

Corporation. The contract shall consist of the accepted Application, the Basic Provisions, the Crop Provisions, the Special Provisions, the county Actuarial Table, and any amendments or options thereto. Changes made in the contract shall not affect its continuity from year to year. No indemnity shall be paid unless the insured complies with all terms and conditions of the contract. The forms referred to in the contract are available at the offices of the crop insurance agent.

**§ 457.8 The application and policy.**

(a) Application for insurance on a form prescribed by the Corporation, or approved by the Corporation, must be made by any person who wishes to participate in the program, to cover such person's share in the insured crop as landlord, owner-operator, crop ownership interest, or tenant. No other person's interest in the crop may be insured under an application unless that person's interest is clearly shown on the application and unless that other person's interest is insured in accordance with the procedures of the Corporation. The application must be submitted to the Corporation or the reinsured company through the crop insurance agent and must be submitted on

or before the applicable sales closing date on file.

(b) The Corporation or the reinsured company may reject or discontinue the acceptance of applications in any county or of any individual application upon the Corporation's or the reinsured company's determination that the insurance risk is excessive. If the reinsured company rejects any application and such rejection is not required by the Corporation, the applicant must be referred to an agent authorized to sell the Corporation's policies of insurance. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable agents office and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period or that such extension is required to comply with other programs of the United States Department of Agriculture. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications and will require that the reinsured companies also immediately discontinue such acceptance.

DEPARTMENT OF AGRICULTURE  
FEDERAL CROP INSURANCE CORPORATION

*Common Crop Insurance Policy*

(This is a continuous policy. Refer to section 2.)

FCIC policies

United States Department of Agriculture,  
Federal Crop Insurance Corporation

This is an insurance policy issued by the Federal Crop Insurance Corporation, a United States Government agency. The provisions of the policy are published in the FEDERAL REGISTER and in the Code of Federal Regulations (CFR) under the Federal Register Act (44 U.S.C. 1501 *et seq.*) and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC.

Throughout this policy, "you" and "your" refer to the named insured shown on the accepted application and "we", "us" and "our" refer to the Federal Crop Insurance Corporation. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

*Agreement to insure:* In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If a conflict exists between the basic provisions contained herein and the specific crop provisions, the crop provisions will control.

TERMS AND CONDITIONS

*Basic Provisions*

1. Definitions

As used in this Policy these terms are defined as follows:

(a) *Abandon*—Failure to continue providing sufficient care (For example, cultivation, irrigation, fertilization, application of chemicals, etc., consistent with good farming practices) for the insured crop to make normal progress toward harvest or maturity, or failure to harvest in a timely manner.

(b) *Acreage report*—A report required by paragraph 6 of these basic provisions which contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county whether

Reinsured policies

This policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Federal Crop Insurance Act. The provisions of the policy are published in the FEDERAL REGISTER and in chapter IV of title 7 of the Code of Federal Regulations (CFR) under the Federal Register Act (44 U.S.C. 1501 *et seq.*), and may not be waived or varied in any way by the crop insurance agent, or any other agent or employee of the company. In the event we cannot pay your loss, your claim will be settled in accordance with the provisions of this policy and paid by the FCIC. No state guaranty fund will be liable to pay your loss.

Throughout this policy, "you" and "your" refer to the named insured shown on the accepted application and "we" "us" and "our" refer to the company providing the insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

insurable or not insurable. This report must be filed not later than the final acreage reporting date contained in the special provisions for the county for the insured crop.

(c) *Acreage reporting date*—The date (contained in the special provisions) by which you are required to submit your acreage reports.

(d) *Actuarial table*—The forms and related material for the crop year which are available for public inspection in your agent's office, and which show the amounts of insurance or production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable acreage, and other related information regarding crop insurance in the county.

(e) *Another use, notice of*—The written notice required when you wish to put acreage to another use (see section 14).

(f) *Application*—The form required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each

crop for which insurance coverage is requested. If a break in insurance coverage occurs, a new application must be filed.

(g) *ASCS*—The Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

(h) *ASCS Farm Serial Number*—The number assigned to the farm by the ASCS County Committee.

(i) *Assignment of indemnity*—A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

(j) *Cancellation date*—The calendar date specified in each crop provision on which that crop provision will automatically renew unless canceled in writing by either you or us.

(k) *Claim for indemnity*—A claim made on our form by you for damage or loss to an insured crop and submitted to us not later than 60 days after the end of the insurance period (see section 14).

(l) *Consent*—Approval in writing by us allowing you to take a specific action.

(m) *Contract*—(also see “Policy”) This policy is a contract between you and us consisting of the accepted Application, these Basic Provisions, the Crop Provisions, the Special Provisions, the Actuarial Table for the insured crops, and the applicable regulations as published at 7 CFR part 401.

(n) *Contract change date*—The calendar date by which we make any contract (policy) changes available for inspection in the agent’s office (see section 4).

(o) *County*—The county or other political subdivision shown on your accepted application.

(p) *Coverage*—The insurance provided by this policy, against insured loss of production or value, by unit as shown on your summary of coverage.

(q) *Coverage begins, date*—The calendar date insurance begins on the insured crop, as contained in the crop provision, or the date after planting is started on the unit (see section 11).

(r) *Crop Provisions*—The part of the policy that contains the specific provisions of insurance for each insured crop.

(s) *Crop year*—The period within which the insured crop is normally grown and designated by the calendar year in which the insured crop is normally harvested.

(t) *Damage*—Injury, deterioration, or loss of production of the insured crop due to insured or uninsured causes.

(u) *Damage, notice of*—A written notice required to be filed in your agent’s office whenever you initially discover the insured crop has been damaged to the extent that a loss is probable (see section 14).

(v) *Delinquent account*—Any account you have with us in which premiums, or interest

on those premiums is not paid by the termination date specified in the crop provisions, or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

(w) *Earliest planting date*—The earliest date established for planting the insured crop and qualifying for a replant payment if applicable (see special provisions and section 13).

(x) *End of insurance period, date of*—The date upon which your crop insurance coverage ceases for the crop year. (See crop provisions and section 11).

(y) *Insured*—The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application (see definition of “Person” paragraph 1.(dd)).

(z) *Insured crop*—The crop defined under these basic provisions and the applicable crop provision as shown on the application accepted by us.

(aa) *Late Planting Agreement Option*—Available on selected crops. An amendment to the insurance policy which, when planting has been delayed, provides insurance coverage for acreage of an insured crop planted after the final planting date shown on the special provisions in exchange for a reduction in coverage.

(bb) *Loss, notice of*—The notice required to be given by you not later than 72 hours after certain occurrences or 15 days after the end of the insurance period (see section 14).

(cc) *Negligence*—The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

(dd) *Person*—An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

(ee) *Policy*—(also see “Contract”) The basic provisions for insuring a specific crop. The “Insurance Contract” or “Contract” which is the insurance contract between you and us consisting of the accepted application, the basic provisions, the crop provisions, the special provisions, the actuarial table for the insured crop, and the applicable regulations as published at 7 CFR part 401.

(ff) *Practical to replant*—Our determination, after loss or damage to the insured crop, based upon all factors, including, but not limited to moisture availability, condition of the field, time to crop maturity, etc., on the feasibility of replanting and harvesting the insured crop. It is not practical to replant after the final planting date (for crops without an offered Late Planting Agreement Option) or after 20 days after the final planting

date (for crops with an offered Late Planting Agreement Option).

(gg) *Premium billing date*—The earliest date upon which you will be billed for insurance coverage based on your acreage report and which generally falls at or near harvest time.

(hh) *Price election*—The amounts determined by FCIC and contained in the actuarial table, to be used as a basis for computing the amount per unit of production which will be paid in the event of a loss under the policy.

(ii) *Production report*—A written record showing your annual production and used by us to determine your yield for insurance purposes (see section 3). The report contains previous years yield information including planted acreage and harvested production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop or by measurement of farm stored production, or by other records of production approved by us on an individual case basis.

(jj) *Reporting date*—The acreage reporting date (contained in the special provisions) by which you are required to report all your insurable acreage in the county in which you have a share and your share at the time insurance attaches, and any acreage in which you have a share which is not insured (see section 9.).

(kk) *Representative sample*—Portions of the insured crop or insured crop residue which are required to remain in the field for examination and review by our loss adjusters when making a crop appraisal if required by the crop provisions. The samples are further defined in the crop provisions.

(ll) *Sales closing date*—The date contained in the special provisions which is the final date when an application may be filed. This is the last date for you to make changes in your crop insurance coverage for the crop year.

(mm) *Section* (for the purposes of unit structure)—A unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

(nn) *Share*—Your percentage of interest in the insured crop as an owner, operator, or tenant at the time coverage begins. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss or the beginning of harvest. Unless the accepted application clearly indicates that insurance is requested for a partnership or joint venture, or is intended to cover the landlord's, or tenant's share of the crop (see section 10), insurance will only cover the crop share of the person completing the application. The share will not extend to any other person having an interest in the crop except as may otherwise be specifically al-

lowed in this policy. We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be your share. Leases containing provisions for both a cash or minimum payment and a crop share will be considered a crop share lease.

(oo) *Special provisions*—The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

(pp) *State*—The state shown on your accepted application.

(qq) *Summary of coverage*—Our statement to you, based upon your acreage report, by unit, specifying the insured crop and the guarantee or amount of insurance coverage provided.

(rr) *Tenant*—A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of "share" above).

(ss) *Termination date*—The calendar date contained in the crop provisions upon which your policy ceases for nonpayment of premium or any other amount due us under the policy.

(tt) *Unit*—All insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have a 100 percent share;

or

(2) Which is owned by one entity and operated by another specific entity on a share basis.

(For example, if, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units, one for each crop share lease and one for the two cash leases and the land you own). Land rented for cash, a fixed commodity payment, or a consideration other than a share in the insured crop on such land will be considered as owned by the lessee (see "Share" above). Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in the applicable crop provisions. Units will be determined when the acreage is reported but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. However, no further division may be made after the acreage report date for any reason.

## 2. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application. After acceptance of the application, you may not cancel this policy the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(b) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the crop provisions.

(c) All policies issued by us under the authority of the Federal Crop Insurance Act will terminate as of the coincidental or next termination date contained in these policies if any amount due us is not paid on or before the termination date for the crop on which the amount is due. Such unpaid debts will also make you ineligible for any crop insurance provided under the Federal Crop Insurance Act until payment is made. If we deduct any amount due us from an indemnity, the date of payment for the purpose of this paragraph will be the date you sign the properly completed claim for indemnity.

(d) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(e) Your policy will terminate if no premium is earned for 3 consecutive years.

(f) The cancellation and termination dates are contained in the crop provisions.

### 3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) For each crop year the production guarantee or amount of insurance, coverage level, and price at which an indemnity will be determined for each unit will be those used to calculate your summary of coverage. The information necessary to determine those factors will be contained in the special provisions or in the actuarial table.

(b) You may select only one coverage level offered by us for each insured crop. By written notice to us you may change the coverage level, price election, or amount of insurance for the following crop year not later than the sales closing date for the affected insured crop. If you do not elect a coverage level, we will assign the coverage level which is designated for that purpose in the special provisions. Since the price election or amount of insurance may change each year, if you do not select a new price election or amount of insurance before the next insurance year prior to the sales closing date, we will assign the price election or amount of insurance which bears the same relationship

to the price election schedule as the price election or amount of insurance in effect for the preceding year.

(c) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date. If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75% of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your production history for the purpose of determining your coverage for the current crop year. If you have filed a claim for any crop year, the production used to determine the indemnity payment will be the production report for that year.

(d) We may revise your production guarantee for any farm unit, and revise any indemnity paid based on that production guarantee, if we find that your production report under paragraph (c) above:

- (1) Is not supported by written verifiable records (see paragraph 1.(ii)); or
- (2) Fails to accurately report actual production.

### 4. Contract changes

We may change the coverage under this policy from year to year. Your crop insurance agent will have changes in policy provisions, price elections, amounts of insurance, premium rates and program dates by the contract change date contained in the crop provisions. In addition, you will be notified, in writing, of these changes. Such notification will be made at least 30 days prior to the cancellation date of the insured crop.

### 5. Liberalization

If we adopt any revisions which would broaden the coverage under this policy subsequent to the contract change date without additional premium, the broadened coverage will apply.

### 6. Report of Acreage

(a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date shown in the special provisions. This report must include the following information, if applicable:

- (1) All acreage of the crop (insurable and not insured) in which you have a share;
- (2) Your share at the time coverage begins;
- (3) The practice;
- (4) The type; and
- (5) The date the insured crop was planted.

(b) If you do not have a share in any insured crop in the county for the crop year, you must submit an acreage report so indicating.

(c) Because incorrect reporting on the acreage report may have the effect of changing your premium and any indemnity which may be due, you may not revise this report after the acreage reporting date without our consent.

(d) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances which we determine to have actually existed.

(e) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice or deny liability on any unit.

(f) If the information reported by you on the acreage report for a unit results in a lower premium than the actual premium determined to be due on the basis of the share, acreage, practice, type or other material information determined to actually exist, the production guarantee or amount of insurance on the unit will be reduced proportionately. In the event that acreage is under-reported, all production or value from insurable acreage for the unit, whether or not reported as insurable, will be considered production or value to count in determining the indemnity.

(g) Errors in reporting units may be corrected by us to reduce our liability and to conform to applicable unit division guidelines at the time of adjusting a loss.

#### 7. Annual Premium

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for premium due not earlier than the billing date specified in the special provisions. The premium due, plus any accrued interest, will be considered delinquent if any amount due us is not paid on or before the termination date specified in the crop provisions.

(b) Any amount due us will be deducted from any replant payment or indemnity due you under the provisions of this policy.

(c) The annual premium amount is determined by either:

(1) Multiplying the production guarantee per acre times the price election, times the premium rate, times the insured acreage, times your share at the time coverage begins, times any premium adjustment percentages that may apply; or

(2) Multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time coverage begins, times any premium adjustment percentages that may apply.

#### 8. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in

the crop provisions and must be grown on insurable acreage.

(b) A crop which will NOT be insured will include, but will not be limited to, any crop:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates, production guarantees or amounts of insurance have been established;

(2) Initially planted after the final planting date, unless we allow and you agree in writing on our form, to a coverage reduction (this Late Planting Agreement Option is available only on selected crops);

(3) Of a type, class or variety established as not adapted to the area or excluded by the special provisions;

(4) That is a volunteer crop;

(5) That is a second crop following the same crop (insured or not insured) harvested in the same crop year unless specifically permitted by the crop provisions or the special provisions;

(6) Which is planted for the development or production of hybrid seed or for experimental purposes, unless permitted by the crop provisions or unless we agree, in writing, to insure such crop; or

(7) Used for wildlife protection or management.

#### 9. Insurable Acreage

(a) Acreage planted to the insured crop in which you have a share is insurable unless it is acreage:

(1) On which a crop has not been planted or harvested in a least one of the three previous crop years, unless ASCS classifies such acreage as cropland;

(2) Which has been strip-mined, unless we agree in writing to insure such acreage;

(3) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(4) Which is planted with a crop other than the insured crop, unless allowed by the crop provisions; or

(5) Which is otherwise restricted by the crop provisions of special provisions.

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities and water, at the time coverage begins, to carry out a good irrigation practice.

(c) If acreage is irrigated and we do not provide a premium rate for an irrigated practice, you may either report and insure the irrigated acreage as "nonirrigated," or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage which we will insure to the amount allowed under any acreage limitation program established by the United States Department of Agriculture if we notify you of that restriction prior to the sales closing date.

## 10. Share Insured

(a) You may only insure your share as defined in subparagraph 1(nn) above.

(b) You as a landlord (or tenant) may insure your tenant's (or landlord's) share of the crop if evidence of the other party's approval of that insurance is demonstrated (Lease, Power of Attorney, etc.). The respective shares must be clearly set out on the Acreage Report and a copy of the other party's approval must be retained by us.

## 11. Insurance Period

Coverage begins on each unit or part of a unit the later of the date you submit your application, when the insured crop is planted, or on the calendar date for the beginning of the insurance period if specified in the crop provisions, and ends at the earliest of:

- (a) Total destruction of the insured crop on the unit;
- (b) Harvest of the unit;
- (c) Final adjustment of a loss on a unit;
- (d) The calendar date for the end of the insurance period contained in the crop provisions;
- (e) Abandonment of the crop on the unit; or
- (f) As otherwise specified in the crop provisions.

## 12. Causes of Loss

The insurance provided is against only unavoidable loss of production directly caused by specific causes of loss contained in the crop provisions. All other causes of loss, including but not limited to the following, are NOT covered:

- (a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;
- (b) The failure to follow recognized good farming practices for the insured crop;
- (c) Water contained by any governmental, public, or private dam or reservoir project;
- (d) Failure or breakdown of irrigation equipment or facilities; or
- (e) Failure to carry out a good irrigation practice for the insured crop if applicable.

## 13. Replanting Payment

(a) If allowed by the crop provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured acreage for the unit (as determined on the final planting date).

(b) No replanting payment will be made on acreage:

- (1) On which our appraisal establishes that production will exceed the level set by the crop provisions;
- (2) Initially planted prior to the date established by the special provisions; or

(3) On which one replanting payment has already been allowed for the crop year.

(c) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the crop provisions.

(d) If the information reported by you on the acreage report results in a lower premium than the actual premium determined to be due based on the acreage, share, practice, or type determined actually to have existed, the replanting payment will be reduced proportionately.

(e) No replanting payment will be paid for replanting any crop if we determine it is not practical to replant (see subparagraph 1.(ff)).

## 14. Duties in the Event of Damage or Loss

## Your Duties—

(a) In case of damage to any insured crop you must:

- (1) Protect the crop from further damage by providing sufficient care;
- (2) Give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), by unit, for each insured crop; and
- (3) Leave representative samples intact for each field of the damaged unit as may be required by the crop provisions.

(b) You must obtain consent from us before, and notify us after you:

- (1) Destroy any of the insured crop which is not harvested;
- (2) Put the insured crop to an alternative use;
- (3) Put the acreage to another use; or
- (4) Abandon any portion of the insured crop. We will not give such consent if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(c) In addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the end of the insurance period. This claim must include all the information we require to settle the claim.

(d) Upon our request, you must:

- (1) Provide a complete harvesting and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured; and
- (2) Submit to examination under oath.

(e) You must establish the total production or value received for the insured crop on the unit and that any loss of production or value has been directly caused by one or more of the insured causes (see crop provisions) during the insurance period.

(f) All notices required in this paragraph that must be received by us within 72 hours may be made by telephone or in person to

your crop insurance agent but must be confirmed in writing within 15 days.

Our Duties—

(a) If you have complied with all the policy provisions we will pay your loss within 30 days after:

(1) We reach agreement with you; or  
 (2) The entry of a final judgment by a court of competent jurisdiction.

(b) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30 day period.

(c) We may defer the adjustment of a loss until the amount of loss can be accurately determined. We will not pay for additional damage resulting from your failure to provide sufficient care for the crop during the deferral period.

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

15. Production Included in Determining Indemnities

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.

(b) The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

(c) If you elect to exclude hail and fire as insured causes of loss and the insured crop is damaged by hail or fire, appraisals will be made in accordance with the applicable Form FCI-78 or FCI-78-A, "Request To Exclude Hail and Fire" or a form which contains the same terms.

16. Crops as Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

For FCIC policies

For reinsured policies

17. Appeals

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations (7 CFR part 400, subpart J).

17. Arbitration

If you and we fail to agree on any factual determination, disagreement will be resolved, in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by the Federal Crop Insurance Corporation (FCIC) must be resolved through the FCIC appeal regulation at 7 CFR part 400, subpart J.

18. Access to Insured Crop and Record Retention

(a) We reserve the right to examine the insured crop as often as we reasonably require.

(b) For three years after the end of the crop year, you must retain, and provide upon our request, complete records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit. This requirement also applies to the records used to establish the basis for the production report for each unit. You must also upon our request, provide separate records showing the same information for production from any acreage not insured. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such records may, at our option, result in:

- (1) Cancellation of the policy;
- (2) Assignment of production to units by us; or
- (3) A determination that no indemnity is due.

(c) Any person designated by us will, at any time during the record retention period, have access:

- (1) To any records relating to this insurance at any location where such records may be found or maintained; and
- (2) To the farm.

(d) By applying for insurance under the Act or by continuing insurance previously applied for, you authorize us, or any person acting for us, to obtain records relating to the insured crop from any person who may have custody of those records including, but not limited to, county ASCS offices, banks, warehouses, gins, cooperatives, marketing associations, accountants, etc. You must assist us in obtaining all records which we request from third parties.

19. Other Insurance

(a) *Other Like Insurance.* You must not obtain any other crop insurance issued under the authority of the Federal Crop Insurance Act on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the fraud provisions under this policy. If we

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determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act.

(b) *Other Insurance Against Fire.* If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, and you have not excluded coverage for fire from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to any other insurance; or

(2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

For the purpose of this paragraph, the amount of loss from fire will be the difference between the fair market value of the production of the insured crop on the unit

involved before the fire and after the fire, as determined from appraisals made by us.

20. Conformity to Food Security Act

Although your violation of a number of federal statutes, including the Federal Crop Insurance Act, may cause cancellation, termination, or avoidance of your insurance contract, you should be aware that your policy will be cancelled if you are determined to be ineligible to receive benefits under the Federal Crop Insurance Act due to violation of the Conservation Provision (title XII) or the Controlled Substance Provision (title XVII) of the Food Security Act of 1985 (Pub. L. 99-198) and the regulations promulgated under the Act by the United States Department of Agriculture (USDA). Your insurance policy will be cancelled if you are determined, by the appropriate United States Government (USDA) Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you and your premium will be refunded.

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21. Amounts Due Us

21. Amounts Due Us

- (a) Any delinquent amount due us may be deducted from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies or from any amount due you from any other United States Government Agency.
- (b) Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid amount due us. For the purpose of premium amounts due us, interest will start on the first day of the month following the premium billing date specified in the special provisions.
- (c) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph (c) will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.
- (d) Penalties and interest will be charged in accordance with 31 U.S.C. 3717 and 4 CFR 102.13. The penalty for accounts more than 90 days delinquent (31 U.S.C. 3717(e)(2) and 4 CFR 102.13(e) is six percent (6%) per annum.
- (e) Interest on any amount due us found to have been received by you because of fraud, misrepresentation or presentation by you of a false claim will start on the date you received the amount with the 6% penalty beginning on the 31st day after the notice of amount due is issued to you. This interest is in addition to any other amount found to be due under any other Federal criminal or civil statute.
- (f) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.
- (g) All amounts paid will be applied first to the payment of the expenses of collection accounts, second to the reduction of any penalties which may have been assessed, then to reduction of accrued interest, then to reduction of the principal balance.
- (a) Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid amount due us. For the purpose of premium amounts due us, the interest will start on the first day of the month following the premium billing date specified in the special provisions.
- (b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.
- (c) All amounts paid will be applied first to expenses of collection (see (d) below) if any, second, to the reduction of accrued interest, and then to the principal balance.
- (d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection. Those expenses will be paid before the application of any amounts to interest or principal.

## 22. Legal Action Against Us

- (a) You may not bring legal action against us unless you have complied with all of the policy provisions.
- (b) If you do take legal action against us you must do so within 12 months of the date of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(c).

- (c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal Regulations.

## 23. Payment and Interest Limitations

- (a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees,

or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

(b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the FEDERAL REGISTER semiannually on or about January 1 and July 1 of each year and may vary with each publication.

24. Concealment, Misrepresentation or Fraud

This policy will be void in the event you have falsely or fraudulently concealed either the fact that you are restricted from receiving benefits under the Federal Crop Insurance Act or that action is pending which may restrict your eligibility to receive such benefits. We will also void this policy if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this or any other FCIC or FCIC reinsured policy. This voidance will not affect your obligation to pay premiums or waive any of our rights under this policy, including the right to collect any amount due us. The voidance will be effective as of the time coverage began for the crop year within which such act occurred.

25. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights. The transfer must be on our form and approved by us. Both you and the person to whom you transfer your interest are jointly and severally liable for the payment of the premium. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

26. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy.

27. Subrogation (Recovery of loss from a third party)

Because you may be able to recover all or a part of your loss from someone other than

us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

28. Applicability of State and Local Statutes

If the provisions of this policy conflict with statutes of the State in which this policy is issued, the policy provisions will prevail. State and local laws and regulations in conflict with federal statutes, this contract, and the applicable regulations do not apply to this policy.

29. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

30. Notices

All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or Federal holiday, or, if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day. All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your Crop Insurance Agent. You should advise us immediately of any change of address.

[56 FR 1351, Jan. 14, 1991, as amended at 58 FR 58262, 58263, Nov. 1, 1993; 59 FR 42751, Aug. 19, 1994]

**§ 457.9 Appropriation contingency.**

Notwithstanding the cancellation date stated in the policy, if there are insufficient funds appropriated by the Congress to deliver the crop insurance program, the policy will automatically terminate without liability.

[59 FR 45972, Sept. 6, 1994]

**§ 457.10-457.100 [Reserved]**

**§ 457.101 Small Grains Crop Insurance.**

The Small Grains Crop Insurance provisions for the 1995 and succeeding crop years are as follows: