oct., 2017), <https://www.rma.usda.gov/en/Fact-Sheets/National-Fact-Sheets/Gleaning-Crops>.
2. Food Waste: The Challenge, REFED, <https://refed.com/food-waste/the-challenge> (last visited Nov. 5, 2021).
3. ECON. RSCH. SERV., Food Security in the US: Key Statistics & Graphics, U.S. DEP'T OF AGRIC., <https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx> (last visited Nov. 5, 2021).
4. RISK MGMT. AGENCY, GLEANING CROPS, U.S. DEP'T OF AGRIC., (Oct., 2017), <https://www.rma.usda.gov/en/Fact-Sheets/National-Fact-Sheets/Gleaning-Crops>.
5. U.S. DEP'T OF AGRIC. AND FED. CROP INS. CORP., LOSS ADJUSTMENT MANUAL STANDARDS HANDBOOK 153 (Nov., 2020), <https://www.rma.usda.gov/-/media/RMA/Handbooks/Loss-Adjustment-Standards---25000/Loss-Adjustment-Manual/2021-25010-1H-Loss-Adjustment-Standards-Handbook.ashx>;
6. RISK MGMT. AGENCY, GLEANING CROPS, U.S. DEP'T OF AGRIC., (Oct., 2017), <https://www.rma.usda.gov/en/Fact-Sheets/National-Fact-Sheets/Gleaning-Crops>.
7. FARM SERVICE AGENCY, NONINSURED CROP DISASTER ASSISTANCE 2020 AND SUBSEQUENT YEARS BASIC PROVISIONS, U.S. DEP'T OF AGRIC. 15 (2020), [https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/State-Offices/Indiana/pdfs/cc-471\\_nap\\_basic\\_provisions\\_03-04-2020.pdf](https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdfiles/State-Offices/Indiana/pdfs/cc-471_nap_basic_provisions_03-04-2020.pdf).
8. REDUCING FOOD INSECURITY AND FOOD WASTE: IMPROVING THE NATIONAL FRAMEWORK TO SUPPORT GLEANING OPERATIONS, THE NAT'L GLEANING PROJECT 8 (Aug., 2017), <https://nationalgleaningproject.org/wp-content/uploads/2018/12/NGP-reducing-food-insecurity-and-waste.pdf>.
9. Federal Tax Incentives, REFED, <https://policyfinder.refed.org/federal-policy/federal-tax-incentives> (last visited Nov. 5, 2021).
10. RISK MGMT. AGENCY, GLEANING CROPS, U.S. DEP'T OF AGRIC., (Oct., 2017), <https://www.rma.usda.gov/en/Fact-Sheets/National-Fact-Sheets/Gleaning-Crops>.
11. 42 USC § 1791(D).
12. 42 USC § 1791(C).
13. The term "person" is defined to include farmers. 42 USC § 1791(B)(10).
14. 42 USC § 1791(C)(1).
15. 42 USC § 1791(C)(2).