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code of federal regulations

Agriculture

7

PARTS 400 TO 699

Revised as of January 1, 1997

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JANUARY 1, 1997

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Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 7 CFR 400.1 *refers to title 7, part 400, section 1.*

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Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
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RICHARD L. CLAYPOOLE,
Director,
Office of the Federal Register.

January 1, 1997.

THIS TITLE

Title 7—AGRICULTURE is composed of fifteen volumes. The parts in these volumes are arranged in the following order: parts 0–26, 27–52, 53–209, 210–299, 300–399, 400–699, 700–899, 900–999, 1000–1199, 1200–1499, 1500–1899, 1900–1939, 1940–1949, 1950–1999, and part 2000 to end. The contents of these volumes represent all current regulations codified under this title of the CFR as of January 1, 1997.

The Food and Consumer Service current regulations in the volume containing parts 210–299, include the Child Nutrition Programs and the Food Stamp Program. The regulations of the Federal Crop Insurance Corporation are found in the volume containing parts 400–699.

All marketing agreements and orders for fruits, vegetables and nuts appear in the one volume containing parts 900–999. All marketing agreements and orders for milk appear in the volume containing parts 1000–1199. Part 900—General Regulations is carried as a note in the volume containing parts 1000–1199, as a convenience to the user.

Redesignation tables appear in the Finding Aids section of the volumes containing parts 210–299 and parts 1500–1899.

For this volume, Gregory R. Walton was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

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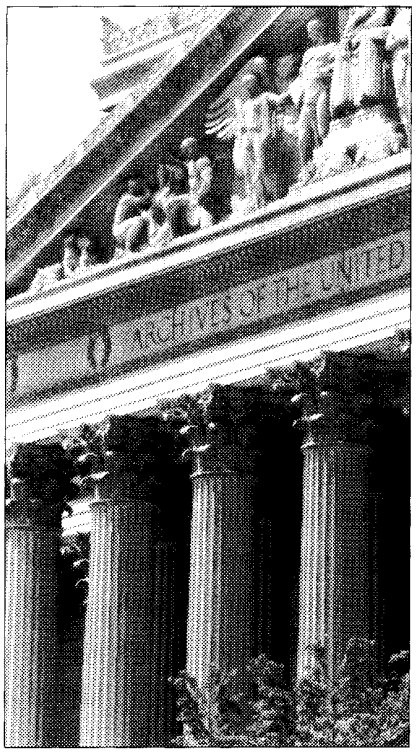

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Subpart A—Late Planting Agreement Option; Regulations for the 1987 and Succeeding Crop Years

AUTHORITY: 7 U.S.C. 1506(l).

SOURCE: 51 FR 20246, June 4, 1986, unless otherwise noted.

§400.1 Availability of the late planting option.

The Late Planting Option shall be offered under the provisions contained in 7 CFR part 402, *et seq.*, within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in §400.4 of this subpart. All provisions of the applicable contract for the insured crop apply, except those provisions which are in conflict with this subpart.

§400.2 Definitions.

For the purposes of the Late Planting Option:

(a) *Final planting date* means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(b) *Late Planting Agreement* means that agreement executed by the final planting date, between the FCIC and the insured whereby the insured elects, and FCIC provides, insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days that the acreage is planted after the final planting date.

(c) *Production guarantee* means the guaranteed level of production under the provisions of the applicable contract for crop insurance (sometimes expressed in amounts of insurance).

§400.3 Responsibilities of the insured.

The insured is solely responsible for the completion of the Late Planting Agreement and for the accuracy of the data provided on that Agreement. The provisions of this subsection shall not relieve the insured of any responsibilities under the provisions of the insurance contract.

§400.4 Applicability to crops insured.

The provisions of this subpart shall be applicable to the provisions of FCIC policies issued under the following regulations for insuring crops:

7 CFR part 416 Pea
7 CFR part 422 Potatoes
7 CFR part 425 Peanuts
7 CFR part 430 Sugar Beets
7 CFR part 433 Dry Beans
7 CFR part 435 Tobacco (Quota Plan)
7 CFR part 437 Sweet Corn (Canning and Freezing)
7 CFR part 447 Popcorn

[58 FR 64873, Dec. 10, 1993, as amended at 60 FR 40055, Aug. 7, 1995]

§400.5 The Late Planting Agreement.

The provisions of the Late Planting Agreement are as follows:

U.S. DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Late Planting Agreement

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____

Crop _____

Notwithstanding the provisions of section 2 of the policy regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted for 20 days after such date. Upon my making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced 10 percent for each five days or portion thereof that the acreage is planted after the final planting date. Each 10 percent reduction will be applied to the production guarantee or amount of insurance applicable on the final planting date.

The premium will be computed based on the guarantee or amount of insurance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option.

If planting continues under this Agreement after the acreage reporting date on file in the service office, the acreage reporting date will be extended to 5 days after the completion of planting the acreage to which insurance will attach under this Agreement.

Insured's Signature _____

Date _____

Corporation Representative's Signature and Code Number _____

Date _____

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

To the extent that the information requested herein relates to the information supplier's individual capacity as opposed to the supplier's entrepreneurial (business) capacity, the following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552(a)). The authority for requesting information to be furnished on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and the Federal Crop Insurance Corporation Regulations contained in 7 CFR chapter IV.

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums, and pay indemnities. Furnishing the Tax Identification Number (Social Security Number) is voluntary and no adverse action will result from the failure to furnish that number. Furnishing the information required by this form, other than the Tax Identification (Social Security) Number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of or substantial reduction in any claim for indemnity, ineligibility for insurance, and a unilateral determination of the amount of premium due. (See the face of this form for information on the consequences of furnishing false or incomplete information.)

The information furnished on this form will be used by Federal agencies, FCIC employees, and contractors who require such information in the performance of their duties. The information may be furnished to: FCIC contract agencies, employees and loss adjusters; reinsured companies; other agencies within the United States Department of Agriculture; the Internal Revenue Service; the Department of Justice, or other Federal or State law enforcement agencies; credit reporting agencies and collection agencies; and in response to judicial orders in the course of litigation.

[51 FR 20246, June 4, 1986, as amended at 52 FR 24979, July 2, 1987]

Subpart B—Individual Yield Coverage Plan Regulations for the 1985 and Succeeding Crop Years

AUTHORITY: Sec. 508, Pub. L. 75–430, 52 Stat. 73, as amended (7 U.S.C. 1508).

SOURCE: 50 FR 32001, Aug. 8, 1985, unless otherwise noted.

§ 400.15 Availability of Individual Yield Coverage Plan.

Individual Yield Coverage Plan (IYCP) shall be offered under the provisions contained in the following regulations:

7 CFR part 418 .....Wheat Crop Insurance
7 CFR part 419 .....Barley Crop Insurance
7 CFR part 423.....Flax Crop Insurance
7 CFR part 427 .....Oat Crop Insurance
7 CFR part 428.....Sunflower Crop Insurance
7 CFR part 429.....Rye Crop Insurance
7 CFR part 431.....Soybean Crop Insurance
7 CFR part 433 .....Dry Bean Crop Insurance

Within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in this section and in those areas where the actuarial table provides that IYCP is available. (IYCP is available only on those crops and in those areas where the Corporation's Actual Production History Program has not been implemented. The Actual Production History form will be used for both programs). All provisions of the applicable standard insurance contract for the crop apply, except those provisions which are in conflict with this subpart. Cropland acreage, which is defined as ''new ground acreage'' by the actuarial table or by the policy, will not be eligible for IYCP. Crops covered under the provisions of the Combined Crop Insurance policy will not be eligible for IYCP.

§ 400.16 Definitions.

In addition to the definitions contained in the crop insurance contract, the following definitions, for the purposes of Individual Yield Coverage Plan, are applicable:

(a) *Appraised Production* means production that was unharvested but reflected yield potential for the crop at the time of the appraisal. Appraisals will be determined by ASCS or FCIC.

(b) *Area Average Yield* is the average yield determined by FCIC upon which the guarantee is based for the insured crop, area, type, and practice and is the average for the area over the base period. It is contained in the actuarial table.

(c) *Area Coverage Plan* is the coverage and rate assigned by the FCIC Actuarial Division for an homogeneous group of areas and producers.

(d) *Average Yield* is the average of the recorded and/or indexed yields for the 10-year base period, dropping the highest and lowest yield in the 10-year period, including a combination of a minimum of the three most recent year's recorded yields.

(e) *Base Period* means the 10-year period immediately preceding the crop year for which the yield is to be established.

(f) *Established Farm Yield* is the yield as shown on the Official Farm Record card (ASCS–156) on file in the county ASCS office.

(g) *FCIC Adjusted Yield* is production information derived by the Statistical Reporting Service on a county, crop, and practice basis modified by FCIC for factors necessary to conform to sound actuarial practices.

(h) *Individual Yield Certification* is the appraised result of the examination of the insured's records of planted acreage and production certified by the county Agricultural Stabilization and Conservation Service (ASCS) office.

(i) *Indexed Yield* means yield established for a year in which recorded (actual) yields are not available. It is determined by multiplying the FCIC adjusted yield, for each crop year (for which records of acreage and production are not available), by the producer's yield index.

(j) *IYCP* is the Individual Yield Coverage Plan.

(k) *ICYP* is the Individual Certified Yield Plan within IYCP. (7 CFR 400.20).

(l) *Recorded Yield* is the yield that is based on the producer's records of planted acreage and production certified by ASCS.

(m) *Yield Index* is the result obtained by dividing the total of the producer's recorded yields for the years FCIC adjusted yields are available by the total FCIC adjusted yields for those same years.

§400.17 Yield certification and acceptability.

The insured shall request Form FCIC 19A (APH) (Actual Production History) and shall provide records of acreage and production to ASCS county office. The request and records must be submitted at least 15 days prior to the acreage reporting date for the crop in the county. The ASCS county office will examine the insured's records and, if acceptable, record the actual yield obtained from the records, determine the relationship of such yields to the FCIC adjusted yield for the same years, and apply the yield index to the area average yield for those years for which the producer does not have acceptable records.

§400.18 Responsibilities.

(a) The insured is solely responsible for the timely submission of Form FCIC 19A (APH) to the service office after its completion by the ASCS office.

(b) The service office is responsible for the explanation of the Individual Yield Coverage Plan (IYCP) to the insured, and upon receipt of Form FCIC 19A (APH) is responsible for determining that the form is completed correctly.

§400.19 Qualifications for Individual Yield Coverage Plan.

The Insured may elect to substitute the IYCP Yield for the Area Average Yield.

(a) For the producer to qualify for IYCP for any crop year, the completed Form FCIC 19A (APH) must be received in the crop insurance service office not later than the acreage reporting date for the crop and the year.

(b) For a crop to qualify for IYCP, a minimum of 3 years of records of planted acreage and production, under the control of either the landlord or tenant, must be provided to ASCS for all units and be certified by ASCS. Records for up to 10 continuous years shall be used where such records are available and the same farming practices are followed for that period of

time. There can be no break in continuity from the most recent crop year through preceding crop years. A year in which no acreage was planted to the crop on the unit or in which a different practice was followed will not be considered a break in continuity.

(c) Either the landlord's or tenant operator's records may qualify either party for the same IYCP guarantee. If a conflict exists between the records of the landlord and the tenant operator, the Corporation will determine which records will be used.

(d) If an insured wishes to obtain an IYCP yield on land newly added to production for the insured, the insured must comply with the provisions of this paragraph. If the IYCP yield being requested is for an ASCS program crop and if the added land has an ASCS established yield for that crop of 90 percent or more of the ASCS established yield of the unit to which the land is to be added or of the nearest unit then: When land without satisfactory records is added to a unit satisfactory records, the IYCP average yield will be that of the unit to which the land was added; and when land without satisfactory records is added as a separate unit, the IYCP average yield will be that of the closest unit of the same crop and practice. When the ASCS established farm yields for the added land are less than 90 percent of the program yields for the existing units, the IYCP yields will be the area average yield.

(e) When the yield being requested on land being added is for a crop for which the added land does not have an ASCS established farm yield, the ASCS established farm yield for the crop with the largest ASCS base acreage on the added land will be compared to the program yield for the crop on the existing units to determine if the 90-percent ratio is achieved. If the land is being added to a unit and there is no ASCS established farm yield on either the added land or the units or both to compare, the IYCP yield will be the area average yield. If the land is being added as a separate unit, and the nearest unit has no ASCS established farm yield to compare to the added unit, the next nearest unit will be used. If no comparable yields are available on any unit, the yield of the added unit will be the area average yield.

(f) If a producer disposes of his entire operation and begins operation on completely different units, the new units will be compared to the old units in accordance with paragraphs (d) and (e) of this section, for adding new units.

(g) When land is being added but less than 3 continuous years of acceptable records are available, the acceptable production and acreage records will be used for the years they are available and paragraphs (d) and (e) of this section will be used for the years when adequate records are not available.

(h) When participation in IYCP is continuous, ASCS certification under this part for up to 10 years, dropping the highest and lowest yield in the 10-year period, will be used in calculating the IYCP average yield. When an insured has previously participated in IYCP, he must have at least the most recent three years records of production acceptable to ASCS. These records and all records previously certified by ASCS up to 10 years, will be used to ascertain the new yield.

(i) The premium shall be contained in the actuarial table and will be the same as applicable under the Area Coverage Plan.

§ 400.20 Modifications through individual certification of yield (Individual Certified Yield Plan—IYCP).

(a) In addition to the provisions contained in §§ 400.15 through 400.19 of this part, producers who customarily feed crop production to livestock or poultry, and who are unable to provide adequate records sufficient to become eligible for the IYCP Plan, will be considered for eligibility for the Individual Certified Yield Plan (ICYP) in certain counties as announced by the Manager, FCIC.

(b) To qualify for this plan, producers must agree to the conditions contained herein and provide information to the county ASCS office including but not limited to, the following:

(1) Satisfactory acreage and yield records for at least the most recent crop year.

(2) Acreage and yield records for the prior crop years even though such records may be incomplete.

(3) Feeding records, fertilization and liming records, soil conservation methods used, land tillage practices, insecticide and herbicide records, planting pattern and population data, and equipment adequacy information as available.

(4) Certification of acreage and yield data for the previous 2nd and 3rd years when written records are unavailable.

(5) Agreement to disregard to the extent required by FCIC any unit division guideline provisions of the crop insurance policy.

(6) Records of acreage and yield for each future year that the insurance is in force. (Failure to provide such records in accordance with the provisions of §§400.17 and 400.19 will result in insurance being based on the area coverage plan.)

(7) Agreement to convert to the IYCP for determining yields as soon as 3 consecutive years acreage and yield records are available.

(8) Producer certified yields will be reviewed by FCIC and may be adjusted by the Corporation prior to the final yield determination by ASCS.

(9) The producer may request FCIC to assist in establishing satisfactory acreage and yield information through field appraisals of potential production, bin measurements, etc. FCIC will determine if any evidence offered by the producer is relevant to the determination of yield on the unit.

(10) The producer must request the certified yield plan in accordance with the provisions of §§400.17 and 400.19 from the county ASCS office.

(11) The premium per acre shall be the production guarantee per acre under this plan times the applicable price election, times the applicable premium rate for the crop insured, times any applicable premium adjustment factor.

§400.21 OMB control numbers.

OMB control numbers are contained in subpart H of part 400 in title 7 CFR.

Subpart C—General Administrative Regulations; Mutual Consent Cancellation

AUTHORITY: 7 U.S.C. 1501 *et seq.*

SOURCE: 57 FR 56438, Nov. 30, 1992, unless otherwise noted.

§400.27 Applicability.

Notwithstanding any provisions of the crop insurance policy to the contrary, the mutual consent provision contained herein shall be applicable to all new crop insurance policies issued by the Federal Crop Insurance Corporation (7 CFR part 401 *et seq.*), or by a company reinsured by the Federal Crop Insurance Corporation, effective for the applicable crop year only if those policies meet the requirements of §400.28 of this subpart and if the crop insured is the same as the crop for which a disaster payment application (CCC 441) was filed for the previous crop year.

[58 FR 67304, Dec. 21, 1993]

§400.28 Mutual consent criteria.

(a) An insured may request policy cancellation for the crop year for which the insured filed a CCC 441 for the applicable crop year if written documentation is provided, signed by an authorized Agricultural Stabilization and Conservation Service official, certifying the cancellation is based on one of the following conditions:

(1) insurance was not a condition of eligibility for disaster payment, based on one or more of the statutory criteria; or

(2) the producer withdrew his application for disaster payments with prejudice or it was rejected by Commodity Credit Corporation;

(b) Cancellation requests must be received in writing no later than three weeks after the date:

(1) the disaster payment check is issued; or

(2) the producer is notified that an application for disaster payment has been rejected; or

(3) the producer withdraws from the disaster payment program.

(c) Carryover policies are not available for mutual consent cancellation. Crop insurance applications dated before the disaster cancellation date

(available in the insureds' service office) are not eligible for mutual consent cancellations.

[57 FR 56438, Nov. 30, 1992, as amended at 58 FR 67304, Dec. 21, 1993]

§ 400.29 OMB control numbers.

Office of Management and Budget control numbers (OMB) are contained in subpart H to part 400 in title 7 CFR.

§§ 400.30—400.36 [Reserved]

Subpart D—Application for Crop Insurance; Regulations for the 1993 and Succeeding Crop Years

AUTHORITY: Secs. 506, 507, Pub. L. 75–430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516).

§ 400.37 Applicability.

The Crop Insurance application contained herein shall be applicable to all crop insurance regulations issued by the Corporation (7 CFR part 400 *et seq.*), effective with the 1983 and succeeding crop years.

[48 FR 1023, Jan. 10, 1983]

§400.38 The crop insurance application.

United States Department of Agriculture

Federal Crop Insurance Corporation

Crop Insurance Application

Continuous Contract

1. Name of Applicant

2. Applicant's Authorized Representative

3. Street or Mailing Address

4. City and State

5. ZIP Code

[ ][ ] – [ ][ ][ ] – [ ][ ][ ][ ][ ]
6. State County
[ ][ ][ ][ ][ ]
7. Contract Number

8. County

9. State

[ ][ ][ ][ ][ ][ ][ ]
10. Identification Number
[ ][ ][ ][ ][ ]
11. SSN TAX

12. Type of Entity

13. Is Applicant Over 18: Yes_____ No_____

If No, Date of Birth

A. The applicant subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called ''Corporation''), hereby applies to the Corporation for insurance on the applicant's share in the crop(s) shown below planted or grown, whichever is applicable, on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and, where applicable, a price election, amount of insurance or plan of insurance. The premium rate and applicable production guarantee or amount of insurance per acre shall be those shown on the applicable county actuarial table filed in the service office for each crop year.

14. Effective crop year	15. Crop	16. Type, class, plan of ins.	17. Price election or amount of ins.	18. Level election	For agency use only 19 (A)	20. (P)	21.
					[ ]		
					[ ]		
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N S I O T—F U R

23. Crop(s) NOT insured the first year:

B. This application is hereby accepted by the Corporation except that the Corporation may reject the application on the basis that (1) the Corporation has determined that the risk is excessive under the provisions of the individual crop insurance regulations; (2) any material fact is concealed or misrepresented or fraud occurs in the application; or submission of the application; (3) the applicant is indebted to any United States Government Agency and that indebtedness is delinquent; (4) the applicant is indebted for crop insurance coverage provided by any company reinsured by the Corporation and that indebtedness is delinquent; (5) the applicant previously had crop insurance terminated for violation of the terms of the contract or the regulations, or for failure to pay the applicant's indebtedness; (6) the applicant is debarred by any United States Government Agency; or (7) the applicant has failed to provide complete and accurate information to material requests this application.

Rejection shall be accomplished by depositing notification thereof in the United States mail, postage paid to the above address. Unless rejected as provided above, or the time for filing applications has passed at the time this application is filed, the contract shall be in effect for the crops and crop years specified and shall continue for each succeeding crop year until cancelled or terminated as provided in the contract. This accepted application, the insurance policy(ies), the applicable appendix(es), and the provisions of the county actuarial table showing the insurable and uninsurable acreage coverage levels, premium rates, and where applicable, the production guarantees, amounts of insurance, or plans of insurance shall constitute the contract. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

24. [ ] Applicant does not have like insurance on any of the above crops.

25. [ ] Previous Carrier:

26. [ ] Policy Number:

27. [ ] Applicant's Signature

28. [ ] Date

[ ][ ][ ][ ][ ][ ][ ]

29. Code No.

30. Witness to Signature

31. Location of Farm Headquarters

32. Address of Your Service Office

Phone: _____

Phone: _____

I am aware and agree to comply with all requirements regarding the conservation provisions of the Food Security Act of 1985 (the Act) Sodbuster/Swampbuster provisions. I understand that I must be in compliance with the Act including reporting requirements to the applicable ASCS office for a crop insurance indemnity to be paid. I also understand that if I have not met these requirements, or if ASCS determines that I am out of compliance, an indemnity payment will not be made on this policy. Any graduated sanctions imposed by any agency under the Act must be paid in full prior to receipt of any of any indemnity paid.

Signature of Insured _____

Date _____

Agent's Initials _____

See Reverse Side of Form for Statement Required by Privacy Act of 1974.

33. Page ____ of ____ pages

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)):

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations promulgated thereunder (7 CFR part 400 *et seq.*). The information requested is necessary for FCIC to consider and process the application for insurance; to assist in determining the correct premium and indemnity; and to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture Agencies, the Internal Revenue Service, the Department of Justice or other State and Federal law enforcement agencies, and in response to orders of a court, magistrate, or administrative tribunal. Furnishing the social security number is voluntary and no adverse action will result from failure to do so. Furnishing the information other than the social security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of the application and/or subsequent denial of any claim for indemnity which may be failed. The failure to supply correct, complete information may also invalidate the automatic acceptance provisions of Section B hereof and may substantially delay acceptance of the application and processing of any claim for indemnity.

[49 FR 6317, Feb. 21, 1984, as amended at 58 FR 17943, Apr. 7, 1993]

Subpart E—[Reserved]

Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits

AUTHORITY: Secs. 1506, 1516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1501 et seq.); sec. 1244, Pub. L. 99–198.

SOURCE: 52 FR 19128, May 21, 1987, unless otherwise noted.

§ 400.45 Applicability.

(a) The regulations in this subpart implement Chapter XII and section 1764 of the Food Security Act of 1985 (Pub. L. 99–198) (the Act) requiring the denial of crop insurance to persons who are determined to have performed certain practices prohibited by the Act or who have violated certain federal or State statutes or the regulations implementing the Act. The provisions of this subpart are applicable to all crop insurance policies written by the Federal Crop Insurance Corporation (the Corporation) or reinsured by the Corporation.

(b) The provisions of this subpart will be effective for the crop and crop year immediately following the first crop cancellation date occurring after the effective date of the Act for all crop policies reinsured by FCIC, and for all policies and regulations for crop insurance issued by FCIC.

§ 400.46 Definitions.

For the purpose of this regulation and in addition to the definitions included at 7 CFR 12.2, the following definitions are applicable:

(a) *Controlled substance* means any prohibited drug-producing plants including, but not limited to, cacti of the genus *lophophora,* coca bushes *(erythroxylum coca),* marijuana *(cannabis satiua),* opium poppies *(papauer somniferum),* and other drug-producing plants, the planting and harvesting of which is prohibited by Federal or State law.

(b) *Person* means any producer, tenant, or landlord, insured under a policy of crop insurance issued by FCIC, or by a multi-peril insurance company whose crop insurance policy is reinsured by FCIC.

(c) *State* means each of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific.

(d) *The Act* means the Food Security Act of 1985 (Pub. L. 99–198).

§ 400.47 Denial of crop insurance.

(a) Any person convicted under Federal or State law of planting, cultivating, growing, producing, harvesting or storing a controlled substance in any crop year will be ineligible for crop insurance during that crop year and the four succeeding crop years.

(1) The insurance of such person insured by FCIC who found to be ineligible under paragraph (a) of this section will be null and void, and any indemnity paid on such insurance must be returned in full to FCIC. Any premium paid for insurance coverage declared null and void will be returned, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid.

(2) Any person ineligible for crop insurance under the provisions of paragraph (a) of this section may make application for crop insurance for the crop year following the applicable period of ineligibility by submitting a new application. The previous application and policy of insurance will be cancelled.

(b) Any insurance written by a multi-peril crop insurance company to any person who is ineligible under the provisions of this subpart is not eligible for reinsurance under the Corporation's standard reinsurance agreement. Any premium subsidy and expense allowance or loss paid by the Corporation because of such agreement will be immediately refunded to the Corporation. Notwithstanding any other provision of law, policies written by multi-peril crop insurance companies to any person ineligible under the provisions of this subpart are null and void. Premium paid for such policies will be refunded to the person applying for insurance, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid, and no indemnity will be paid unless the multi-peril company expressly agrees to continue such policy in effect without FCIC reinsurance. However, if the reinsured company follows the procedure of the Corporation and the requirements of the regulations, reinsurance will continue to be provided under the reinsurance agreement on the policy unless it is shown that the agent or company had knowledge of facts which would indicate ineligibility on the part of the insured and failed to act on that knowledge.

(c) FCIC employees or contractors are required to report all suspected cases of violation of the Act or the regulations to the appropriate agency for a determination of violation. Benefits shall not be paid in such cases pending a determination from the appropriate agency.

(d) Notwithstanding any other provision of this subpart, any crop insurance policy where insurance attached to a crop prior to August 15, 1986, will continue in effect for that crop until the next termination date following August 15, 1986.

[52 FR 19128, May 21, 1987, as amended at 58 FR 17945, Apr. 7, 1993; 61 FR 38058, July 23, 1996]

§400.48 Protection of interests of tenants, landlords or producers.

Any tenant, landlord or producer on the farm separate from the person declared ineligible for crop insurance under the provisions of §400.47 of this part, will remain eligible for crop insurance on their insurable share in the crop, unless such tenant, landlord, or producer on the farm is:

(a) Also convicted of planting, cultivating, growing, producing, or storing a controlled substance;

(b) Otherwise determined by FCIC to be ineligible for crop insurance.

[52 FR 19128, May 21, 1987, as amended at 61 FR 38058, July 23, 1996]

§§400.49–400.50 [Reserved]

Subpart G—Actual Production History

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 59 FR 47787, Sept. 19, 1994, unless otherwise noted.

§400.51 Availability of actual production history program.

An Actual Production History (APH) Coverage Program is offered under the provisions contained in the following regulations:

7 CFR 401.110—Almond Endorsement
7 CFR part 405—Apple Crop Insurance
7 CFR 401.118—Canning and Processing Bean Endorsement
7 CFR part 409—Arizona-California Citrus Crop Insurance
7 CFR 401.127—Cranberry Endorsement
7 CFR part 433—Dry Beans Crop Insurance
7 CFR 401.116—Flaxseed Endorsement

7 CFR part 415—Forage Production Corp Insurance
7 CFR 401.130—Grape Endorsement
7 CFR part 455—Macadamia Nut Crop Insurance
7 CFR 401.126—Onion Endorsement
7 CFR part 447—Popcorn Crop Insurance
7 CFR part 403—Peach Crop Insurance
7 CFR 401.140—Pear Endorsement
7 CFR part 416—Pea Crop Insurance
7 CFR 401.146—Fresh Plum Endorsement
7 CFR part 422—Potato Crop Insurance
7 CFR part 450—Prune Crop Insurance
7 CFR 401.123—Safflower Seed Endorsement
7 CFR 401.133—Sugarcane Endorsement
7 CFR part 430—Sugar Beet Crop Insurance
7 CFR 401.124—Sunflower Seed Endorsement
7 CFR part 437—Sweet Corn Crop Insurance
7 CFR part 441—Table Grape Crop Insurance
7 CFR 401.129—Guaranteed Tobacco Endorsement
7 CFR 401.114—Canning and Processing Tomato Endorsement
7 CFR part 454—Guaranteed Production Plan of Fresh Market Tomato
7 CFR part 446—Walnut Crop Insurance
7 CFR part 457—Common Crop Insurance Regulations; and all special provisions thereto unless specifically excluded by the special provisions.

The APH program operates within limits prescribed by, and in accordance with, the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in this section in those areas where the Actuarial Table provides coverage. Except when in conflict with this subpart, all provisions of the applicable crop insurance contract for these crops apply.

§ 400.52 Definitions.

In addition to the definitions contained in the crop insurance contract, the following definitions apply for the purposes of the APH Coverage Program:

(a) *APH*—Actual Production History.

(b) *Actual yield*—The yield per acre for a crop year calculated from the production records or claims for indemnities. The actual yield is determined by dividing total production (which includes harvested and appraised production) by planted acres for annual crops or by insurable acres for perennial crops.

(c) *Adjusted yield*—The transitional or determined yield reduced by the applicable percentage for lack of records. The adjusted yield will equal 65 percent of the transitional or determined yield, if no producer records are submitted; 80 percent, if records for one year are submitted; and 90 percent, if two years of records are submitted.

(d) *Appraised production*—Production determined by the Agricultural Stabilization and Conservation Service (ASCS), the FCIC, or a company reinsured by the FCIC, that was unharvested but which reflected the crop's yield potential at the time of the appraisal. For the purpose of APH ''appraised production'' specifically excludes production lost due to uninsurable causes.

(e) *Approved APH yield*—A yield, calculated and approved by the verifier, used to determine the production guarantee and determined by the sum of the yearly actual, assigned, and adjusted or unadjusted transitional or determined yields divided by the number of yields contained in the database. The database may contain up to 10 consecutive crop years of actual and or assigned yields. At least four yields will always exist in the database.

(f) *Assigned yield*—A yield assigned by FCIC in accordance with the crop insurance contract, if the insured does not file production reports as required by the crop insurance contract. Assigned yields are used in the same manner as actual yields when calculating APH yields except for purposes of the Nonstandard Classification System (NCS).

(g) *Base period*—Ten consecutive crop years (except peaches, which have a five-year base period) immediately preceding the crop year defined in the insurance contract for which the approved APH yield is being established (except for sugarcane, which begins the calendar year preceding the immediate previous crop year defined in the insurance contract).

(h) *Continuous production reports*—Reports submitted by a producer for each crop year that the unit was planted to the crop and for the most recent crop year in the base period.

(i) *Crop year*—Defined in the crop insurance contract, however, for APH purposes the term does not include any year when the crop was not planted or when the crop was prevented from being planted by an insurable cause. For example, if an insured plants acreage in a county to wheat one year, that year is a crop year in accordance with the policy definition. If the land is summerfallowed the next calendar year, that calendar year is not a crop year for the purpose of APH.

(j) *Database*—A minimum of four years up to a maximum of ten crop years of production data used to calculate the approved APH yield.

(k) *Determined yield (D-yield)*—An estimated year for certain crops, which can be determined by multiplying an average yield for the crop (attained by using data available from The National Agricultural Statistics Service (NASS) or comparable sources) by a percentage established by the FCIC for each county.

(l) *Master yields*—Approved APH yields, for certain crops and counties as initially designated by the FCIC, based on a minimum of four crop years of production records for a crop within a county.

(m) *New producer*—A person who has not been actively engaged in farming for a share of the production of the insured crop for more than two crop years.

(n) *Production report*—A written record showing the insured crop's annual production and used to determine the insured's yield for insurance purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, insurable acreage for perennial crops, and harvested and appraised production for the previous crop years. This report must be supported by written verifiable records, measurement of farm stored production, or by other records of production approved by FCIC on an individual basis. Information contained in a claim for indemnity is considered a production report for the crop year for which the claim was filed.

(o) *Production Reporting Date (PRD)*—The PRD is contained in the crop insurance contract and is the last date production reports will be accepted for inclusion in the database for the current crop year.

(p) *Transitional yield (T-Yield)*—An estimated yield, for certain crops, generally determined by multiplying the ASCS program yield by a percentage determined by the FCIC for each county and provided on the actuarial table to be used in the APH yield calculation process when less than four consecutive crop years of actual or assigned yields are available.

(q) *Verifiable records*—Contemporaneous records of acreage and production provided by the insured, which may be verified by FCIC through an independent source, and which are used to substantiate the acreage and production that have been reported on the production report.

(r) *Verifier*—A person authorized by the FCIC to calculate approved APH yields.

(s) *Yield variance tables*—Tables for certain crops that indicate unacceptable yield variations and yield trends which will require determination of the APH yield by the FCIC.

§400.53 Yield certification and acceptability.

(a) Production reports must be provided to the crop insurance agent no later than the production reporting date for the crop insured.

(1) Production reports must provide an accurate account of planted acreage for annual crops or insurable acres for perennial crops, as well as harvested and appraised production by unit.

(2) The insured must certify the accuracy of the information.

(3) Production reported for more than one crop year must be continuous. A year in which no acreage was planted to the crop on a unit or no acreage was planted to a practice, type, or variety requiring an APH yield will not be considered a break in continuity. Assigned yields, at the discretion of the FCIC, may be used to maintain continuity of yield data of file. Production on uninsured (for those years a crop insurance

policy under the Federal Crop Insurance Act is in effect) or uninsurable acreage (for other years of the period) will not be used to determine APH yield unless production from such acreage is commingled with production from insured or insurable acreage.

(b) Production reports and supporting records are subject to audit or review to verify the accuracy of the information certified. Production and supporting records may be reviewed and verified if a claim for indemnity is submitted on the insured crop. The reported yield is subject to revision, if needed, so that the claim conforms to the records submitted at that time.

(1) Inaccurate production reports or failure to retain acceptable records shall result in the verifier combining optional farm units and recomputing the approved APH yield. These actions shall be taken at any time after reporting or record discrepancies are identified and may result in reduction of the approved APH yield for any calendar year.

(2) Records must be provided by the insured at the time of an audit, review, or as otherwise requested, to verify that the acreage and production certified are accurate. Records of any other person having shares in the insured crop, which are used by the insured to establish the approved APH yield, must also be provided upon request.

(3) In the event acreage or production data certified by two or more persons sharing in the crop on the same acreage is different, the verifier shall, at the verifier's discretion, determine which acreage and production data, if any, will be used to determine the approved APH yield. If the correct acreage and production cannot be determined, the data submitted will be considered unacceptable by the verifier for APH purposes.

(4) Failure of the producer to report acreage and production completely and accurately may result in voidance of the crop insurance contract, as well as criminal or civil false claims penalties pursuant to applicable Federal criminal or civil statutes.

§ 400.54 Submission and accuracy of production reports.

(a) The insured is solely responsible for the timely submission and certification of accurate, complete production reports to the agent. Production reports must be provided for all planted units.

(b) Records may be requested by the FCIC, or an insurance company reinsured by the FCIC, or by anyone acting on behalf of the FCIC or the insurance company. The insured must provide such records upon request.

(c) The agent will explain the APH Program to insureds and prospective insureds. When necessary, the agent will assist the insured in preparation of production reports. The agent will determine the adjusted or unadjusted transitional or determined yields in accordance with § 400.54(b). The agent will review the production reports and forward them to the verifier, along with any requested and required supporting records for determination of an approved APH yield.

(d) The verifier will determine if the certified production reports are acceptable and calculate the approved APH yield.

§ 400.55 Qualification for actual production history coverage program.

(a) The approved APH yield is calculated from a database containing a minimum of four yields and will be updated each subsequent crop year. The database may contain a maximum of the 10 most recent crop years and may include actual, assigned, and adjusted or unadjusted T or D-Yields. T or D-Yields, adjusted or unadjusted, will only occur in the database when there are less than four years of actual and/or assigned yields.

(b) The insured may be required to provide production records to determine the approved APH yield, if production records for the most recent crop year are available. If acceptable records of actual production are provided, the records must be continuous and contain at least the most recent crop year's actual yield.

(1) If no acceptable production records are available, the approved APH yield is the adjusted T or D-Yield (65 percent of T or D-Yield).

(2) If acceptable production records containing information for only the most recent crop year are provided, the three T or D-Yields adjusted by 80 percent will be used to complete the minimum database and calculate the approved APH yield.

(3) If acceptable production records containing information for only the two most recent crop years are provided, the two T or D-Yields adjusted by 90 percent and the two actual yields will be used to complete the database and calculate the approved APH yield.

(4) If acceptable production records containing information for only the three most recent crop years are provided, the three actual yields and one unadjusted T or D-Yield are used to complete the database and calculate the approved APH yield.

(5) When the database contains four or more (up to ten) continuous actual yields, the approved APH yield is a simple average of the actual yields.

(6) New producers may have their approved APH yields based on unadjusted T or D-Yields or a combination of actual and unadjusted T or D-Yields.

(7) Producers who add land or new practice, types and varieties to their farming operations and who do not have available records for the added land, practice, types or varieties may have approved APH yields for the added land, practice, types or varieties that are based on adjusted or unadjusted T or D-Yields as determined by FCIC.

(8) If the producer's crop is destroyed or if it produces a low actual yield due to insured causes of loss, the resulting average yield may qualify for catastrophic yield adjustment according to FCIC guidelines. APH yields qualifying for catastrophic yield adjustment may be adjusted to mitigate the effect of catastrophic years. Premium rates for approved APH yields, which are adjusted for catastrophic years, may be based on the producer's APH average yield prior to the catastrophic adjustment or such other basis as determined appropriate by FCIC.

(c) If *no insurable acreage of the insured crop is planted* for a year, a production report indicating zero planted acreage will maintain the continuity of production reports for APH record purposes and that calendar year will not be included in the APH yield calculations.

(d) Actual yields calculated from the claim for indemnity will be entered in the database. The resulting average yield will be used to determine the premium rate and approved APH yield, at the discretion of FCIC.

(e) Optional units are not available to an insured who does not provide acceptable production reports for at least the most recent crop year with which to calculate an approved APH yield.

(f) FCIC may determine approved APH yields for designated crops in the following situations:

(1) If less than four years of yield history is certified and T or D-Yields are not provided in the actuarial documents,

(2) If actual yield exceed tolerances specified in yield variance tables, and

(3) For perennial crops:

(i) If significant upward or downward yield trends are indicated;

(ii) If tree or vine damage, or cultural practices will reduce the production level;

(iii) if more than two percent of the trees or vines have been removed within the last two years; or

(iv) If yield trends are evident and yields greater than the average yield are requested by the insured.

(g) APH yields will not be approved the first insurance year on perennial crops until an inspection acceptable to FCIC has been performed and the acreage is accepted for insurance purposes in accordance with the crop insurance contract.

(h) APH Master Yields may be established whenever crop rotation requirements and land leasing practices limit the yield history available. FCIC will establish crops and locations for which Master Yields are available. To qualify, the producer must have at least four recent continuous crop years' annual production reports and must certify the authenticity of the production reports of the insured crop. Master Yields are based on acreage and production history from all acreage of the insured crop in the county in which the operator has shared in the crop's production.

(i) FCIC may use any production report available under the provisions of

any crop insurance contract, whether continuous or not, involving the interests of the person's insured crops in determining the approved APH yield.

§ 400.56 Administrative appeal exhaustion.

The insured may appeal the approved APH yield in accordance with the procedures contained in 7 CFR part 400, subpart J. Administrative remedies through the appeal process must be exhausted prior to any action for judicial review. The approved APH yield determined as a result of the appeal process will be the yield applicable to the crop year.

§ 400.57 OMB control numbers.

OMB control numbers are contained in 7 CFR part 400, subpart H.

Subpart H—Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

AUTHORITY: 5 U.S.C. 1320, Pub. L. 96–511 (44 U.S.C., chapter 35).

SOURCE: 56 FR 49390, Sept. 30, 1991, unless otherwise noted.

§ 400.65 Purpose.

This subpart collects and displays the control numbers assigned to information collection requirements of the Federal Crop Insurance Corporation (FCIC) by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). FCIC intends that this subpart comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

§ 400.66 Display.

(a) Crop Insurance Regulations promulgated by FCIC and contained in 7 CFR part 400 *et seq.*, contain the following statement:

OMB Control Numbers

The OMB control numbers are contained in subpart H of part 400, title 7 CFR.

(b) Specific report title and agency forms approved by OMB are as follows:

FCI No.	Form title	OMB No.	Expiration date
FCI–3	Collector's Contact Report	0563–0043	8–31–94
FCI–5	Contract Price Election Agreement Option for Non-Quota (additional) Peanuts.	0563–0021	6–30–94
FCI–5	Request for Actuarial Change	0563–0042	9–30–94
FCI–5–A	Request for Actuarial Change Continuation Sheet	0563–0042	9–30–94
FCI–6	Statement of Facts	0563–0027	6–30–94
FCI–9	Late Planting Agreement	0563–0023	6–30–94
FCI–12	Crop Insurance Application	0563–0003	3–31–93
FCI–12–A	Contract Changes	0563–0025	7–31–94
FCI–12–P	Pre-Acceptance Perennial Crop Inspection Report	0563–0031	7–31–94
FCI–19	Crop Insurance Acreage Report	0563–0001	2–28–95
FCI–19–A	Actual Production History Review	0563–0036	7–31–94
FCI–19–A	Production and Yield Report	0563–0029	7–31–94
FCI–19–C	Texas Citrus Grove Inspection Report	0563–0017	4–30–95
FCI–20	Application for Assignment of Indemnity	0563–0014	12–31–93
FCI–21	Transfer of Right to an Indemnity	0563–0014	12–31–93
FCI–63	Claim for Citrus Indemnity	0563–0007	2–28–95
FCI–63–A	Claim for Raisin Indemnity	0563–0007	2–28–95
FCI–63–A	Notice of Damage—Raisins	0563–0035	8–31–94
FCI–63–A	Adjuster's Florida Citrus Worksheet	0563–0016	4–30–95
FCI–63–B	Tabulation of Production Records from Individual Load Certificates.	0563–0044	9–30–94
FCI–73	Certiication Form	0563–0033	7–31–94
FCI–74	Field Inspection and Claim for Indemnity	0563–0007	2–28–95
FCI–74	Field Inspection and Claim for Indemnity (Continuation Sheet).	0563–0007	2–28–95
FCI–74–T–P–C	Field Inspection and Claim for Indemnity (Tobacco, Peanuts, and Cotton).	0563–0007	2–28–95

FCI No.	Form title	OMB No.	Expiration date
FCI–74–T–P–C	Field Inspection Claim for Indemnity (Continuation Sheet).	0563–0007	2–28–95
FCI–74–A	Adjuster's Apple Worksheet	0563–0016	4–30–95
FCI–74–A	Beans and Peas Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Citrus Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Stand Reduction and Hail Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Nut Tree Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Adjuster's Citrus Worksheet	0563–0016	4–30–95
FCI–74–A	Corn, Grain Sorghum, and Silage Appraisal Worksheet.	0563–0016	4–30–95
FCI–74–A	Cotton Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Fig Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Flax Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Forage Seeding Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Fresh Sweet Corn Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Table Grape Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Peanut Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Pear Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Peppers, Fresh Tomatoes Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Fresh Plums Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Potato Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Prune Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Safflower Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Wheat, Barley, Oats, Rye, Rice Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Soybean Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Stonefruit Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Sugar Beet Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Sugarcane Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Sunflower Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Tobacco Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Adjuster's Peach Worksheet	0563–0016	4–30–95
FCI–74–A	Adjuster's Tomato Worksheet	0563–0016	4–30–95
FCI–74–A	Texas Citrus Tree Appraisal Worksheet	0563–0016	4–30–95
FCI–74–A	Macadamia Tree Worksheet	0563–0028	6–30–94
FCI–74–A	Macadamia Tree Worksheet (continuation)	0563–0028	6–30–94
FCI–74–A	Random Path Appraisal Worksheet	0563–0039	8–31–94
FCI–74–B	Adjuster's Apple Worksheet	0563–0016	4–30–95
FCI–74–B	Peanut Computation Sheet	0563–0041	9–30–94
FCI–74–B	Stand Reduction Appraisal Worksheet	0563–0016	4–30–95
FCI–74–B	Fresh Tomatoes Appraisal Worksheet	0563–0016	4–30–95
FCI–74–B	Peppers Appraisal Worksheet	0563–0016	4–30–95
FCI–74–B	Cotton Claim for Indemnity	0563–0014	12–31–93
FCI–74–C	Summary of Harvested Production	0563–0040	8–31–94
FCI–74–C	Hail Damage Appraisal Worksheet	0563–0016	4–30–95
FCI–78	Request to Exclude Hail and Fire	0563–0032	6–30–94
FCI–78–A	Request to Exclude Hail and Fire	0563–0032	6–30–94
FCI–505	Potato Crop Insurance Policy—Certified Seed Potato Option Amendment.	0563–0029	6–30–94
FCI–506	Apple Fresh Fruit Option	0563–0020	6–30–94
FCI–513	Waiver to Transfer Segregation II and III Peanuts to Quota Loan.	0563–0026	7–31–94
FCI–514	Malting Barley Option	0563–0020	6–30–94
FCI–523	Potato Quality Option	0563–0020	6–30–94
FCI–527	Planting Record—Fresh Sweet Corn	0563–0022	6–30–94
FCI–528	Planting Record—Peppers	0563–0022	6–30–94
FCI–529	Planting Record—Tomatoes (Fresh Market Dollar)	0563–0022	6–30–94
FCI–530	Upland/ELS Cotton Program/Identification of Cotton Prod.	0563–0038	8–31–94
FCI–532	Power of Attorney	0563–0030	8–31–94
FCI–535	Wheat Crop Insurance—Winter Coverage Option	0563–0020	6–30–94
FCI–539	Apple Sunburn Option	0563–0020	6–30–94
FCI–541	Corn Silage Option	0563–0020	6–30–94
FCI–544	Underwriting Questionnaire (Container Stock Only)	0563–0034	7–31–94
FCI–545	Nursey Container Report	0563–0034	7–31–94

FCI No.	Form title	OMB No.	Expiration date
FCI–546	Nursey Crop Insurance Inventory Summary	0563–0034	7–31–94
FCI–547	Potato Crop Ins. Policy—Processing Potato Quality Option.	0563–0020	6–30–94
FCI–548	Potato Crop Ins. Policy—Frost/Freeze Potato Option	0563–0020	6–30–94
FCI–549	High-Risk Land Exclusion Option	0563–0018	6–30–95
FCI–550	Fresh Market Tomato Minimum Value Option	0563–0020	6–30–94
FCI–551	Raisin Conditioning Pool—Production to Count	0563–0035	8–31–94
FCI–552	Self-Certification Replant Worksheet	0563–0037	8–31–94
FCI–553	Unit Division Option	0563–0001	2–28–95
FCI–554	Macadamia Orchard Inspection Report	0563–0015	4–30–95
FCI–555	Peach Producer's Picking Records	0563–0024	6–30–94
FCI–819	Raisin Supplement—Tonnage Report	0563–0035	8–31–94

[56 FR 49390, Sept. 30, 1991, as amended at 58 FR 13531, Mar. 12, 1993]

Subpart I—[Reserved]

Subpart J—Appeal Procedure—Regulations

AUTHORITY: 7 U.S.C. 1506(p).

§ 400.90 Applicability.

Persons who are insured or believe they are insured under contracts of insurance issued under the Federal Crop Insurance Act must obtain appeal and reconsideration of decisions made under the provisions of this chapter in accordance with part 780 of this title.

[60 FR 67313, Dec. 29, 1995]

Subpart K—Debt Management—Regulations for the 1986 and Succeeding Crop Years

AUTHORITY: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

SOURCE: 51 FR 17316, May 12, 1986, unless otherwise noted.

§ 400.115 Purpose.

This subpart sets forth procedures that will be followed, and the rights afforded to debtors, in connection with the reporting by the Federal Crop Insurance Corporation (FCIC) to credit reporting agencies of information with respect to current and delinquent debts owed to FCIC, and in connection with referral of delinquent debts to contract collection agencies.

§ 400.116 Definitions.

(a) *Credit reporting agency* means (1) a reporting agency as defined at 4 CFR 102.5(a), or (2) any entity which has entered into an agreement with USDA concerning the referral of credit information.

(b) *Collection agency* means a private debt collection contractor under Federal Supply Schedule contract with the General Services Administration (GSA) for professional debt collection services.

(c) *Comptroller* means the employee of FCIC filling that position or the person designated by the Comptroller to perform that function.

(d) *Debt and claim* are deemed synonymous and are used interchangeably herein. The debt or claim is an amount of money which has been determined by an appropriate agency official to be owed to FCIC by any individual, organization or entity, except another Federal agency; State, local or foreign government or agencies thereof; Indian tribal governments; or other public institutions.

The debt or claim may have arisen from overpayment, premium non-payment, interest, penalties, reclamations resulting from payments under good faith reliance provisions, or other causes.

(e) *Delinquent debt* means (1) any debt owed to FCIC that has not been paid by the termination date specified in the applicable contract of insurance, or other due date for payment contained in any other agreement, or notification of indebtedness, and (2) any overdue amount owed to FCIC by a debtor

which is the subject of an installment payment agreement which the debtor has failed to satisfy under the terms of such agreement.

(f) *System of records* means a group of any records under the control of FCIC from which information is retrieved by the name of the individual by some identifying number, symbol, or other identification assigned to the individual.

(g) *Request for review* means that request submitted to FCIC by a debtor for a review of the facts resulting in the determination of indebtedness to FCIC. FCIC allows 45 days for such request and any request submitted within that period is considered a timely request.

§400.117 Determination of delinquency.

Prior to disclosing information about a debt to a credit reporting agency in accordance with this subpart, the FCIC claims official, designated as the Comptroller, FCIC, or the designee of the Comptroller who has jurisdiction over the claim, shall review the claim and determine that the claim is valid and overdue.

§400.118 Demand for payment.

The Comptroller who is responsible for carrying out the provisions of this subpart with respect to the debt shall send to the debtor appropriate written demands for payment in terms which inform the debtor of the consequences of failure to make payment, in accordance with guidelines established by the Manager, FCIC, the Federal Claims Collection Standards at 4 CFR 102.2, or the contract between the General Services Administration (GSA) and the collection agency.

§400.119 Notice to debtor; credit reporting agency.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller who is responsible for disclosure of information with respect to delinquent debts to a credit reporting agency shall send written notice to the delinquent debtors that FCIC intends to disclose credit information to a credit reporting agency on a regular basis. In addition, delinquent debtors are to be informed:

(1) Of the basis for the indebtedness;

(2) That the payment is overdue;

(3) That FCIC intends to disclose to a credit reporting agency that the debtor is responsible for the debt and with respect to an individual, that such disclosure shall be made not less than 60 days after notification to such debtor;

(4) Of the specific information intended to be disclosed to the credit reporting agency;

(5) Of the rights of such debtor to a full explanation of the claim and to dispute any information in the system of records of FCIC concerning the claim;

(6) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and

(7) Of the date after which the information will be reported to the credit reporting agency.

(b) The content and standards for demand letters and notices sent under this section shall be consistent with the Federal Claims Collection Standards at 4 CFR 102.2.

§400.120 Subsequent disclosure and verification.

(a) FCIC shall promptly notify each credit reporting agency to which the original disclosure of debt information was made of any substantial change in the condition or amount of the claim. A substantial change in condition may include, but is not limited to, notice of death, cessation of business, or relocation of the debtor. A substantial change in the amount may include, but is not limited to, payments received, additional amounts due, or offsets made with respect to the debt.

(b) FCIC shall promptly verify or correct, as appropriate, information about the claim or request of such credit reporting agency for verification of any or all information so disclosed. The records of the debtor shall reflect any correction resulting from such request.

(c) FCIC shall obtain satisfactory assurances from each reporting agency to which information will be provided that the agency is in compliance with

the provisions of all laws and regulations of the United States relating to providing credit information.

§ 400.121 Information disclosure limitations.

FCIC shall limit delinquent debt information disclosed to credit reporting agencies to:

(a) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(b) The amount, status, and history of the claim; and

(c) The FCIC program under which the claim arose.

§ 400.122 Attempts to locate debtor.

Before disclosing delinquent debt information to a credit reporting agency, FCIC shall take reasonable action to locate a debtor for whom FCIC does not have a current address in order to send the notification in accordance with § 400.119 of this subpart.

§ 400.123 Request for review of the indebtedness.

(a) Before disclosing delinquent debt information to a credit reporting agency, FCIC shall, upon request of the debtor, provide for a review of the claim, including an opportunity for reconsideration of the initial decision concerning the existence or amount of the claim, in accordance with applicable administrative appeal procedures.

(b) Upon receipt of a timely request for review, FCIC shall suspend its schedule for disclosure of delinquent debt information to a credit reporting agency until such time as a final decision is made on the request.

(c) Upon completion of the review, the reviewing office shall transmit to the debtor a written notification of the decision. If appropriate, notification shall inform the debtor of the scheduled date on or after which information concerning the debt will be provided to the credit reporting agency. The notification shall, if appropriate, also indicate any changes in the information to be disclosed to the extent such information differs from that provided in the initial notification.

§ 400.124 Disclosure to credit reporting agencies.

(a) In accordance with guidelines established by the Manager, FCIC, the Comptroller or designated manager of the systems of records shall disclose to credit reporting agencies the information specified in § 400.121.

(b) Disclosure of information to credit reporting agencies shall be made on or after the date specified in §§ 400.119(a)(3) and 400.125 and shall be comprised of the information set forth in the initial determination or any modification thereof.

(c) This section shall not apply to disclosure of delinquent debts when:

(1) The debtor has agreed to a repayment agreement for such debt and such agreement is still valid; or

(2) The debtor has filed for review of the debt and the reviewing official or designee has not issued a decision on the review.

§ 400.125 Notice to debtor, collection agency.

FCIC shall provide 30 days written notice to the debtor, mailed to the debtor's last known address, of FCIC's intent to forward the debt to a collection agency for further collection action.

§ 400.126 Referral of delinquent debts to contract collection agencies.

(a) FCIC shall use the services of a contract collection agency which has entered into a contract with the General Services Administration to recover debts owed to FCIC.

(b) If FCIC's collection efforts have been unsuccessful on a delinquent debt, and the delinquent debt remains unpaid, FCIC may refer the debt to a contract collection agency for collection.

(c) FCIC shall retain the authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation.

§ 400.127 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 400.128 Definitions.

(a) *Agency* means (1) An Executive Agency as defined by 5 U.S.C. 105, the United States Postal Service, and the

United States Postal Rate Commission, or (2) A Military Department, as defined by section 102 of Title 5 U.S.C.

(b) *Debt* means:

(1) An amount owed to the United States from sources including, but not limited to, insured or guaranteed loans, fees, leases, insurance premiums, interest (except where prohibited by law), rents, royalties, services, sale of real or personal property, overpayments, penalties, damages, fines and forfeitures (except those arising under the Uniform Code of Military Justice).

(2) An amount owed to the United States by an employee for pecuniary losses where the employee has been determined to be liable because of such employee's negligent, willful, unauthorized or illegal acts, including but not limited to:

(i) Theft, misuse, or loss of Government funds;

(ii) False claims for services and travel reimbursement;

(iii) Illegal, unauthorized obligations and expenditures of Government appropriations;

(iv) Using or authorizing the use of Government owned or leased equipment, facilities, supplies and services for other than official or approved purposes;

(v) Lost, stolen, damaged, or destroyed Government property;

(vi) Erroneous entries on accounting records or reports; and

(vii) Deliberate failure to provide physical security and control procedures for accountable officers, if such failure is determined to be the proximate cause for a loss of Government funds.

(c) *Department* or *USDA* means the United States Department of Agriculture.

(d) *Disposable salary (pay)* means any pay due an employee which remains after required deductions for Federal, State and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for life and health insurance benefits; and such other deductions as may be required by law to be withheld.

(e) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces.

(f) *FCIC Official* means the Manager, or the Manager's designee.

(g) *Hearing Officer* means an Administrative Law Judge of the Department of Agriculture or another person not under the control of the USDA, designated by the FCIC Official to review the determination of the alleged debt.

(h) *Salary Offset* means a deduction of a debt due the U.S. by deduction from the disposable salary of an employee without the employee's consent.

(i) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt owed by an employee as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

[53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.129 Salary offset.

(a) Debt collection by salary offset is feasible if: the cost to the Government of collection by salary offset does not exceed the amount of the debt; there are no legal restrictions to the debt, such as the debtor being under the jurisdiction of a bankruptcy court or the expiration of a statute of limitations; or, other such legal restrictions. The Debt Collection Act permits collections of debts by offset for claims that have not been outstanding for more than 10 years.

(b) The salary offset provisions contained herein provide procedures which must be followed before FCIC may request another Federal agency to offset any amount from the debtor's salary. Decisions made under the provisions of this section are not appealable under the provisions of the Appeal Regulations in part 400, subpart J of this title.

(c) These regulations will not apply to any case where collection of a debt by salary offset is explicitly provided for by another statue as noted by the Comptroller General in 64 Comp. Gen. 142 (1984), including 5 U.S.C. 5512(a), 5 U.S.C. 5513, 5 U.S.C. 5522(a) (1), 5 U.S.C. 5705 (1) and (2), and 5 U.S.C. 5724(f).

(d) Salary offset may be used by FCIC to collect debts which arise from delinquent FCIC premium payments or delinquent repayment plans and other debts arising from, but not limited to, such sources as program theft, embezzlement, fraud, salary overpayments,

underwithholding of any amounts due and payable for life and health insurance, advance travel payments, overpaid indemnities, and any amount owed by present or former employees from loss of federal funds through negligence and other matters. The debt does not have to be reduced to judgment and does not have to be covered by a security instrument.

(e) FCIC may use salary offset against one of its employees who is indebted to another agency if requested to do so by that agency. Salary offset will not be initiated until after other servicing options available to the requesting agency have been utilized, and due process has been afforded to the FCIC employee. When salary offset is utilized, payment for the debt will be deducted from the employee's salary and sent directly to the creditor agency. Not more than fifteen percent (15%) of the employee's disposable salary can be offset in any one pay period, unless the employee agrees in writing to the deduction of a larger amount.

(f) When FCIC is owed a debt by an employee of another agency, the other agency shall not initiate the requested offset until FCIC provides the agency with a written certification that the debtor owes FCIC a debt (including the amount and basis of the debt and the due date of the payment), and that FCIC has complied with Department regulations. If a repayment schedule is elected by the employee, interest will be charged in accordance with Departmental Regulation 2520–1, Interest Rate on Delinquent Debts; USDA Debt Collection Regulations in 7 CFR part 3; and 4 CFR 102.13.

(g) For the purposes of this section, the Manager, FCIC, or the Manager's designee, is delegated authority to:

(1) Certify to the debtor's employing agency that the debt exists and the amount of the debt or delinquent balance;

(2) Certify that, with respect to debt collection, the procedures and regulations of FCIC and the Department have been complied with; and

(3) Request that salary offset be initiated by the debtor's employing agency.

[53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.130 Notice requirements before offset.

Salary offset will not be made unless the employee receives 30 calendar days written notice. The notice of intent to offset salary (notice of intent) will state:

(a) That FCIC has reviewed the records relating to the debt and has determined that the debt is owed, and has verified the amount of the debt, and the facts giving rise to the debt;

(b) That FCIC intends to deduct an amount not to exceed 15% of the employees current disposable salary until the debt and all accumulated interest are paid in full;

(c) The amount, frequency, approximate beginning date, and duration of the intended deductions;

(d) An explanation of the requirements concerning interest, penalties, and administrative costs, including a statement that these assessments will be made unless waived in accordance with 31 U.S.C. 3717 and 7 CFR 3.34;

(e) That FCIC's records concerning the debt are available to the employee for inspection and that the employee may request a copy of such records;

(f) That the employee has a right to voluntarily enter into a written agreement with FCIC for a repayment schedule with FCIC, which may be different from that proposed by FCIC, if the terms of the repayment agreement are agreed to by FCIC;

(g) That the employee has the right to a hearing conducted by an Administrative Law Judge of USDA, or a hearing official not under the control of USDA, concerning the determination of the debt, the amount of the debt, or the percentage of disposable salary to be deducted each pay period, if the petition for a hearing is filed by the employee as prescribed by FCIC;

(h) The method and time period allowable for a petition for a hearing;

(i) That the timely filing of a hearing petition will stay the offset collection proceedings;

(j) That a final decision on the hearing will be issued at the earliest practical date, but not later than 60 calendar days after the filing of the petition, unless the employee requests, and the hearing officer grants, a delay in the proceedings;

(k) That any knowingly false or frivolous statement, representation, or evidence may subject the employee to:

(1) Disciplinary procedures appropriate under 5 U.S.C. Chapter 75, 5 CFR part 752, or any other applicable Statutes or regulations;

(2) Penalties under the False Claims Act, 31 U.S.C. 3729–3731, or any other applicable statutory authority: or

(3) Criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or any other applicable statutory authority;

(l) Any other rights or remedies available to the employee under any statute or regulations governing the program for which collection is being made;

(m) That the employee may request waiver of salary overpayment under applicable statutory authority (5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C 716, or 5 U.S.C 8346(b)), or may request waiver in the case of general debts and if waiver is available under any statutory provision pertaining to the particular debt being collected. The employee may question the amount or validity of the salary overpayment or general debt by submitting a claim to the Comptroller General in accordance with General Accounting Officer procedure.

(n) That amounts paid on or deducted for the debt which are later waived or found not to be owed to the United States will be promptly refunded to the employee, unless there are applicable contractual or statutory provisions to the contrary; and

(o) The name and address of an official of FCIC to whom the employee should direct any communication with respect to the debt.

[53 FR 4, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.131 Request for a hearing and result if an employee fails to meet deadlines.

(a) Except as provided in paragraph (c) of this section, an employee must file a petition for hearing that is received by the FCIC Official not later than 30 calendar days from the date of the notice of intent to collect a debt by salary offset, if the employee wants a hearing concerning:

(1) The existence or amount of the debt; or

(2) The FCIC Official's proposed offset schedule, including the percentage of deduction.

(b) The petition must be signed by the employee and should clearly identify and explain with reasonable specificity and brevity the facts, evidence and witnesses which the employee believes support the his or her position. If the employee objects to the percentage of disposable salary to be deducted from each check, the petition should state the objection and the reasons for it.

(c) If the employee files a petition for hearing later than the 30 days provided in paragraph (a) of this section, the FCIC Official may accept the petition if the employee is able to show that the delay caused by conditions beyond his or her control, or because the employee failed to received the notice of the filing deadline (unless the employee has actual notice of the deadline).

(d) An employee will not be granted a hearing and will have his or her disposable salary offset in accordance with the FCIC Official's announced schedule if the employee:

(1) Fails to file a petition for hearing as set forth in this subsection; or

(2) Is scheduled to appear and fails to appear at the hearing.

[53 FR 4, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 401.132 Hearings.

(a) If an employee timely files a petition for a hearing, the FCIC Official will select the date, time, and location for the hearing.

(b) The hearing shall be conducted by an appropriately designated Hearing Official.

(c) Rules of evidence shall not be observed, but the hearing officer will consider all evidence that he or she determines to be relevant to the debt that is the subject of the hearing, and weigh all such evidence accordingly, given all the facts and circumstances surrounding the debt.

(d) The burden of proof with respect to the existence of the debt rests with FCIC.

(e) The employee requesting the hearing shall bear the ultimate burden of proof.

(f) The evidence presented by the employee must prove that no debt exists, or cast sufficient doubt such that reasonable minds could differ as to the existence of the debt.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 401.133 Written decision following a hearing.

(a) At the conclusion of the hearing, a written decision will be provided which will include:

(1) A statement of the facts presented at the hearing supporting the nature and origin of the alleged debt and those presented to refute the debt;

(2) The hearing officer's analysis, findings, and conclusions, considering all the evidence presented and the respective burdens of the parties, in light of the hearing;

(3) The amount and validity of the alleged debt determined as a result of the hearing;

(4) The payment schedule (including the percentage of disposable salary), if applicable; and

(5) The determination of the amount of the debt at this hearing is the final agency action on this matter.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.134 Review of FCIC record related to the debt.

An employee who intends to inspect or copy FCIC records related to the debt must send a letter to the FCIC official (designated in the notice of intent) stating his or her intentions. The letter must be received by the FCIC official within 30 calender days of the date of the notice of intent. In response to the timely notice submitted by the debtor, the FCIC official will notify the employee of the location and time when the employee may inspect and copy FCIC records related to the debt.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.135 Written agreement to repay debt as an alternative to salary offset.

The employee may propose, in response to a notice of intent, a written agreement to repay the debt as an alternative to salary offset. The proposed written agreement to repay the debt must be received by the FCIC official within 30 calendar days of the date of the notice of intent. The FCIC official will notify the employee whether the employee's proposed written agreement for repayment is acceptable. The FCIC official may accept a repayment agreement instead of proceeding by offset. In making this determination, the FCIC official will balance the FCIC interest in collecting the debt against hardship to the employee. If the debt is delinquent and the employee has not disputed its existence or amount, the FCIC official will accept a repayment agreement, instead of offset, for good cause such as, if the employee establishes that offset would result in undue financial hardship, or would be against equity and good conscience.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.136 Procedures for salary offset; when deductions may begin.

(a) Deductions to liquidate an employee's debt will be made by the method and in the amount outlined in the Notice of Intent to collect from the employee's salary, as provided for in § 400.130.

(b) If the employee files a petition for a hearing before the expiration of the period provided for in § 400.130, then deductions will begin after the hearing officer has provided the employee with a final written decision in favor of FCIC.

(c) If an employee retires or resigns before collection of the amount of the indebtedness is completed, the remaining indebtedness will be collected in accordance with procedures for administrative offset.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§400.137 Procedures for salary offset; types of collection.

A debt will be collected in a lump-sum or in installments. Collection will be by lump-sum collection unless the employee is financially unable to pay in one lump-sum, or if the amount of the debt exceeds 15 percent of the disposable pay for an ordinary pay period. In these cases, deduction will be by installments as set forth in §400.138.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§400.138 Procedures for salary offset; methods of collection.

(a) *General.* A debt will be collected by deductions at officially-established pay intervals from an employee's current pay account, unless the employee and the hearing official agree to alternative arrangements for repayment under §400.135.

(b) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment. The size and frequency of the installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. If possible, the installment payment will be sufficient in size and frequency to liquidate the debt in no more than three years. Installment payments of less than $25.00 per pay period, or $50.00 per month, will be accepted only in the most unusual circumstances.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§400.139 Nonwaiver of rights.

So long as there are no statutory or contractual provisions to the contrary, no employee payment (or all or portion of a debt) collected under these regulations will be interpreted as a waiver of any rights that the employee may have under the provisions of 5 U.S.C. 5514.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§400.140 Refunds.

FCIC will promptly refund to the appropriate individual amounts offset under these regulations when:

(a) A debt is waived or otherwise found not owing to the United States (unless expressly prohibited by statute or regulation); or

(b) FCIC is directed by an administrative or judicial order to refund amounts deducted from an employee's current pay.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§400.141 Internal Revenue Service (IRS) Tax Refund Offset.

Under the provisions of 31 U.S.C. 3720A, the (IRS) may be requested to collect a legally enforceable debt owing to any Federal agency by offset against a taxpayer's Federal income tax refund. This section provides policies and procedures to implement IRS tax refund offsets in accordance with the provisions set forth in §301.6402–6T of 26 CFR chapter I.

(a) Any person who is indebted to the Federal Crop Insurance Corporation (FCIC) is entitled to the extent of FCIC's administrative due process including review and appeal of the debt under the Appeal Regulations in 7 CFR part 400, subpart J.

(b) If, after such administrative due process is exhausted, the debt is still outstanding with no other means of collection, the debtor will be notified by letter of FCIC's intention to refer such debt to the IRS for collection by tax refund offset. The notification letter will inform the debtor that their account is delinquent and that IRS will be requested to reduce the amount of any tax refund check due the debtor by the amount of the deliquency. The debtor will be given 60 days in which to write to the Manager, FCIC, providing written evidence that the debt is not legally enforceable. FCIC will refer the debt to IRS for collection by offset after the 60-day period if no response is received from the debtor. Decisions made under the provisions of this section are not appealable under the provisions of the Appeal Regulations in 7 CFR part 400, subpart J.

(c) If the debtor has requested a review, and has provided written evidence that the debt is not legally enforceable, the Manager, with the assistance of the Office of General Counsel, USDA, will review the debtor's reasons

for believing that the debt is not legally enforceable. The debtor will then be notified of the results of the review.

(d) FCIC will notify IRS of those accounts against which offset action is to be taken.

(e) If, during the period of review, the debtor pays the debt in full, the collection of the debt by tax refund offset procedure will be halted. Changes in debtor status that eliminate the debtor from IRS offset will be reported to IRS by FCIC and the debtor's refund will not be offset.

(f) Amounts offset for delinquent debt which are later found to be not owed to FCIC, will be promptly refunded.

(g) Debtors will not be subject to IRS offset for any of the following reasons:

(1) Debtors who are discharged in bankruptcy or who are under the jurisdiction of a bankruptcy court;

(2) Debtors who are employed by the Federal Government;

(3) Debtors whose cases are in suspense because of actions pending by or taken by FCIC;

(4) Debtors who have not provided a Social Security Number (SSN) and no SSN can be obtained;

(5) Debtors whose indebtedness is less than $25;

(6) Debtors whose account is more than ten (10) years delinquent; except in the case of a judgment debt; or

(7) Debtors whose account has not been first reported to a consumer credit reporting agency.

[53 FR 5, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

§ 400.142 Past-due legally enforceable debt eligible for refund offset.

For purposes of this section, a past-due, legally enforceable debt which may be referred by FCIC to IRS for offset is a debt which:

(a) Except in the case of a judgement debt, has been delinquent for at least three months but has not been delinquent for more than 10 years at the time the offset is made;

(b) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(c) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2), or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the referring agency against amounts payable to the debtor by the referring agency;

(d) With respect to which the agency has given the employee at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such employee, and has determined that an amount of such debt is past-due and legally enforceable;

(e) Has been disclosed by FCIC to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), in the case of a debt to be referred to IRS after June 30, 1986;

(f) With respect to which that FCIC has notified, or has made a reasonable attempt to notify, the employee that:

(1) The debt is past due; and

(2) Unless repaid within 60 days thereafter, will be referred to IRS for offset against any overpayment of tax; and

(3) Which is at least $25.00.

[53 FR 6, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988]

Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 52 FR 17543, May 11, 1987, unless otherwise noted. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988.

§ 400.161 Definitions.

In addition to the terms defined in the Standard Reinsurance Agreement, the following terms as used in this rule are defined to mean:

(a) *Annual Statutory Financial Statement* means the annual financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer is licensed.

(b) *Company* means the company reinsured by FCIC or apply to FCIC for a Standard Reinsurance Agreement.

(c) *Corporation* means the Federal Crop Insurance Corporation.

(d) *FCIC* means the Federal crop Insurance Corporation.

(e) *Financial statement* means any documentation submitted by a company as required by this subpart.

(f) *Guaranty fund assessments* means the state administered program utilized by some state insurance regulatory agencies to obtain funds with which to discharge unfunded obligations of insurance companies licensed to do business in that state.

(g) *Insurer* means an insurance company that is licensed or admitted as such in any State, Territory, or Possession of the United States.

(h) *MPUL* means the maximum possible underwriting loss that an insurer can sustain on policies it intends to reinsure with FCIC, after adjusting for the effect of any reinsurance agreement with FCIC, and any outside reinsurance agreements, as evaluated by FCIC.

(i) *Obligations* mean crop or indemnity for crop loss on policies reinsured under the Standard Reinsurance Agreement.

(j) *Plan of operation* means a statment submitted to FCIC each year in which a reinsured or a prospective reinsured specifies the reinsurance options it wishes to use, its marketing plan, and similar information as required by the Corporation.

(k) *Quarterly Statutory Financial Statement* means the quarterly financial statement of an insurer prepared in accordance with Statutory Accounting Principles and submitted to the state insurance department if required by any state in which the insurer is licensed.

(l) *Reinsurance agreement* means an agreement between two parties by which an insurer cedes to a reinsurer certain liabilities arising from the insurer's sale of insurance policies.

(m) *Reinsured* means the insurer which is a party to the Standard Reinsurance Agreement with FCIC.

(n) *Standard Reinsurance Agreement* (Agreement) means the reinsurance agreement between the reinsured and FCIC.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 57 FR 34666, Aug. 6, 1992; 60 FR 57903, Nov. 24, 1995]

§ 400.162 Qualification ratios.

The sixteen qualification ratios include:

(a) Eleven National Association of Insurance Commissioner's (NAIC's) Insurance Regulatory Information System (IRIS) ratios found in §§ 400.170(d)(1)(ii) and 400.170(d)(2) (i), (ii), (iii), (vi), (vii), (ix), (xi), (xii), (xiii), and (xiv) and referenced in ''Using the NAIC Insurance Regulatory Information System'' distributed by NAIC, 120 West 12th St., Kansas City, MO 64105–1925;

(b) Three ratios used by A.M. Best Company found in § 400.170(d)(2) (v), (viii), and (x) and referenced in Best's Key Rating Guide, A.M. Best, Ambest Road, Oldwick, N.J. 08858–0700;

(c) One ratio found in § 400.170(d)(1)(i) is calculated the same as the Gross Premium to Surplus IRIS ratio, with Gross Premium adjusted to exclude the MPCI premium assumed by FCIC; and

(d) One ratio found in § 400.170(d)(2)(iv) which is formulated by FCIC and is calculated the same as the One-Year Change to Surplus IRIS ratio but for a two-year period.

[60 FR 57903, Nov. 24, 1995]

§ 400.163 Applicability.

The standards contained herein shall be applicable to insurers who apply for or enter into a Standard Reinsurance Agreement effective for the 1997 and subsequent reinsurance years or who continue with a prior years Standard Reinsurance Agreement into the 1997 and subsequent reinsurance years.

[60 FR 57903, Nov. 24, 1995]

§ 400.164 Availability of the Standard Reinsurance Agreement.

Federal Crop Insurance Corporation will offer Standard Reinsurance Agreements to eligible Companies under which the Corporation will reinsure policies which the Companies issue to producers of agricultural commodities. The Standard Reinsurance Agreement will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and provisions of the regulations of the Corporation found at chapter IV of title 7 of the Code of Federal Regulations.

§ 400.165 Eligibility for Standard Reinsurance Agreements.

A Company will be eligible to participate in an Agreement if the Corporation determines the Company meets the standards and reporting requirements of this subpart.

§ 400.166 Obligations of the Corporation.

The Agreement will include the following among the obligations of the Corporation.

(a) The Corporation will reinsure policies written on terms, including premium rates, approved by the Corporation, on crops and in areas approved by the Corporation, and in accordance with the provisions of the Federal Crop Insurance Act, as amended, and the provisions of these regulations.

(b) The Corporation will pay a portion of each producer's premium on the policies reinsured under the Agreement, as authorized by the Federal Crop Insurance Act, as amended.

(c) The Corporation will assume all obligations for unpaid losses on policies reinsured under the Agreement in the event any company reinsured under the Agreement is unable to fulfill its obligations to any holder of a Multiple Peril Crop Insurance Policy reinsured by the Corporation by reason of a directive or order issued by any State Department of Insurance, State Commissioner of Insurance, any court of law having competent jurisdiction or any other similar authority of any jurisdiction to which the Company is subject.

(d) Each policy reinsured by the Corporation must be clearly identified by including in bold face or large type the following statement as item number 1 in its General Provisions:

This insurance policy is reinsured by the Federal Crop Insurance Corporation under the provisions of the Federal Crop Insurance Act, as amended (the Act) (7 U.S.C. 1501 *et seq.*), and all terms of the policy and rights and responsibilities of the parties are specifically subject to the Act and the regulations under the Act published in chapter IV of 7 CFR.

§ 400.167 Limitations on Corporation's obligations.

The Agreement will include the following among the limitations on the obligations of the Corporation.

(a) The Corporation may, at any time, suspend its obligation to accept additional liability from the Company by providing written notice to that effect.

(b) The obligations of the Corporation under the Agreement are contingent upon the availability of appropriations.

(c) The Corporation will not reinsure any policy sold by the Company to a producer after the date Company receives notice that the Corporation has determined that the producer is ineligible to receive Federal Crop Insurance.

§ 400.168 Obligations of participating insurance company.

The Agreement will include the following among the obligations of the Company.

(a) The Company shall follow all applicable Corporation procedures in its administration of the crop insurance policies reinsured.

(b) The Company shall make available to all eligible producers in the areas designated in its plan of operations as approved by the Corporation:

(1) The crop insurance plans for the crops designated in its plan of operation in those counties within a State, or a portion of a State, where the Secretary of Agriculture has determined that insurance is available through local offices of the United States Department of Agriculture; and

(2) Catastrophic risk protection, limited, and additional coverage plans of insurance for all crops, for which such insurance is made available by the Corporation, in all counties within a state, or a portion of State, where the Secretary of Agriculture has determined that insurance is no longer available through local offices of the United States Department of Agriculture.

(c) The Company shall provide the Corporation, on forms approved by the Corporation all information that the Corporation may deem relevant in the

administration of the Agreement, including a list of all applicants determined to be ineligible for crop insurance coverage and all insured producers cancelled or terminated from insurance, along with the reason for such action, the crop program, and the amount of coverage for each.

(d) The Company shall utilize only loss adjustment procedures and methods that are approved by the Corporation.

(e) The Company shall sell the policies covered under the Agreement through licensed agents or brokers who have successfully completed a training course approved by the Corporation.

(f) The Company shall not discriminate against any employee, applicant for employment, insured or applicant for insurance because of race, color, religion, sex age, handicap, or national origin.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 61 FR 34368, July 2, 1996; 61 FR 65153, Dec. 11, 1996]

§400.169 Disputes.

(a) If the company believes that the Corporation has taken an action that is not in accordance with the provisions of the Standard Reinsurance Agreement or any reinsurance agreement with FCIC, except compliance issues, it may within 45 days after receipt of such determination, request, in writing, the Director of Insurance Services to make a final administrative determination addressing the disputed issue. The Director of Insurance Services will render the final administrative determination of the Corporation with respect to the applicable issues.

(b) If the company believes that the Corporation's compliance review findings are not in accordance with the applicable laws, regulations, custom or practice of the insurance industry, or FCIC approved policy and procedure, it may within 45 days after receipt of such determination, request, in writing, the Director of Compliance to make a final administrative determination addressing the disputed issue. The Director of Compliance will render the final administrative determination of the Corporation with respect to these issues.

(c) A company may also request reconsideration by the Director of Insurance Services of a decision of the Corporation rendered under any Corporation bulletin or directive which bulletin or directive does not affect, interpret, explain, or restrict the terms of the reinsurance agreement. The company, if it disputes the Corporation's determination, must request a reconsideraiton of that determination in writing, within 45 days of the receipt of the determination. The determinations of the Director will be final and binding on the company. Such determinations will not be appealable to the Board of Contract Appeals.

(d) Appealable final administrative determinations of the Corporation under §400.169 (a) or (b) may be appealed to the Board of Contract Appeals in accordance with the provisions of part 24 of title 7, subtitle A, of the Code of Federal Regulations, 7 CFR part 24.

[60 FR 21036, May 1, 1995]

§400.170 General qualifications.

To qualify initially or thereafter for a Standard Reinsurance Agreement with FCIC, an insurer must:

(a) Be licensed or admitted in any state, territory, or possession of the United States;

(b) Be licensed or admitted, or use as a policy-issuing Company an insurer that is licensed or admitted, in each state from which the insurer will cede policies to FCIC for reinsurance;

(c) Have surplus, as reported in its most recent Annual or Quarterly Statutory Financial Statement, that is at least equal to the MPUL for the company's estimated retained premium proposed to be reinsured, multiplied by the appropriate Minimum Surplus Factor found in the Minimum Surplus Table. For the purposes of the Minimum Surplus Table, an insurer is considered to issue policies in a state if at least two and one-half percent (2.5%) of all its reinsured retained premium is written in that state;

MINIMUM SURPLUS TABLE

Number of states in which a company issues FCIC-reinsured policies	Minimum surplus factor (multiplied by MPUL)
1 through 10	2.5
11 or more	2.0

(d) Have and meet the ratio requirements of the Gross Premium to Surplus and Net Premium to Surplus required ratios and at least ten of the fourteen analytical ratios in this section based on the most recent Annual Statutory Financial Statement, or comply with § 400.172:

Ratio	Ratio requirement
(1) Required:	
(i) Gross Premium to Surplus.	Less than 900%.
(ii) Net Premium to Surplus.	Less than 300%.
(2) Analytical:	
(i) Two-Year Overall Operating Ratio.	Less than 100%.
(ii) Agents' Balances to Surplus.	Less than 40%.
(iii) One-Year Change in Surplus.	Greater than −10% and less than 50%.
(iv) Two-Year Change in Surplus.	Greater than −10%.
(v) Combined Ratio After Policyholder Dividends.	Less than 115%.
(vi) Change in Writing	Greater than −33% and less than 33%.
(vii) Surplus Aid to Surplus.	Less than 15%.
(viii) Quick Liquidity	Greater than 20%.
(ix) Liabilities to Liquid Asset.	Less than 105%.
(x) Return on Surplus	Greater than −5%.
(xi) Investment Yield	Greater than 4.5% and less than 10%.
(xii) One-Year Reserve Development to Surplus.	Less than 20%.
(xiii) Two-Year Reserve Development to Surplus.	Less than 20%.
(xiv) Estimated Current Reserve Deficiency to Surplus.	Less than 25%.

(e) Submit to FCIC all of the following statements:

(1) Annual and Quarterly Statutory Financial Statements;

(2) Statutory Management Discussion & Analysis;

(3) Most recent State Insurance Department Examination Report;

(4) Actuarial Opinion of Reserves;

(5) Annual Audited Financial Report; and

(6) Any other appropriate financial information or explanation of IRIS ratio discrepancies as determined by the company or as requested by FCIC.

[60 FR 57903, Nov. 24, 1995]

§ 400.171 Qualifying when a state does not require that an Annual Statutory Financial Statement be filed.

An insurer exempt by the insurance department of the states where they are licensed from filing an Annual Statutory Financial Statement must, in addition to the requirements of § 400.170 (a), (b), (c) and (d), submit an Annual Statutory Financial Statement audited by a Certified Public Accountant in accordance with generally accepted auditing standards, which if not exempted, would have been filed with the insurance department of any state in which it is licensed.

[60 FR 57904, Nov. 24, 1995]

§ 400.172 Qualifying with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements.

An insurer with less than two of the required ratios or ten of the analytical ratios meeting the specified requirements in § 400.170(d) may qualify if, in addition to the requirements of § 400.170 (a), (b), (c) and (e), the insurer:

(a) Submits a financial management plan acceptable to FCIC to eliminate each deficiency indicated by the ratios, or an acceptable explanation why a failed ratio does not accurately represent the insurer's insurance operations; or

(b) Has a binding agreement with another insurer that qualifies such insurer under this subpart to assume financial responsibility in the event of the reinsured company's failure to meet its obligations on FCIC reinsured policies.

[60 FR 57904, Nov. 24, 1995]

§ 400.173 [Reserved]

§ 400.174 Notification of deviation from financial standards.

An insurer must immediately advise FCIC if it deviates from compliance with any of the requirements of this chapter. FCIC may require the insurer

to update its financial statements during the year. FCIC may terminate the reinsurance agreement if the Company is out of compliance with the requirements of this chapter.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 60 FR 57904, Nov. 24, 1995]

§ 400.175 Revocation and non-acceptance.

(a) FCIC will deny reinsurance to any insurer or will terminate any existing reinsurance agreement if any false or misleading statement is made in the financial statements or any other document submitted by the insurer in connection with its qualification for FCIC reinsurance.

(b) No policy issued by an insurer subsequent to revocation of a reinsurance agreement will be reinsured by FCIC. Policies in effect at the time of revocation will continue to be reinsured by FCIC for the balance of the crop year then in effect for the applicable crop. However, if materially false information is made to the Corporation and that information directly affects the ability of the Company to perform under the Agreement, or if the Company commits any fraudulent or criminal act in relation to the Standard Reinsurance Agreement or any policy reinsured under the Agreement, FCIC may require that the Company transfer the servicing and contractual right to all business in effect and reinsured by the Corporation to the Corporation.

[52 FR 17543, May 11, 1987. Redesignated at 53 FR 3, Jan. 4, 1988, and 53 FR 10527, Apr. 1, 1988, as amended at 60 FR 57904, Nov. 24, 1995]

§ 400.176 State action preemptions.

(a) No policyholder shall have recourse to any state guaranty fund or similar state administered program for crop or premium losses reinsured under such Standard Reinsurance Agreement. No assessments for such State funds or programs shall be computed or levied on companies for or on account of any premiums payable on policies of Multiple Peril Crop Insurance reinsured by the Corporation.

(b) No policy of insurance reinsured by the Corporation and no claim, settlement, or adjustment action with respect to any such policy shall provide a basis for a claim of damages against the Company issuing such policy, other than damages to which the Corporation would be liable under federal law if the Corporation had issued the policy of insurance under its direct writing program, unless the claimant establishes in a court of competent jurisdiction, or to the satisfaction of the Corporation in the event of a settlement, that such damages were caused by the culpable failure of the Company to substantially comply with the Corporation's procedures or instructions in the handling of the claim or in servicing the insured' policy, or unless the Company or its agents were acting outside the scope of their authority (apparent or implied) in performing or omitting the actions claimed as a basis for the damage action.

§ 400.177 [Reserved]

Subpart M—Agency Sales and Service Contract—Standards for Approval

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 53 FR 24015, June 27, 1988, unless otherwise noted.

§ 400.201 Applicability of standards.

Federal Crop Insurance Corporation will offer an Agency Sales and Service Contract (the Contract) to private entities meeting the requirements set forth in this subpart under which the Corporation will insure producers of agricultural commodities. The Contract will be consistent with the requirements of the Federal Crop Insurance Act, as amended, and the provisions of the regulations of the Corporation found at chapter IV of title 7 of the Code of Federal Regulations. The Standards contained herein are required for an entity to be a contractor under the Contract.

§ 400.202 Definitions.

For the purpose of these Standards:

(a) *Agency Sales and Service Contract or the Contract* means the written agreement between the Federal Crop Insurance Corporation (Corporation) and a private entity (Contractor) for the purpose of selling and servicing

Federal Crop Insurance policies and includes, but is not limited to, the following:

(1) The Agency Sales and Service Contract;

(2) Any Appendix to the Agency Sales and Service Contract issued by the Corporation;

(3) The annual approved Plan or Operation; and

(4) Any amendment adopted by the parties.

(b) *BELL 208B (or compatible) modem*—means a modem meeting the standards developed by BELL Laboratories for dial-up, half-duplex, 4800 or 9600 bits per second (bps) transmission of data utilizing 3780 (or 2780) protocol.

(c) *Contract, the* see Agency Sales and Service Contract.

(d) *Contractor's electronic system (system)* means the data processing hardware and software, data communications hardware and software, and printers utilized with the system.

(e) *CPA* means a Certified Public Accountant who is licensed as such by the State in which the CPA practices.

(f) *CPA Audit* means a professional examination conducted by a CPA in accordance with generally accepted auditing standards of a Financial Statement on the basis of which the CPA expresses an independent professional opinion respecting the fairness of presentation of the Financial Statement.

(g) *Current Assets* means cash and other assets that are reasonably expected to be realized in cash or sold or consumed during the normal operation cycle of the business or within one year if the operation cycle is shorter than one year.

(h) *Current Liabilities* means those liabilities expected to be satisfied by either the use of assets classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time, usually one year.

(i) *Financial Statement* means the documents submitted to the Corporation by a private entity which portray the financial information of the entity. The financial statement must be prepared in accordance with Generally Accepted Accounting Principles (GAAP) and reflect the financial position in the Statement of Financial Condition or Balance Sheet; and the result of operations in the Statement of Profit and Loss or Income Statement.

(j) *Processing representative* means a person or organization designated by the Contractor to be responsible for data entry and electronic transmission of data contained on crop insurance documents.

(k) *Sales* means new applications and renewals of FCIC policies.

(l) *Suspended Data Notice* means a notification of a temporary stop or delay in the processing of data transmitted to the Corporation by the Contractor because the same is incomplete, nonprocessable, obsolete, or erroneous.

(m) *3780 protocol*—means the data communications protocol (standard) that is a binary synchronous communications (BSC), International Business Systems (IBM)-defined, byte controlled communications protocol, using control characters and synchronized transmission of binary coded data.

§ 400.203 Financial statement and certification.

(a) An entity desiring to become or continue as a contractor shall submit to the Corporation a financial statement which is as of a date not more than eighteen (18) months prior to the date of submission.

(b) The financial statement submitted shall be audited by a CPA (CPA Audit); or if a CPA audited financial statement is not available, the statement submitted to the Corporation must be accompanied by a certification of:

(1) The owner, if the business entity is a sole proprietorship; or

(2) At least one of the general partners, if the business entity is a partnership; or

(3) The Chief Executive Officer and Treasurer, if the business entity is a Corporation, that said statement fairly represents the financial condition of the entity on the date of such certification to the Corporation. If the financial statement as certified by the Chief Executive Officer and Treasurer, partner, or owner is submitted, a CPA audited financial statement must be submitted if subsequently available.

§400.204 Notification of deviation from standards.

A Contractor shall advise the Corporation immediately if the Contractor deviates from the requirements of these standards. The Corporation may require the Contractor to show compliance with these standards during the contract year if the Corporation determines that such submission is necessary. If the Corporation determines that the deviation is temporary, the Corporation may grant a temporary waiver pending compliance within a specified period of time. A waiver of any provision of these standards will not be granted to an applicant for a contract.

§400.205 Denial or termination of contract and administrative reassignment of business.

Non-compliance with these standards will result in:

(a) The denial of a Contract; or

(b) Termination of an existing Contract.

In the event of denial or termination of the Contract, all crop insurance policies of the Corporation sold by the Contractor and all business pertaining thereto may be assumed by the Corporation and may be administratively reassigned by the Corporation to another Contractor.

§400.206 Financial qualifications for acceptability.

The financial statement of an entity must show total allowable assets in excess of liabilities and the ability of the entity to meet current liabilities by the use of current assets.

§400.207 Representative licensing and certification.

(a) A Contractor must maintain twenty-five (25) licensed and certified Contractor Representatives.

(b) A Contractor's Representative who solicits, sells and services FCIC policies or represents the Contractor in solicitation, sales or service of such policies must hold a license as issued by the State or States in which the policies are issued, which license authorizes the sales of insurance in any one or more of the following lines:

(1) Multiple peril crop insurance;

(2) Crop hail insurance;

(3) Casualty insurance;

(4) Property insurance;

(5) Liability insurance; or

(6) Fire insurance and allied lines.

The Contractor must submit evidence, satisfactory to the Corporation, verifying the type of State license held by each Representative and the date of expiration of each license.

(c) A Contractor's Representative must have achieved certification by the Corporation for each crop upon which the Representative sells and services insurance.

§400.208 Term of the contract.

(a) The term of the Contract shall commence on July 1 or when signed. The contract will continue from year to year with an annual renewal date of July 1 for each succeeding year unless the Corporation or the Contractor gives at least ninety (90) days advance notice in writing to the other party that the contract is not to be renewed. Any breach of the contract, or failure to comply with these Standards, by the Contractor, may result in termination of the contract by the Corporation upon written notice of termination to the Contractor. That termination will be effective thirty (30) days after mailing of the notice and termination to the Contractor.

(b) A Contractor who elects to continue under the Contract for a subsequent year must, prior to the month of June, submit a completed Plan of Operation which includes the Certifications as required by §400.203 of this subpart. The Contractor may not perform under the contract until the Plan of Operation is approved by the Corporation.

§400.209 Electronic transmission and receiving system.

Any Contractor under the Contract is required to:

(a) Adopt a plan for the purpose of transmitting and receiving electronically, information to and from the Corporation concerning the original executed crop insurance documents;

(b) Maintain an electronic system which must be tested and approved by the Corporation;

(c) Maintain Corporation approval of the electronic system as a condition to

the electronic transmission and reception of data by the Contractor;

(d) Utilize the Corporation approved automated data processing and electronic data transmission capabilities to process crop insurance documents as required herein; and

(e) Establish and maintain the electronic equipment and computer software program capability to:

(1) Receive and store actuarial data electronically via telecommunications utilizing 3780 protocol and utilizing a BELL 208B or compatible modem at 4800 bits per second (bps);

(2) Enter and store information from original crop insurance documents into electronic format;

(3) Verify electronically stored information recorded from crop insurance documents with electronically stored actuarial information;

(4) Compute and print the data elements in the Summary of Protection;

(5) Transmit crop insurance data electronically, via 3780 protocol utilizing a BELL 208B or compatible modem at 4800 bps;

(6) Receive electronic acknowledgements, error messages, and other data via 3780 protocol utilizing a BELL 208B or compatible modem at 4800 bps, and relate error messages to original crop insurance documents; and

(7) Store backup data and physical documents.

(The Corporation may approve other compatible specifications if accepted by the Corporation and if requested by the Contractor)

§ 400.210 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

Subpart N—Disaster Assistance Act of 1988; Procedures for Implementation

SOURCE: 54 FR 24318, June 7, 1989, unless otherwise noted.

§ 400.250 General statement.

The Disaster Assistance Act of 1988, subsequent disaster acts and disaster provisions in subsequent acts and the Rural Development Act (7 U.S.C. 1961 *et seq.*) have required that, subject to certain provisions in those enactments, procedures on a farm, in order to be eligible to receive benefits under the various provisions, would be required to purchase Federal crop insurance when the disaster for which benefits are being obtained are related to a peril which should be covered under the insurance policy. Most of these legislative provisions require that regulations be promulgated to provide for a reduction in the commissions paid to private insurance agents, brokers, or companies on contracts for crop insurance entered into under such disaster provisions. Said reductions must be sufficient to reflect that such insurance contracts principally involve only a servicing function to be performed by the agent, broker, or company.

[58 FR 36593, July 8, 1993]

§ 400.251 Purpose and applicability.

(a) It is the purpose of these regulations to provide the procedures for implementing the various disaster acts and disaster provisions which require the purchase of crop insurance issued under the Federal Crop Insurance Act, by requiring a reduction in the compensation rate to the agent, broker, or company under contract or agreement with FCIC.

(b) The provisions contained in this subpart shall be applicable to all holders of an Agency Sales and Service Contract (herein referred to as ''agency'') or a Reinsurance Agreement (herein referred to as ''company'') with FCIC, and shall be applicable on all crop insurance contracts for crops entered into to comply with the requirements of various disaster acts or provisions requiring the purchase of crop insurance issued under the Federal Crop Insurance Act.

[54 FR 24318, June 7, 1989, as amended at 58 FR 36593, July 8, 1993]

§ 400.252 Implementation and expense reimbursement.

Crop insurance coverage, required by various disaster acts or disaster provisions to be made available to any producer identified by the Agricultural Stabilization and Conservation Service (ASCS) as having suffered a crop loss of

65 percent or more, unless the requirement for such crop insurance coverage is waived under the provisions of various disaster acts or disaster provisions, may be made available through any agent or company under the terms and conditions of the contract or agreement such agent or company may have with FCIC. Agents under an Agency Sales and Service Contract and companies under a Reinsurance Agreement with FCIC are required to sign an amendment to the contract or agreement agreeing to a reduction in expense reimbursement for evidence of a policy of crop insurance issued under the requirements of various disaster acts or disaster provisions. Such expense reimbursement:

(a) Will not be reduced if the producer:

(1) Had crop insurance under the Federal Crop Insurance Act during the crop year for which the payment or other benefit is being sought under the various disaster acts or disaster provisions and said insurance has been continued into the next crop year;

(2) Furnishes evidence of insurance coverage (copy of the completed, filed application or policy confirmation) for the next crop year for the crop for which the payment or other benefit under various disaster acts or disaster provisions is being requested, to the ASCS county office at the time of application for the disaster payment or other benefit under various disaster acts or disaster provisions; or

(3) Has, under the provisions of various disaster acts or disaster provisions, received a waiver of the requirement to obtain crop insurance coverage.

(b) Will be reduced in the amount of 1½ percent of base premium when the producer, applying for disaster payment at the ASCS Office without evidence of the required crop insurance coverage, is required by the ASCS or the Farmer's Home Administration (FmHA) county committee to obtain such crop insurance coverage for next crop year in order to receive the payment or other benefit sought under various disaster acts or disaster provisions.

[54 FR 24318, June 7, 1989, as amended at 58 FR 36593, July 8, 1993]

Subpart O—Non-Standard Underwriting Classification System Regulations for the 1991 and Succeeding Crop Years

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 55 FR 32595, Aug. 10, 1990, unless otherwise noted.

§ 400.301 Basis, purpose, and applicability.

The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (the Act), to prescribe the procedures for nonstandard determinations and the assignment of assigned yields and/or premium rates in conformance with the intent of section 508 of the Act (7 U.S.C. 1508). These regulations are applicable to all policies of insurance insured or reinsured by the Corporation under the Act.

§ 400.302 Definitions.

(a) *Act*—means Federal Crop Insurance Act as amended (7 U.S.C. 1501 *et seq.*).

(b) *Actively engaged in farming*—means that a person in return for a share of profits and losses makes a contribution to the production of an insurable crop of capital, equipment, personal, labor, and/or personal management.

(c) *Actual Yield*—means total harvested production of a crop divided by the number of acres on which the crop was planted. For insured acres, actual yield is the total production to count as defined in the insurance policy, divided by insured acres.

(d) *Assigned yield*—means units of crop production per acre administratively assigned by the Corporation for the purpose of determining insurance coverage.

(e) *Base period*—means the 10 preceding crop years through the next to last crop year.

(f) *Corporation*—means the Federal Crop Insurance Corporation.

(g) *Cumulative earned premium rate*—is the total premium earned for all years in the base period, divided by the total liability for all years in the base period with the result expressed as a percentage.

(h) *Cumulative loss ratio*—means the ratio of total indemnities to total

earned premiums during the base period expressed as a decimal.

(i) *Earned premium rate*—means premium earned divided by liability and expressed as a percentage.

(j) *Entity*—means a person as defined in this subpart other than an individual.

(k) *Insurance experience*—means premium earned, indemnities paid, and other data resulting from a crop insurance policy insured or reinsured by the Corporation.

(l) *Loss ratio*—means the ratio of indemnity to earned premium expressed as a decimal.

(m) *Person*—means an individual, partnership, association, corporation, estate, trust, or other legal entity, and whenever applicable, a State or a political subdivision, or agency of a state.

(n) *Substantial beneficial interest*—means an interest of 10 percent or more. In determining whether such an interest equals at least 10 percent, all interests which are owned directly or indirectly through such means as ownership of shares in a corporation which owns the interest will be taken into consideration.

§ 400.303 Initial selection criteria.

(a) Nonstandard Classification procedures in the subpart initially apply when both of the following insurance experience criteria have been met:

(1) Three (3) or more indemnified losses which exceed earned premium during the base period; and

(2) The natural logarithm of cumulative earned premium rate multiplied by the square root of the cumulative loss ratio equals 2.00 or greater. The minimum standard of 2.00 may be increased provided the increased standard applies to all insurance experience in the same county.

(b) Selection criteria may be applied on the basis of insurance experience of a person, insured acreage, or the combination of both.

(1) Insurance experience of a person will include:

(i) Insurance experience of the person;

(ii) Insurance experience of other insured entitites in which the person had substantial beneficial interest if the person was actively engaged in farming of the insured crop by virtue of the person's interest in those insured entities;

(iii) Insurance experience of a spouse and minor children if the person is an individual and the spouse and minor children are considered the same as the individual under § 400.306.

(2) Insurance experience of insured acreage includes all insurance experience during the base period resulting from the production of the insured crop on the acreage.

(3) Where insurance experience is based on a combination of person and insured acreage, the insurance experience will include the experience of the person as defined in paragraph (b) of this section (1) only on the specific insured acreage during the base period.

§ 400.304 Nonstandard Classification determinations.

(a) Nonstandard Classification determinations can affect a change in assigned yields, premium rates, or both from those otherwise prescribed by the insurance actuarial tables.

(b) Changes of assigned yields based on insurance experience of insured acreage (or of a person on specific insured acreage) will be based on the simple average of available actual yields from the insured acreage during the base period.

(c) Changes of assigned yields based on insurance experience of a person without regard to any specific insured acreage will be determined by an assigned yield factor calculated by multiplying excess loss cost ratio by loss frequency and subtracting that product from 1.00 where:

(1) Excess loss cost ratio is total indemnities divided by total liabilities for all years of insurance experience in the base period and the result of which is then reduced by the cumulative earned premium rate, expressed as a decimal, and

(2) Loss frequency is the number of crop years in which an indemnity was paid divided by the number of crop years in which premiums were earned during the base period.

(d) Changes of premium rates will be made to reflect premium rates that would have resulted in insurance experience during the base period with a loss ratio of 1.00 but:

(1) A higher loss ratio than 1.00 may be used for premium rate determinations provided that the higher loss ratio is applied uniformly in a county; and

(2) If a Nonstandard Classification change has been made to current assigned yields, insurance experience during the base period will be adjusted to reflect the affects of changed assigned yields before changes of premium rates are calculated based on that experience.

(e) Once selection criteria have been met in any year, Nonstandard Classification adjustments will be made from year to year until no further changes are necessary in assigned yields or premium rates under the conditions set forth in §400.304(f). In determining whether further changes are necessary, the eligibility criteria will be recomputed each subsequent year using the premium rates and yields which would have been applicable had this part not been in effect.

(f) Nonstandard Classification changes will not be made that:

(1) Increase assigned yields or decrease premium rates from those otherwise assigned by the actuarial tables, or

(2) Result in less than a 10 percent decrease in assigned yields or less than a 10 percent increase in premium rates from those otherwise assigned by the actuarial tables.

§400.305 Assignment of Nonstandard Classifications.

(a) Assignment of a Nonstandard Classification of assigned yields, assigned yield factors, or premium rates shall be made on forms approved by the Corporation and included in the actuarial tables for the county.

(b) Nonstandard Classification assignment will be made each year for the year identified on the assignment forms and not subject to change under the provisions of this subpart by the Corporation for that year when included in the actuarial tables for the county except as a result of a request for reconsideration as provided in subsection §400.309, or as the result of appeals under subpart J.

(c) Nonstandard Classifications may be assigned to identified insurable acreage; person; or, to a combination of person and identified acreage whereby:

(1) Classifications assigned to identified insurable acreage apply to all acres of the insured crop grown on the identified acreage;

(2) Classifications assigned to a person apply to all insurable acres of the insured crop on which the person and any entity in which the person has substantial beneficial interest is actively engaged in farming; and

(3) Classifications assigned to a combination of a person and identified insurable acreage will only apply to those acres of the insured crop grown on the identified acreage on which the named person is actively engaged in producing such crop.

§400.306 Spouses and minor children.

(a) The spouse and minor children of an individual are considered to be the same as the individual for purposes of this subpart except that:

(1) The spouse who was actively engaged in farming in a separate farming operation prior to their marriage will be a separate person with respect to that separate farming operation so long as that operation remains separate and distinct from any farming operation conducted by the other spouse;

(2) A minor child who is actively engaged in farming in a separate farming operation will be a separate person with respect to that separate farming operation if:

(i) The parent or other entity in which the parent has a substantial beneficial interest does not have any interest in the minor's separate farming operation or in any production from such operation;

(ii) The minor has established and maintains a separate household from the parent;

(iii) The minor personally carries out the farming activities with respect to the minor's farming operation; and

(iv) The minor establishes separate accounting and recordkeeping for the minor's farming operation.

(b) An individual shall be considered to be a minor until the age of 18 is reached. Court proceedings conferring majority on an individual under 18 years of age will not change such individual's status as a minor.

§ 400.307 Discontinuation of participation.

In the event that insurance participation is interrupted for one or more years following the assignment of a Nonstandard Classification, the most recent Nonstandard Classification assigned will be continued from year to year until participation has been renewed for at least one crop year and at least three years of insurance experience have occurred in the current base period.

§ 400.308 Notice of Nonstandard Classification.

(a) The Corporation will give written notice to all persons to whom a Nonstandard Classification will be assigned. The notice will give the Nonstandard Classification and the person's rights and responsibilities according to this subpart.

(b) The person, upon receiving notice from the Corporation, will be responsible for giving notice of the Nonstandard Classification to any other person with an insurable interest affected by the classification. The person will give notice to any other affected person:

(1) Prior to the sales closing date if the other affected person has an established insurable interest at the time the classified person is notified by the Corporation; or

(2) Prior to the Classified person's establishing an insurable interest of another person that will be affected by the classification.

§ 400.309 Requests for reconsideration.

(a) Any person to be assigned a Nonstandard Classification under this subpart will be notified of and allowed not less than 45 days from the date notice is received to request reconsideration before the Nonstandard Classification becomes effective. The request will be considered to have been made when received, in writing, by the Corporation.

(b) Upon receipt of a timely request for reconsideration from the person to whom the classification will be assigned, the Corporation will:

(1) Review all information supplied by, and respond to all questions raised by the individual, or

(2) In the absence of information and questions, review insurance experience and determinations for compliance with this subpart and report review results to the individual requesting reconsideration.

(c) Upon review of a request for reconsideration, the classification to be assigned will be corrected for:

(1) Errors and omissions in insurance experience;

(2) Incorrect calculations under procedures in this subpart, and

(3) Typographical errors.

(d) If the review finds no cause for change, the classification will be assigned and placed on file in the actuarial tables for the county.

(e) If a request for reconsideration has not been timely made by a person within the 45 days as prescribed by this section, appeal rights under regulations contained in 7 CFR part 400, subpart J, and subsequent regulations, will be considered to have been waived by that person with regard to the Nonstandard Classification.

(f) Any person not satisfied by a determination of the Corporation upon reconsideration may further appeal under the provisions of 7 CFR part 400, subpart J.

Subpart P—Preemption of State Laws and Regulations

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 55 FR 23069, June 6, 1990, unless otherwise noted.

§ 400.351 Basis and applicability.

The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) (the Act), to prescribe the procedures for Federal preemption of State laws and regulations not consistent with the purpose, intent, or authority of the Act. These regulations are applicable to all policies of insurance, insured or reinsured by the Corporation, contracts, agreements, or actions authorized by the Act and entered into or issued by FCIC.

§ 400.352 State and local laws and regulations preempted.

(a) No State or local governmental body or non-governmental body shall

have the authority to promulgate rules or regulations, pass laws, or issue policies or decisions that directly or indirectly affect or govern agreements, contracts, or actions authorized by this part unless such authority is specifically authorized by this part or by the Corporation.

(b) The following is a non-inclusive list of examples of actions that State or local governmental entities or non-governmental entities are specifically prohibited from taking against the Corporation or any party that is acting pursuant to this part. Such entities may not:

(1) Impose or enforce liens, garnishments, or other similar actions against proceeds obtained, or payments issued in accordance with the Federal Crop Insurance Act, these regulations, or contracts or agreements entered into pursuant to these regulations;

(2) Tax premiums associated with policies issued hereunder;

(3) Exercise approval authority over policies issued;

(4) Levy fines, judgments, punitive damages, compensatory damages, or judgments for attorney fees or other costs against companies, employees of companies including agents and loss adjustors, or Federal employees arising out of actions or inactions on the part of such individuals and entities authorized or required under the Federal Crop Insurance Act, the regulations, any contract or agreement authorized by the Federal Crop Insurance Act or by regulations, or procedures issued by the Corporation (nothing herein is intended to preclude any action on the part of any authorized State regulatory body or any State court or any other authorized entity concerning any actions or inactions on the part of the agent, company or employee of any company whose action or inaction is not authorized or required under the Federal Crop Insurance Act, the regulations, any contract or agreement authorized by the Federal Crop Insurance Act or by regulations or procedures issued by the Corporation); or

(5) Assess any tax, fee, or amount for the funding or maintenance of any State or local insolvency pool or other similar fund.

The preceding list does not limit the scope or meaning of paragraph (a) of this section.

Subpart Q—General Administrative Regulations; Collection and Storage of Social Security Account Numbers and Employer Identification Numbers

AUTHORITY: 7 U.S.C. 1506, 1508.

SOURCE: 57 FR 46297, Oct. 8, 1992, unless otherwise noted.

§ 400.401 Basis and purpose and applicability.

(a) The regulations contained in this subpart are issued pursuant to the Federal Crop Insurance Act, (7 U.S.C. 1501 et seq.) (FCI Act), as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (1990 Farm Act) (Pub. L. 101–624, 104 Stat. 3359), to prescribe procedures for the collection, use, and confidentiality of Social Security Account Numbers (SSN) or Employer Identification Numbers (EIN) and related records.

(b) These regulations are applicable to:

(1) All holders of all crop insurance policies issued by FCIC under the FCI Act and all private insurance companies, their contractors and subcontractors including past and present officers, agents, and employees of such companies, their contractors and subcontractors, selling and servicing such policies under an FCIC Agency Sales and Service Contract, a Loss Adjustment Contract, or some other similar contract.

(2) All holders of crop insurance policies sold by private insurance companies and reinsured by the FCIC under the provisions of an FCIC Standard Reinsurance Agreement or other FCIC reinsurance agreement; and all private reinsured companies, their contractors and subcontractors, including past and present officers and employees of such companies, their contractors and subcontractors;

(3) Any agent or company, or any past or present officer, employee, contractor or subcontractor of such agent or company, under contract to private insurance companies for loss adjustment or other purposes related to the

crop insurance programs insured or reinsured by FCIC; and

(4) All past and present officers, employees, contractors, and subcontractors of the Federal Crop Insurance Corporation.

§ 400.402 Definitions.

(a) *Agency Sales and Service Contractor*—Any private insurance company selling FCIC policies (direct sales).

(b) *Access*—with respect to authorized persons, means the ability of the authorized person to read, review, or use for actions authorized under the FCI Act, the records containing the SSN or EIN.

(c) *ASCS*—Agricultural Stabilization Conservation Service, United States Department of Agriculture.

(d) *Applicant*—The person or entity that submitted the application for a crop insurance policy issued by the FCIC, or issued by a reinsured company under the FCI Act.

(e) *Authorized person*—An officer, employee, general or special agent, or loss adjuster of the FCIC, insurance company, reinsured company, or ASCS whose duties require access in the administration of the FCI Act.

(f) *Collection*—Act of obtaining and recording a SSN or EIN from participants in the crop insurance program.

(g) *Disposition of records*—the act performed by the insurance company or reinsured company of removing records containing a participant's SSN or EIN and disposition of such records by the insurance companies, or reinsured companies.

(h) *EIN*—a participant's Employer Identification Number required under section 6109 of the Internal Revenue Code of 1986.

(i) *FCI Act*—the Federal Crop Insurance Act as amended (7 U.S.C. 1501 *et seq.*).

(j) *FCIC*—Federal Crop Insurance Corporation.

(k) *Government contract employees*—authorized persons employed by a direct insurance or reinsured company, former officers or employees of such company, and general or special agents and loss adjusters.

(l) *Past officers and employees*—any officer or employee of the direct insurance company, reinsured company, or corporation who leaves the employ of such company or corporation subsequent to the official effective date of this rule.

(m) *Policyholder*—means an applicant accepted by the FCIC, the direct insurance company, or the reinsured company.

(n) *Private insurance company*—a direct insurance company selling FCIC policies under an Agency Sales and Service Contract.

(o) *Reinsured company*—a private insurance company having a Standard Reinsurance Agreement, or other reinsurance agreement, with the FCIC whose crop insurance policies are approved and reinsured by the FCIC under such agreements.

(p) *Related records*—any record, list, or compilation that indicates, directly or indirectly, the identity of any individual with respect to whom an SSN or EIN is maintained in a system of records.

(q) *Restricted access*—restricting review of all records maintained by authorized persons to only the authorized persons who need access to such records for official business under the FCI Act.

(r) *Retrieval of records*—retrieval of an individual's records by a participant's SSN or EIN.

(s) *Safeguards*—methods of security to be taken by the FCIC, the direct insurance company, and the reinsured companies to protect a participant's SSN or EIN from unlawful disclosure and access. Records containing the SSN or EIN must be secured in locked file storage, secured computer data files, or similar safe storage.

(t) *SSN*—an individuals's Social Security Number.

(u) *Storage*—the secured storing of records kept by the FCIC, direct insurance, or reinsured companies on computer diskettes (soft and hard drives), computer printouts, magnetic tape, index cards, microfiche, micro film, etc.

(v) *Substantial beneficial interest*—an interest of ten percent (10%) or more in an application or policyholder.

(w) *System of Records*—records maintained by the FCIC, direct insurance companies, or reinsured companies from which information is retrieved by

a personal identifier including the SSN, EIN, or name.

[57 FR 46297, Oct. 8, 1992, as amended at 58 FR 47204, Sept. 8, 1993; 59 FR 52408, Oct. 18, 1994]

§400.403 Required System of Records.

Thirty days after the publication in the FEDERAL REGISTER of this rule, direct insurance companies and reinsured companies are required to implement a system of records for obtaining, using, and storing documents containing SSN or EIN data. This data should include: name; address; city and state; SSN or EIN; and policy numbers which have been used by the FCIC, the direct insurance company, or the reinsured companies.

§400.404 Policyholder responsibilities.

(a) The policyholder or applicant for crop insurance must provide a correct SSN or EIN to the FCIC, the direct insurance company, the reinsured company, or ASCS to be eligible for insurance. The SSN and EIN will be used by the FCIC, the direct insurance companies, and the reinsured companies in:

(1) Determining the correct parties to the agreement or contract;

(2) collecting premiums;

(3) determining the amount of indemnities;

(4) establishing actuarial data on an individual policyholder basis; and

(5) determining eligibility for program benefits.

(b) If the policyholder or applicant for crop insurance does not provide the correct SSN or EIN on the application and other forms where such SSN or EIN is required, the FCIC, direct insurance company, or reinsured company will reject the application.

(c) The policyholder is required to provide to FCIC, the insurance company, the reinsured companies, and ASCS the name and SSN or EIN of any individual or company holding or acquiring access to a substantial beneficial interest in such policyholder.

§400.405 Company responsibilities.

The insuring or reinsured company is required to collect and record the SSN or EIN on each application or any other form required by the FCIC.

§400.406 Restricted access.

The Manager, other officer, or employee of the FCIC or authorized person (as defined in §400.402(e)) may have access to the EINs and SSNs obtained pursuant to §400.404 only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the FCI Act in accordance with §400.404 of this part. These numbers may be used in administering the FCI Act.

[58 FR 47204, Sept. 8, 1993]

§400.407 Safeguards and storage.

(a) Access to records identifying an applicant's SSN or EIN is restricted as provided in §400.406. Records must be secured in locked file storage, secured computer data files, or similar safe storage. An authorized person, as defined in §400.402(d) must maintain hardcopy records in file folders and, when not in use, such copies must be:

(1) Locked in a cabinet or safe;

(2) On a computer accessed only through a secure computer system procedure;

(i) Locked; or

(ii) On a computer accessed only through a secure computer system procedure.

(b) Records identifying a SSN or EIN stored on computer printouts, hard or floppy diskette, microfiche, or index cards must be kept in locked file cabinets, safes, or in secured computer systems.

§400.408 Unauthorized disclosure.

Anyone having access to the records identifying a participant's SSN or EIN will abide by the provisions of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C), and section 6109(f), Internal Revenue Code of 1986 (26 U.S.C. 6109(f) and the Privacy Act of 1974 (5 U.S.C. 552a). All records are confidential, and are not to be disclosed to unauthorized personnel.

§400.409 Penalties.

Unauthorized disclosure of SSN's or EIN's by any person may subject that person, and the person soliciting the unauthorized disclosure, to civil or criminal sanctions imposed under various Federal statutes, including 26

U.S.C. 7613, 5 U.S.C. 552a, and 42 U.S.C. 408.

§ 400.410 Obtaining personal records.

Policyholders in the crop insurance program will be able to review or correct their records, as provided by the Privacy Act. Participants may request their records by:

(a) Mailing a written request, with their signature, to the headquarters office of the FCIC; the field office, ASCS; the direct insurance company; or reinsured company; or

(b) Making a personal visit to the above mentioned establishments and showing valid identification.

§ 400.411 Record retention.

The reinsured insurance company, either direct or reinsured, will retain all records of policyholders for a period of not less than three (3) years from the date of a final action on a policy for the crop year unless maintenance of specific records is requested by the Corporation. Final actions on insurance policies include conclusion of such insurance events such as renewal or termination of policy, completion of loss adjustment, or satisfaction of claim. Companies are reminded that the Statute of Limitation for FCIC contract claims requires that litigation be instituted within six years of a breach of contract. Destruction of records will not provide a defense to any action by the Corporation against any Company.

[59 FR 52408, Oct. 18, 1994]

§ 400.412 OMB control numbers.

The principal information collection activity associated with this rule (application) has been approved by the Office of Management and Budget (OMB) under control number 056–003. Other OMB control numbers are contained in subpart H of part 400, title 7 CFR.

Subpart R—Sanctions

AUTHORITY: 7 U.S.C. 1506(l).

SOURCE: 58 FR 53110, Oct. 14, 1993, unless otherwise noted.

§ 400.451 General.

(a) The Federal Crop Insurance Corporation (FCIC) has implemented a system of sanctions to prevent waste, fraud, and abuse within its programs and insurance delivery systems. Such sanctions include civil penalties and disqualification from the crop insurance program under the Federal Crop Insurance Act, 7 U.S.C. 1506(m); government wide debarment and suspension; and civil penalties and assessments under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801—31 U.S.C. 3812.

(b) The provisions of this subpart apply to all contracts and agreements to which FCIC is a party unless otherwise specifically provided for in this subpart, including those in which FCIC provides administrative expense reimbursement, premium subsidy, or reinsurance benefits.

(c) The provisions of this subpart are in addition to any other sanctions specifically provided in applicable contracts and agreements.

(d) This subpart is applicable to any act or omission by any affected party after October 14, 1993.

§ 400.452 Definitions.

For purposes of this subpart, a person means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a state, a political subdivision of a state, or any agency thereof.

§ 400.453 Exhaustion of administrative remedies.

All administrative remedies contained herein or incorporated herein by reference must be exhausted before Judicial Review in the United States Courts may be sought, unless review is specifically required by statute.

§ 400.454 Civil penalties.

(a) Any person who willfully and intentionally provides any materially false or inaccurate information to FCIC or to any approved insurance provider reinsured by FCIC with respect to an insurance plan or policy issued under the authority of the Federal Crop Insurance Act, as amended, (7 U.S.C. 1501 *et seq.*) may be subject to a

civil fine of up to $10,000 and disqualification from participation in:

(1) The catastrophic risk protection plan of insurance and the noninsured crop disaster assistance program for a period not to exceed two (2) years; or

(2) Any plan of insurance providing protection in excess of that provided under the catastrophic risk protection plan of insurance for a period not to exceed ten (10) years.

(b) FCIC may make the payment of a civil penalty under this section a prior condition for the issuance, renewal, restoration, or continuing validity of any crop insurance policy or other approval.

(c) FCIC may compromise, modify, settle, collect, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section whenever it considers it to be appropriate or advisable.

(d) If a director, officer, or agent of a corporation provides false or inaccurate information, they may be separately subject to the fine specified in paragraph (a) of this section without regard to any penalties to which the corporation may be subject.

(e) The liability of any person for any penalty under this subpart or any related charges arising in connection therewith shall be in addition to any other liability of such person under any civil or criminal fraud statute or any other statute or provision of law.

(f) Proceedings under this §400.454 will be in accordance with subpart H of 7 CFR part 1, ''Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary under Various Statutes,'' by which the Manager, FCIC, shall initiate proceedings by filing a complaint with the Hearing Clerk, United States Department of Agriculture.

[58 FR 53110, Oct. 14, 1993, as amended at 60 FR 37323, July 20, 1995]

§400.455 Governmentwide debarment and suspension (procurement).

(a) This section prescribes the terms and conditions under which persons or business entities may be debarred or suspended by FCIC from contracting with the Federal government.

(b) This section is in accordance with 48 CFR part 9, subpart 9.4 and 48 CFR part 409, subpart 409.4 and shall be applicable to all FCIC debarment and suspension proceedings undertaken pursuant to the Federal Acquisition Regulations, except that the authority to debar or suspend is reserved to the Manager, FCIC, or the Manager's designee.

(c) Any individual or entity suspended or debarred under the provisions of 48 CFR part 9, subpart 9.4 will not be eligible to contract with FCIC or be employed by or contract with any insurance company that sells or adjusts FCIC's crop insurance contracts or which company's crop insurance contracts are reinsured by FCIC. FCIC may waive this provision if it is satisfied that the insurance company has taken sufficient action to insure that the suspended or debarred entity or individual will not be involved, in any way, with FCIC or FCIC reinsured crop insurance contracts.

§400.456 Governmentwide debarment and suspension (nonprocurement).

(a) This section prescribes the terms and conditions under which individuals or entities may be debarred or suspended by FCIC from participation in Federal assistance and benefits under Federal programs and activities.

(b) This section, in accordance with 7 CFR part 3017, shall be applicable to all FCIC debarment and suspension proceedings other than those undertaken pursuant to the Federal Acquisition Regulations.

(c) Proceedings under this section are not applicable to determinations of eligibility under the provisions of the crop insurance contracts or determinations to be made under 7 CFR 400.454.

(d) The Manager, FCIC, shall be the debarring and suspending official for all debarment or suspension proceedings undertaken by FCIC under the provisions of 7 CFR part 3017.

§400.457 Program Fraud Civil Remedies Act.

(a) This section is in accordance with the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–U.S.C. 3831) which

provides for civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to Federal authorities or to their agents.

(b) Proceedings under this section will be in accordance with subpart L of 7 CFR part 1, ''Procedures Related to Administrative Hearings Under the Program Fraud Civil Remedies Act of 1986.''

(c) The Director, Appeals and Litigation Staff, FCIC, or the Director's designee, is authorized to serve as Agency Fraud Claims Officer for the purpose of implementing the requirements of this section.

§ 400.458 Scheme or device.

(a) In addition to the penalties specified in this part, if a person has knowingly adopted a material scheme or device to obtain catastrophic risk protection, other plans of insurance coverage, or noninsured assistance benefits to which the person is not entitled, has evaded the provisions of the Federal Crop Insurance Act, or has acted with the purpose of evading the provisions of the Federal Crop Insurance Act, the person shall be ineligible to receive any and all benefits applicable to any crop year for which the scheme or device was adopted.

(b) A scheme or device may include, but is not limited to, creating or using another entity, or concealing or providing false information with respect to your interest in the policyholder, to evade:

(1) Suspension, debarment, or disqualification from participation in the program;

(2) The assignment of the nonstandard classification system; or

(3) Ineligibility for a delinquent debt owed to FCIC or the insurance company.

[60 FR 37324, July 20, 1995]

§ 400.459 Indebtedness.

Any person who owes a debt to FCIC, or an approved insurance provider, arising from any program administered under the Act, and that debt is delinquent, will be ineligible to participate in all such programs until the debt is paid in full or the person enters into an agreement, acceptable to FCIC or the approved insurance provider, to repay the debt. If the person provides adequate evidence to demonstrate that the amount of debt is in dispute, the person's application will be accepted or their insurance will remain in effect, but no indemnity payment will be made, until the disputed issue is resolved between that person and FCIC or the approved insurance provider through the available appeal process.

[60 FR 51321, Oct. 2, 1995]

§§ 400.460—400.499 [Reserved]

§ 400.500 OMB control numbers.

Office of Management and Budget (OMB) control numbers are contained in subpart H of 7 CFR part 400.

Subpart S—[Reserved]

Subpart T—Federal Crop Insurance Reform, Insurance Implementation; Regulations for the 1997 and Subsequent Crop Years

AUTHORITY: 7 U.S.C. 1506(l) and 1506(p).

SOURCE: 61 FR 42975, Aug. 20, 1996, unless otherwise noted.

§ 400.650 Purpose.

The Reform Act requires FCIC to implement a crop insurance program that offers several levels of insurance coverage for producers. These levels of protection include catastrophic risk protection, limited coverage, and additional coverage insurance. This subpart provides notice of the availability of these crop insurance options and establishes provisions and requirements for implementation of the insurance provisions of the Reform Act.

§ 400.651 Definitions.

Act. The Federal Crop Insurance Act, as amended (7 U.S.C. §§ 1501 *et seq*.).

Additional coverage. Plans of crop insurance providing a level of coverage equal to or greater than sixty-five percent (65%) of the approved yield indemnified at one hundred percent (100%) of

the expected market price, or comparable coverage as established by FCIC.

Administrative fee. The $50 fee the producer must pay on a per crop and county basis with a maximum of $200 per producer per county and $600 per producer for catastrophic and limited coverage on an annual basis. Also, the $10 fee the producer must pay annually on a per crop and county basis for additional coverage.

Approved insurance provider. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance coverage to producers participating in the Federal crop insurance program.

Approved yield. The amount of production per acre computed in accordance with FCIC's Actual Production History Program (7 CFR part 400, subpart G) or for crops not included under 7 CFR part 400, subpart G, the yield used to determine the guarantee in accordance with the crop provisions or the Special Provisions.

Catastrophic risk protection. The minimum level of coverage offered by FCIC which is required before a person may qualify for certain other USDA program benefits unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop. For the 1995 through 1998 crop years, such coverage will offer protection equal to fifty percent (50%) of the approved yield indemnified at sixty percent (60%) of the expected market price, or a comparable coverage as established by FCIC. For the 1999 and subsequent crop years, such coverage will offer protection equal to fifty percent (50%) of the approved yield indemnified at fifty-five percent (55%) of the expected market price, or a comparable coverage as established by FCIC.

Catastrophic Risk Protection Endorsement. The part of the crop insurance policy that contains provisions of insurance that are specific to catastrophic risk protection.

Crop of economic significance. A crop that has either contributed in the previous crop year, or is expected to contribute in the current crop year, ten percent (10%) or more of the total expected value of the producer's share of all crops grown in the county. However, a crop will not be considered a crop of economic significance if the expected liability under the Catastrophic Risk Protection Endorsement is equal to or less than the administrative fee required for the crop.

Expected market price. (price election) The price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

FCIC. The Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture or any successor agency.

Insurable interest. The value of the producer's interest in the crop that is at risk from an insurable cause of loss during the insurance period. The maximum indemnity payable to the producer may not exceed the indemnity due on the producer's insurable interest at the time of loss.

Intended crop. A crop stated on the application as submitted on or before the sales closing date for the crop which the producer intended to plant in the crop year for which application is made.

Limited coverage. Plans of insurance offering coverage that is equal to or greater than fifty percent (50%) of the approved yield indemnified at one hundred percent (100%) of the expected market price, or a comparable coverage, but less than sixty-five percent (65%) of the approved yield indemnified at one hundred percent (100%) of the expected market price, or a comparable coverage.

Limited resource farmer. A producer or operator of a farm, with an annual gross income of $20,000 or less derived from all sources of revenue, including income from spouse's or other members of the household, for each of the prior

two years. Notwithstanding the previous sentence, a producer on a farm or farms of less than 25 acres aggregated for all crops, where a majority of the producer's gross income is derived from such farm or farms, but the producer's gross income from farming operations does not exceed $20,000, will be considered a limited resource farmer.

Linkage requirement. The legal requirement that a producer must obtain at least catastrophic risk protection coverage for any crop of economic significance as a condition of receiving benefits for such crop from certain other USDA programs in accordance with § 400.657, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

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.

Reform Act. The Federal Crop Insurance Reform Act of 1994, Public Law 103–354.

Secretary. The Secretary of the United States Department of Agriculture.

Substitute crop. An alternative crop whose sales closing date has passed and that is planted on acreage that is prevented from being planted to an intended crop or where an intended crop is planted and fails.

Zero acreage report. An acreage report filed by the producer that certifies that the producer does not have a share in the crop for that crop year.

§ 400.652 Insurance availability.

(a) If sufficient actuarial data are available, FCIC will offer catastrophic risk protection, limited, and additional coverage plans of insurance to indemnify persons for FCIC insured or reinsured crop loss due to loss of yield or prevented planting, if the crop loss or prevented planting is due to an insured cause of loss specified in the applicable crop insurance policy.

(b) Catastrophic risk protection coverage may be offered through approved insurance providers and through local offices of the Farm Service Agency specified by the Secretary. Limited and additional coverage will only be offered through approved insurance providers unless there is not a sufficient number of approved insurance providers that offer such insurance within a service area.

(c) A person must obtain at least catastrophic risk protection for the crop on all insurable acreage in the county in which the person has a share on or before the sales closing date designated by FCIC for the crop in the county in order to satisfy the linkage requirements unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(d) For limited and additional coverage, in areas where insurance is not available for a particular agricultural commodity that is insurable elsewhere, FCIC may enter into a written agreement with a person to insure the commodity, provided that the person has actuarially sound data relating to the production of the commodity that is acceptable to FCIC and that such written agreement is specifically allowed by the crop insurance regulations applicable to the crop.

(e) Failure to comply with all provisions of the policy constitutes a breach of contract and may result in ineligibility for certain other farm program benefits for that crop year and any benefit already received must be refunded. If a producer breaches the insurance contract, the execution of a waiver of eligibility for emergency crop loss assistance will not be effective for the crop year in which the breech occurred.

§ 400.653 Determining crops of economic significance.

To be eligible for certain other program benefits under § 400.657 the following conditions will apply with respect to crops of economic significance if the producer does not execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(a) If a producer planted a crop of economic significance in the preceding crop year, and does not intend to plant the same crop in the present crop year, the producer does not have to obtain insurance coverage or execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop in the present crop year to comply

with the linkage requirements. However, if the producer later decides to plant that crop, the producer will be unable to obtain insurance after the sales closing date and must execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for benefits as specified in §400.657. Failure to execute such a waiver will require the producer to refund any benefits already received under a program specified in §400.657.

(b) The producer is initially responsible to determine the crops of economic significance in the county. The insurance provider may assist the producer in making these initial determinations. However, these determinations will not be binding on the insurance provider. To determine the percentage value of each crop:

(1) Multiply the acres planted to the crop times the producer's share, times the approved yield, and times the price;

(2) Add the values of all crops grown by the producer (in the county); and

(3) Divide the value of the specific crop by the result of paragraph (b)(2).

(c) The producer may use the type of price, such as the current local market price, futures price, established price, highest amount of insurance, etc., for the price when calculating the value of each crop, provided that the producer uses the same type of price for all crops in the county.

(d) The producer may be required to justify the calculation and provide adequate records to enable the insurance provider to verify whether a crop is of economic significance.

§400.654 Application and acreage report.

(a) To participate in catastrophic risk protection, limited, or additional coverage plans of insurance, a producer must submit an application for insurance on or before the applicable sales closing date.

(b) In order to remain eligible for certain farm programs, as specified in §400.657, a producer must obtain at least catastrophic risk protection on all crops of economic significance, if catastrophic risk protection is available in the county, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(c) Notwithstanding the requirements of §400.654(a) that applications for insurance be submitted on or before the applicable sales closing date, FCIC may permit a producer to insure crops other than those specified on the application under the following conditions:

(1) The producer must be unable to plant the intended crop or it is not practical to replant a failed crop before the final planting date. FCIC will take into consideration marketing windows when determining whether it was not practical to replant.

(2) Conditions must exist to warrant allowing a producer to insure crops other than the intended crop.

(3) The producer must submit an application for the substitute crop on or before the acreage reporting date for the substitute crop and pay any applicable administrative fee. A producer may not substitute a crop that the producer planted in the preceding crop year unless that crop was listed on a timely filed application for the current crop year.

(4) If the producer plants a substitute crop that is a crop of economic significance, the producer must obtain CAT coverage, if available, to comply with the linkage requirements specified in §400.657. The producer may not substitute a crop under this provision if the producer has signed or intends to sign a waiver for emergency crop loss assistance for the crop year.

(5) The substitute crop must be planted on or before the final planting date or within the late planting period, if applicable, for the substitute crop.

(6) Under no circumstances may a producer submit an application for limited or additional coverage after the sales closing date for the substitute crop.

(d) For all coverages, including catastrophic risk protection, limited, and additional coverages, the producer must file a signed acreage report on or before the acreage reporting date. Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or

other legally sufficient document authorizing such person to sign.

(e) Under catastrophic risk protection, unless the other person with an insurable interest in the crop objects in writing prior to the acreage reporting date and provides a signed acreage report on their own behalf an operator may sign the acreage report for all other persons with an insurable interest in the crop without a power of attorney. All persons with an insurable interest in the crop, and for whom the operator purports to sign and represent, are bound by the information contained in that acreage report.

§ 400.655 Coverage provided.

(a) The specific causes of loss for which insurance coverage is offered are designated in the crop insurance policy for each crop.

(b) An indemnity paid to a producer may be reduced, in an amount determined in accordance with crop provisions or Special Provisions, to reflect out-of-pocket expenses that were not incurred by the producer as a result of not planting, caring for, or harvesting the crop. Indemnities paid for acreage that is prevented from being planted will be based on a reduced guarantee as provided for in the crop policy and will not be further reduced to reflect expenses not incurred.

(c) The producer must obtain the same level of coverage (catastrophic, limited, or additional) for all acreage of the crop in the county unless one of the following applies:

(1) The applicable crop insurance policy allows the producer the option to separately insure individual crop types or varieties. In this case each individual type or variety insured by the producer will be subject to separate administrative fees. For example, if two grape varieties in California are insured under a CAT policy and two varieties are insured under a limited coverage policy, a separate administrative fee will be charged for each of the four varieties. Although insurance may be elected by type or variety in these instances, failure to insure a type or variety that is of economic significance may result in the denial of other farm program benefits, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

(2) The producer with limited or additional coverage for the crop in the county has acreage that has been designated as ''high risk'' by FCIC. Such producers will be able to obtain a High Risk Land Exclusion Option for the high risk acreage under the limited or additional coverage policies and insure the high risk acreage under a separate CAT policy provided that the CAT coverage is obtained from the same insurance provider from which the limited or additional coverage was obtained. The producer may only obtain CAT from another insurance provider if the original insurance provider does not deliver CAT policies.

(d) Catastrophic risk protection.

(1) Any person who has a bona fide insurable interest in a crop is eligible for catastrophic risk protection subject to any limitations contained in the crop insurance contract.

(2) A person who is eligible to receive an indemnity under catastrophic risk protection and is also eligible to receive compensation for the same crop loss under any other USDA programs, must elect the program from which to receive benefits. A payment or program benefit under only one of the programs is allowed. If other USDA program benefits are not available until after the producer filed a claim for indemnity, the producer may refund the total amount of the indemnity and receive the other program benefit. Farm ownership and operating loans may be obtained from USDA in addition to crop insurance indemnities.

(3) Catastrophic risk protection may, on a commodity-by-commodity basis, be elected on an individual yield and loss basis, or, where offered, may be elected on an area yield and loss basis.

(4) A tobacco producer may insure one hundred percent (100%) of the tobacco crop that is identified by a tobacco marketing card issued by FSA for a specific producer and Farm Serial Number under one CAT policy, provided the producer and other persons each have a share in the crop, all the shareholders agree in writing to such arrangement, and none of the shareholders hold any other interest in another tobacco crop for which they are

required to obtain at least catastrophic coverage. If the tobacco crop is insured under one policy:

(i) The linkage requirements will be satisfied for each shareholder of the crop; and

(ii) The producer insuring the crop will:

(A) Make application for insurance and provide the name and social security number or employer identification number of each person with a share in the tobacco crop;

(B) File the acreage report showing a one-hundred percent (100%) share in the crop (all insurable acreage covered by such marketing card will be considered as one unit);

(C) Be responsible to pay one administrative fee for all the producers within the county;

(D) Fulfill all requirements under the crop insurance contract; and

(E) Receive any indemnity payment under his or her social security number or employer identification number and distribute the indemnity payments to the other person sharing in the crop.

(5) A landowner will be allowed to obtain catastrophic coverage to satisfy linkage requirements for all other landowners who hold an undivided interest in the insurable acreage, provided:

(i) All landowners agree in writing to such arrangement and have their social security number or employer identification number listed on the application, without regard to the actual amount of their interest in the insured acreage;

(ii) All landowners must have an undivided interest in the insurable acreage;

(iii) None of the landowners may hold any share in other acreage for which they are required to obtain at least catastrophic coverage;

(iv) The total cumulative liability under the Catastrophic Risk Protection Endorsement for all landowners must be $2,500 or less;

(v) The landowner insuring the crop will:

(A) Make application for insurance and provide the name and social security number or employer identification number of each person with an undivided interest in the insurable acreage;

(B) Be responsible to pay one administrative fee for all the producers within the county;

(C) Fulfill all requirements under the insurance contract; and

(D) Receive any indemnity payment under the landowner's social security number or employer identification number and distribute the indemnity payments to the other persons sharing in the crop.

(E) Limited and additional coverage. (1) A producer who is eligible to receive an indemnity under a limited or an additional coverage plan of insurance and who also is eligible to receive benefits for the same loss under any other USDA program may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law. However, the total amount received from all such sources may not exceed the amount of the actual loss sustained by the insured. The total amount of the actual loss is the difference between the fair market value of the insured commodity before and after the loss, based upon the producer's production records and the highest price election or amount of insurance available for the applicable crop. FSA will determine and pay the additional amount due the producer for any applicable USDA program, after first considering the amount of any crop insurance indemnity. Farm ownership and operating loans may be obtained from the USDA in addition to crop insurance indemnities.

(2) Limited or additional coverage may, on a commodity-by-commodity basis, be elected on an individual yield and loss basis, or, where offered, on an area yield and loss basis.

(3) Hail and fire coverage may be excluded from the covered causes of loss for a crop policy only if additional coverage is elected.

§ 400.656 Administrative fees and waivers.

(a) Catastrophic risk protection and limited coverage. (1) The producer must pay an administrative fee each year of fifty dollars ($50.00) per crop per county, not to exceed two hundred dollars ($200.00) per county, and six hundred dollars ($600.00) for all counties in

which the producer has elected to obtain catastrophic or limited coverage.

(2) The producer must pay this administrative fee for catastrophic coverage at the time of application for the first year, and by the acreage reporting date for all subsequent years that crop insurance coverage is in effect.

(3) The administrative fee for limited coverage must be paid no later than the time that premium is due.

(4) Except for the initial application year of a crop, payment of an administrative fee will not be required for a crop if the insured files a bona fide zero acreage report for the crop on or before the acreage reporting date. Any producer who falsely files a zero acreage report may be subject to administrative and criminal sanctions.

(5) For Catastrophic coverage, if the administrative fee is not paid when due, the crop insurance contract will terminate effective at the beginning of the crop year for which the administrative fee was not paid. Persons failing to pay the administrative fee, and all persons with an insurable interest in the crop under the same contract, may not be eligible for certain other USDA program benefits as set out in § 400.657 and all such benefits already received for the crop year must be refunded. If a producer fails to pay the administrative fee when due, the execution of a waiver of any eligibility for emergency crop loss assistance in connection with the crop will not be effective for any crop year in which payment was not made.

(6) For limited coverage, persons failing to pay the administrative fee by the due date, and all persons with an insurable interest in the crop under the same contract, will not be eligible for certain other USDA program benefits as set out in § 400.657 and all such benefits already received for the crop year must be refunded. Since insurance coverage was in effect throughout the insurance period, the producer will be required to pay both the administrative fee and the premium for that crop year in accordance with provisions regarding any amounts due us contained in the applicable crop policy. If a producer fails to pay the administrative fee when due, the execution of a waiver of any eligibility for emergency crop loss assistance in connection with the crop will not be effective for any crop year for which payment was not made.

(7) The administrative fee may not be waived unless the insured qualifies as a limited resource farmer.

(8) The administrative fee will be refunded if the insured has previously obtained catastrophic risk protection or limited coverage for the crop year, paid the administrative fee, and subsequently purchased additional coverage for that same crop in the same county on or before the sales closing date. Administrative fees will not be refunded if, after the purchase of the additional coverage, the producer still has four or more crops insured in the county, or four or more crops insured in each of three or more counties, at the catastrophic or limited coverage level.

(9) The administrative fee will not be refunded for the year of application even if the insured does not plant the crop for that year.

(10) For limited coverage, the administrative fee is in addition to the amount of premium owed by the person.

(b) Additional coverage. (1) If additional coverage is elected, the insured must pay, in addition to the premium, an administrative fee of ten dollars ($10) per crop, per county, for the year of application and each subsequent year in which crop insurance coverage remains in effect. The administrative fee must be paid no later than the time that premium is due.

(2) Persons failing to pay the administrative fee by the due date, and all persons with an insurable interest in the crop under the same contract, will not be eligible for certain other USDA program benefits as set out in § 400.657, and all such benefits already received for the crop year must be refunded. Since insurance coverage was in effect throughout the insurance period, the producer will be required to pay both the administrative fee and the premium for that crop year in accordance with provisions regarding any amounts due us contained in the applicable crop policy. If a producer fails to pay the administrative fee when due, the execution of a waiver of any eligibility for

emergency crop loss assistance in connection with the crop will not be effective for any crop year for which payment was not made.

(3) Payment of an administrative fee will not be required if the insured files a bona fide zero acreage report on or before the acreage reporting date for the crop. Any producer who falsely files a zero acreage report may be subject to criminal and administrative sanctions.

(4) The administrative fee for additional coverage is not refundable, is not subject to any limits, and may not be waived.

(c) When obtaining catastrophic risk protection, limited, or additional coverage, a producer must provide information regarding crop insurance coverage on any crop previously obtained at any other local FSA office or from an approved insurance provider, including the date such insurance was obtained and the amount paid in administrative fees. If the producer paid more than the maximum allowable amount in administrative fees, the producer will receive a refund of the excess fees paid from the local FSA office or from the approved insurance provider that last collected such fees.

§ 400.657 Eligibility for other program benefits.

The producer must obtain at least catastrophic coverage for each crop of economic significance in the county in which the producer has an insurable share, if insurance is available in the county for the crop, unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop, to be eligible for:

(a) Benefits under the Agricultural Market Transition Act;

(b) Loans or any other USDA provided farm credit, including: guaranteed and direct farm ownership loans, operating loans, and emergency loans under the Consolidated Farm and Rural Development Act provided after October 13, 1994; and

(c) Benefits under the Conservation Reserve Program derived from any new or amended application or contract executed after October 13, 1994.

§ 400.658 Coverage for acreage that is prevented from being planted.

For the 1995 and succeeding crop years, the insurance period for prevented planting for those crop insurance policies containing prevented planting coverage shall be extended so that prevented planting coverage begins:

(a) On the sales closing date for the insured crop in the county for the crop year the application for insurance is accepted; or

(b) For any crop year following the crop year the application for insurance is accepted, or for any crop year the insurance policy is transferred to a different insurance provider, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. *For example:* If the producer makes application and purchases a corn crop insurance policy for the 1995 crop year (which is not terminated or canceled during or after the 1995 crop year), prevented planting coverage for the 1996 crop year began on the 1995 sales closing date. Cancellation for the purpose of transferring the policy to a different insurance provider when there is no lapse in coverage will not be considered terminated or canceled coverage for the purpose of the preceding sentence.

§ 400.659 Transitional yields for forage or feed crops, 1995–1997 crop years.

(a) For the 1995 through the 1997 crop years, producers who produce feed or forage will be eligible for an adjustment in the assigned yield described in 7 CFR 400.55(b)(1) if:

(1) The feed or forage is primarily for use by the producer as livestock, dairy, or poultry operations; and

(2) At least fifty percent (50%) of the producer's net farm income is derived from the livestock, dairy, or poultry operations.

(b) Producers that qualify under paragraph (a) of this section will receive an assigned yield, if required, under 7 CFR 400.55(b)(1) equal to eighty percent (80%) of the T- or D-Yield.

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

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401.140 Pear endorsement.
401.142 Raisin endorsement.
401.143 Florida citrus endorsement.
401.146 Fresh plum endorsement.

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 52 FR 28447, July 30, 1987, unless otherwise noted.

§ 401.1 Applicability.

The provisions of this part are applicable only to crops for which a crop endorsement is published as a section to 7 CFR part 401 and then only for the crops and crop years designated by the applicable section.

§ 401.2 Availability of Federal crop insurance.

(a) Insurance shall be offered under the provisions of this section on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The crops and counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

(b) The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. These contracts are clearly identified as being reinsured by the Corporation.

(c) No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a company which is reinsured by the Corporation

(d) If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the person.

(e) If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that

crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled.

(f) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

(g) An insured whose contract with the Corporation or with a company reinsured by the Corporation under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility

(h) All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for insurance under the Act and the present status of any such applications or insurance.

§401.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed for the insured crop which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance or a coverage level and price from among those contained in the actuarial table for the crop year.

§401.4 OMB control numbers.

OMB control numbers are contained in Subpart H to Part 400 in Title 7 CFR.

§401.5 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§401.6 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the crop insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§401.7 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the crop as provided in the policy

and the crop endorsement. The contract shall consist of the application, the policy, the crop endorsement and any amendments thereto, and the county actuarial table. 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 applicable service offices.

§ 401.8 The application and policy.

(a) Application for insurance on a form prescribed 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, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may reject or discontinue the acceptance of applications in any county or of any individual application upon its determination that the insurance risk is excessive. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications. If the sales closing date falls on a Saturday or Sunday or legal holiday when the service office is not open, the application must be submitted by the close of business on the next business day.

(c) In accordance with the provisions governing changes in the contract contained in previous policies and regulations issued by FCIC, a contract in the form provided for in this section will come into effect as a continuation of the contract issued under such prior regulations, without the filing of a new application.

(d) The application is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37 and 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Crop Insurance Policy are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

General Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

NOTE: This is a contract with the Federal Crop Insurance Corporation, a United States Government agency. The terms of the contract are published in the FEDERAL REGISTER under the provisions of the Federal Register Act (44 U.S.C. 1501), and may not be waived or varied in any way by the Crop Insurance Agent or any other agent or employee of FCIC.

AGREEMENT TO INSURE: We will provide the insurance described in this policy and the applicable endorsement in return for the premium and your compliance with *ALL* provisions of the crop insurance contract. If a conflict exists between the terms of this policy and the crop endorsement, the terms of the crop endorsement control.

Throughout this policy, ''you'' and ''your'' refer to the 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.

Terms and Conditions

1. Causes of Loss

a. You are insured only against unavoidable loss of production directly caused by specific causes of loss contained in the crop endorsement.

b. We do not insure against any loss caused by:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(2) The failure to follow recognized good farming practices for the insured crop;

(3) Water contained by any governmental, public, or private dam or reservoir project;

(4) Failure or breakdown of irrigation equipment or facilities;

(5) Failure to carry out a good irrigation practice for the insured crop;

(6) Any cause not specified in the crop endorsement as an insured cause of loss; or

(7) Any other cause set out as an uninsured cause of loss in the crop endorsement.

2. Crop, Acreage, and Share Insured

a. The crop insured is the crop specified in the crop endorsement and no other, which is planted for harvest as the insured crop, which is grown on insurable acreage, and for which a guarantee or amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year is the insurable acreage as designated by the actuarial table, which is planted to the insured crop and in which you have a share (as reported by you or as determined by us, whichever we elect).

c. The insured share is your share as landlord, owner-operator, or tenant in the insured crop at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. Unless the application clearly indicates that insurance is requested for a partnership or joint venture, insurance will cover only the crop share of the person making application for insurance.

e. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided by the actuarial table or the crop endorsement (you may elect to insure irrigated acreage on a non-irrigated basis by reporting it as non-irrigated on the acreage report and adjusting the basis used to establish your guarantee accordingly);

(3) Which is destroyed, it is practical to replant to the insured crop, but the insured crop is not replanted;

(4) Initially planted after the final planting date, unless we allow and you agree in writing on our form, to coverage reduction (the Late Planting Option applies only on selected crops);

(5) Of a volunteer crop;

(6) Planted to a type or variety of the crop not established as adapted to the area or excluded by the actuarial table;

(7) Planted with a crop other than the insured crop;

(8) Which does not meet rotation requirements required by the crop endorsement or actuarial table;

(9) Of a second crop following the same crop (insured or uninsured) harvested in the same crop year unless specifically permitted by the crop endorsement or the actuarial table;

(10) Used for wildlife protection or management;

(11) On which a crop has not been planted and harvested in at least one of the three previous crop years unless it is determined the acreage has been in a soil conserving legume or unless the acreage meets the definition of Agricultural Stabilization and Conservation Service (ASCS) ''cropland'' acreage; or

(12) Which has been strip mined unless we agree in writing to insure such acreage.

f. If insurance is provided for an irrigated practice, we will insure as irrigated, and you must report as irrigated, only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good irrigation practice for the insured crop.

g. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless permitted by the crop endorsement or unless we agree, in writing, to insure such acreage.

h. 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 advise you of that limit prior to the time insurance attaches.

i. You must not obtain any other crop insurance under the Federal Crop Insurance Act (Multiple Peril Crop Insurance Policy or Federal Crop Insurance Policy) on your share of the insured crop. More than one policy on your share will result in our voiding the policies and collecting the premium from you unless the violation of this provision is found by us to have been inadvertent. If we determine that the violation was inadvertent, the policy with the earliest date of application will be the one in force and all other policies will be void. Nothing in this paragraph prevents the insured from obtaining other hail and fire insurance not issued under the Act and which is subject to the provisions of section 9 hereof.

j. Although your violation of a number of federal statutes including the Federal Crop Insurance Act may cause cancellation, termination, or voidance of your insurance contract, you are specifically directed to the provisions of Title XII of the Food Security Act of 1985 (Public Law 99–198) and the regulations promulgated thereunder, generally referred to as the controlled substance provisions. Your insurance policy will be cancelled if you are determined 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.

3. Report of Acreage, Share, and Practice (Acreage Report)

You must report on our form:

a. All insured and uninsured acreage of the crop in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

The insurable practices are contained in the actuarial table. You must designate separately any acreage which is not insurable. The report must indicate if you do not have a share of the insured crop in the county. This report must be submitted each year on or before the acreage reporting date for the crop for the county. This report may be used as the basis to determine your premium and indemnity or we may compute premiums and indemnities on the acreage, share, and practice which is determined to have actually been in existence. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Because underreporting of acreage and share would have the effect of reducing your premium and any indemnity which may be due, you may not revise your report after the reporting date except with our approval. Errors in reporting units may be corrected by us to conform to applicable guidelines at the time of adjusting a loss.

4. Production Guarantees, Coverage Levels or Amounts of Insurance, and Prices for Computing Indemnities

a. The production guarantees or amounts of insurance, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the amount of insurance or coverage level and price election on or before the sales closing date for the crop year.

d. You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the sales closing date for the current crop year (See section 21).

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 guarantee 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 guarantee 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.

5. Annual Premium

a. The annual premium is earned and payable at the time insurance attaches. The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, and where applicable, times any applicable premium adjustment factor shown on the actuarial table.

b. If you are eligible for a premium reduction based on your experience under previous crop policies, you may retain that experience under certain conditions as set out in the crop endorsement through the 1991 crop year.

c. Your premium payment, 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 endorsement.

6. Amounts Due Us

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 premium balance due us. For the purpose of premium amounts due us, the interest will start on the first day of the month following the first premium billing date.

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. Interest and penalties will be charged in accordance with 31 U.S.C. 3717 and 4 CFR 102.13. The penalty for accounts more than 90 days past due (31 U.S.C. 3717(e)(2)) is six percent (6%) per annum. 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 90 days 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.

c. All amounts paid will be applied first to reduction of accrued interest, then to reduction of 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.

e. Any amount due us may be deducted from any indemnity payment due you or from any replanting payment, or 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 and from any amounts due you from any other United States Government Agency.

7. Insurance Period

Insurance attaches on each unit or part of a unit when the insured crop is planted or when the application is properly signed,

completed, and delivered to your service office, whichever is later, or on the calendar date for the beginning of the insurance period if specified in the crop endorsement, 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; or

(d) The calendar date for the end of the insurance period contained in the crop endorsement.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant the insured crop damaged by an insured cause of loss;

(b) During the period before harvest the insured crop on a unit is damaged by an insured cause of loss and you decide not to further care for or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage due to an insured cause of loss occurs.

Insured acreage may not be put to another use until we have appraised the insured crop and given written consent. We will not consent to another use if the insured crop can be replanted. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If a loss is anticipated by you on any unit within 15 days of or during harvest, notice of probable loss must be given to us within 72 hours of your discovery. A representative sample of the unharvested insured crop, as required by the crop endorsement, must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you intend to claim an indemnity on any unit, a notice of loss must be given not later than 10 days after the earliest of:

(a) Total destruction of the insured crop on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy and replant any of the insured crop on which you intend to claim a replanting payment, until we give written consent.

c. You must obtain written consent from us before you destroy any of the insured crop which is not harvested.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production and, if applicable, the 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 during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit in accordance with the applicable crop endorsement and the actuarial table.

d. If the information reported by you on the acreage report results in a lower premium than the premium determined to be due on the basis of the share, acreage, practice or type determined to actually exist, the guarantee on the unit will be computed on the information contained in the acreage report but all production from insurable acreage, whether or not reported as insurable, will count against the guarantee.

e. The total production to be counted for a unit will include all production determined in accordance with the crop endorsement.

f. 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.

g. 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.''

h. If allowed by the crop endorsement, 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).

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

(a) On which our appraisal establishes that production will exceed the level set by the crop endorsement;

(b) Initially planted prior to the date established by the actuarial table; or

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

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

If the information reported by you on the acreage report results in a lower premium than the 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.

i. You must not abandon any acreage to us.

j. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

k. An indemnity will not be paid unless you comply with all policy provisions.

l. 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. (State and local laws to the contrary are not applicable to this insurance contract.) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by the 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 FCIC claim 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 will vary with each publication.

m. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

n. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. (For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.)

10. Concealment or Fraud

We may void the insurance contract on all crops without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to this or any other contract with us. The voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to the applicable indemnity. 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 the contract consistent with the transferee's interest.

12. 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 may submit all notices and forms required to protect the insurance contract and to claim an indemnity.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit, and separate records including the same information for production of the crop from any uninsured acreage. The records must be kept for three years from the end of the crop year to which they pertain. Failure to keep and maintain such records may result in: (a) Cancellation of the contract for that crop year; (b) assignment of production to units by us; or (c) a determination that no indemnity is due, whichever we elect. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Contract Term, Cancellation, and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue

in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. If the amount is paid by deduction from an indemnity or other U.S. Department of Agriculture payment, the date of payment:

(1) If deducted from an indemnity, will be the date you sign the properly completed claim form; or

(2) If deducted from a payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are contained in the crop endorsement.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for three consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election or amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the price election or amount of insurance which you are conclusively presumed to have elected unless you elect a different price election or amount of insurance prior to the sales closing date. All contract changes will be available at your service office by the contract change date contained in the crop endorsement. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of the crop insurance contract:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance or production guarantees, coverage levels or amounts of insurance, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding crop insurance in the county.

b. *ASCS* means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. *ASCS farm serial number* means the number assigned to the farm by the ASCS County Office Committee.

d. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

e. *Crop endorsement* means the endorsement to the policy contained in this part which sets forth the terms and conditions of insurance applicable to the named crop.

f. *Cropland* means any acreage considered by ASCS for program payment purposes.

g. *Crop year* means the period within which the crop is normally grown and will be designated by the calendar year in which the insured crop is normally harvested.

h. *Harvest* (Defined in the crop endorsement).

i. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

j. *Insured* means the person who submitted the application accepted by us and does not extend to any other person having a share or interest in the crop such as a partnership, landlord, or any other person unless specifically indicated on the application and accepted by us.

k. *Insured crop* means the crop insured under the provisions of the applicable crop endorsement.

l. *Loss ratio* means the ratio of indemnity to premium.

m. *Person* means 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.

n. *Production report* means previous year yield information including planted acreage and harvested production, reported by you, that is supportable by written verifiable records from a buyer of the insured crop or by measurement of farm stored production.

o. *Section* means a unit of measure under the rectangular survey system describing a tract of land usually one mile square and generally containing approximately 640 acres.

p. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

q. *Tenant* means a person who rents land from another person for a share of the crop or a share of the proceeds therefrom.

r. *Unit* means all insurable acreage of the crop in the county on the date insurance attaches 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.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the insured crop on such land will be considered as owned by the lessee. Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in the applicable crop endorsement or by written agreement with us. Units will be determined when the acreage is reported but may be adjusted to reflect the actual unit structure when adjusting a loss; however, no further division may be made at loss adjustment time. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

s. *Verifiable records* mean documents indicating a quantity of production or acreage determined by us, other government agencies, buyers, processors, packers, storage facilities or other third parties acceptable to us. The documents must include the name of the producer and entity making the measurement, the date of the measurement, and the crop type, class, or variety.

18. Descriptive Headings

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

19. Determinations

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).

20. Notices

All notices required to be given by you must be in writing and received by your service office 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 an application or a report or notice falls on a Saturday, Sunday, or Federal holiday if your service office is not open for business on such date such notice or report must be submitted on the next business day.

21. Dates, Reports, and Notices

To preserve your rights under this insurance contract you are required to file a number of reports and notices with us by certain dates. The actual content requirements and time limits of those reports and notices are set out elsewhere in this contract and you must refer to those sections for those requirements.

As a convenience to you and without limitation on our rights under this contract, a short description of most of the dates, reports and notices have been compiled in this section. Omission of any date, report or notice, or are referred to the crop endorsement for any such requirements.)

a. ''Acreage report''—A report required by section 3 of this contract. This report contains, in addition to other information, the report of the insured's share of all acreage of an insured crop in the county whether insurable or uninsurable and must be filed prior to the final acreage reporting date contained in the actuarial table for the county for the crop insured.

b. ''Another use, Notice of''—The written notice required when an insured wishes to put acreage to another use (See: Section 8).

c. ''Application''—A form required by Subpart D of Part 400 of 7 CFR and each individual program regulation. The application for insurance form must be completed and filed in the service office prior to the sales closing date (contained in the actuarial table) of the initial insurance year for each crop year for which an insurance endorsement is requested by the insured.

d. ''Assignment of indemnity''—A transfer of contract 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.

e. ''Billing date''—The first date upon which an insured is billed for insurance coverage and which generally falls at or near harvest time. Interest accruing on any unpaid premium balance attaches 30 days after the billing date.

f. ''Cancellation date''—The date on or before which the insured or the Corporation may cancel the insurance policy for the subsequent crop year by giving written notice.

g. ''Claim for indemnity'' (See: Section 9)—A claim made by the insured for damage or loss to an insured crop and submitted to the Corporation not later than 60 days after the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

h. ''Claim for indemnity, Notice of''—The loss notice required to be given by the insured not later than 10 days after certain occurrences (See: Section 8).

i. ''Contract change date''—The date by which FCIC makes any contract changes available for inspection in the service office (See: Section 16).

j. ''Damage, notice of''—See: Probable loss, Notice of.

k. ''Earliest planting date''—The earliest date established for planting the insured crop and qualifying for a replant payment (See: Actuarial Table and Section 9.h.(1)(b)).

l. ''End of insurance period, Date of''—The date upon which the insured's crop insurance coverage ceases (See: Section 7).

m. ''Insurance attaches, Date''—The date insurances attaches on the crop, generally after planting is completed or the calendar date in the crop endorsement (See: Section 7).

n. ''Intent to abandon, Notice of''—The written notice to the Corporation by the insured indicating that because of damage from an insured cause, the insured has decided to no longer care for or harvest any part of the crop.

o. ''Late planting agreement''—Available on selected crops. An amendment to the insurance contract which allows an insured whose planting has been delayed, to insure a crop planted after the final planting date in exchange for a reduction in coverage.

p. ''Probable loss, notice of''—A written notice required to be filed in the service office whenever an insured believes that the insured crop has been damaged to the extent that a loss is probable (See: Section 8).

q. ''Production report''—A written record showing the insured's annual production and used to determine the yield guarantee. (See: Section 4). The report contains previous year yield information including planted acreage and harvested production. This report must be supported by written records from a warehouseman or buyer of the insured crop or by measurement of farm stored production.

r. ''Replanting, Notice of completion''—The notice required to be given by the insured to the Corporation when replanting is completed (See: Section 8).

s. ''Reporting date''—The acreage reporting date (contained in the Actuarial Table) by which you are required to report all your insurable and uninsurable acreage in the county in which you have a share and your share at the time insurance attaches.

t. ''Sales closing date''—The date contained in the actuarial table on file in the respective service office which sets out the final date when an application for insurance may be filed.

u. ''Termination date''—The date upon which the Corporation may cancel the insurance policy for non-payment of premium.

(e) Notwithstanding the terms of the crop insurance endorsement and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance endorsement will be effective subject to the availability of appropriations.

[52 FR 28447, July 30, 1987, as amended at 52 FR 36401, Sept. 29, 1987; 53 FR 9099, Mar. 21, 1988; 53 FR 16540, May 10, 1988, and 54 FR 9766, Mar. 8, 1989; 54 FR 20370, May 11, 1989; 55 FR 6972, Feb. 28, 1990; 55 FR 50812, Dec. 11, 1990; 56 FR 13577, Apr. 3, 1991; 61 FR 39050, July 26, 1996]

§§ 401.9—401.100 [Reserved]

§ 401.101 Wheat endorsement.

The provisions of the Wheat Crop Insurance Endorsement for the 1988 through the 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Wheat Endorsement

1. Insured Crop

a. The crop insured will be wheat planted for harvest as grain.

b. In addition to the wheat not insurable in section 2 of the general crop insurance policy, we do not insure any wheat:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such wheat; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the wheat policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy the following will apply:

a. Insurance attaches on each unit or part of a unit when the wheat is planted except that:

(1) In counties with an April 15 cancellation date, insurance will attach on fall-planted wheat on April 16 following planting if it is determined that there is an adequate stand on this date to produce a normal crop;

(2) If you have optional winter coverage in effect, or if optional winter coverage is provided in the county and you purchase such coverage before the winter wheat sales closing date, insurance will attach at the time of planting; or

(3) If optional winter coverage is provided in the county and you fail to purchase such coverage and it is determined that there is an adequate stand on the spring final planting date to produce a normal crop, insurance will attach on the spring final planting date.

b. Insurance ends on each unit at the earliest of:

(1) Total destruction of the wheat;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which wheat is normally harvested:

(a) Alaska, September 25;

(b) All other states, October 31.

5. Unit Division

Wheat acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured wheat is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in all of Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The wheat is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured wheat is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Wheat planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

a. In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the wheat for silage or hay. After such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For purposes of this section and section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

b. A replant payment is available under this endorsement only in those counties where a Wheat Winter Coverage Option is available and only if the insured has elected the Wheat Winter Coverage Option. The replant payment will be the actual cost of replanting not to exceed the lesser of 20 percent of the production guarantee or 3 bushels multiplied by the price election multiplied by your share.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of wheat to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature wheat production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.5 percent; or

(2) Wheat, which due to insurable causes, grades not higher than U.S. No. 5 because of test weight, total damage, or shrunken and broken kernels, or which meets the special grade requirements for ''garlicky'', ''smutty'', ''light smutty'', or ''ergoty'', (all as graded by a grain grader licensed by the Federal Grain Inspection Service or a licensed grader under the United States Warehouse Act) will be adjusted by:

(a) Dividing the value per bushel of the insured wheat by the price per bushel of U.S. No. 2 wheat which does not grade garlicky, smutty, or ergoty; and

(b) Multiplying the result by the number of bushels of such wheat.

The applicable price for No. 2 wheat will be the local market price on the earlier of the day the loss is adjusted or the day the insured wheat is sold.

(3) Any harvested production from other volunteer plants growing in the wheat will be counted as wheat on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good wheat farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of wheat becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation date	Termination date
All Alaska Counties except those listed below; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties, South Dakota and all South Dakota Counties north and east thereof; Vermont; and Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin and all Wisconsin Counties north and west thereof; Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	Apr. 15	Apr. 15.
All other Colorado Counties except those listed below; all Iowa Counties except those listed below; Kansas; Nebraska; New Mexico; Oklahoma; Texas; all other Wisconsin Counties and all other states except those listed below.	Sept. 30.	Sept. 30.
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel Counties, Colorado; Connecticut; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa and all Iowa Counties north thereof; Massachusetts; all other Montana Counties; New York; Rhode Island; all other South Dakota Counties; and all other Wyoming Counties.	Sept. 30.	Nov. 30.
Matanuska-Susitna County, Alaska; Arizona; California; Idaho; Nevada; Oregon; Utah; and Washington.	Oct. 31	Nov. 30.

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and August 15 preceding the cancellation date for all other counties.

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to wheat during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount

for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(i)). This notice must be given not later than three (3) days after:

(1) The latest wheat final planting date in the county if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For all spring-planted wheat acreage (and fall-planted wheat acreage only where insurance is not offered for spring-planted wheat) which is planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the wheat continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If your were prevented from planting wheat (see subparagraph 11.(i), you may elect:

(i) To plant wheat during the late planting period. The production guarantee for such acreage will be determined in accordance subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. In counties for which the Actuarial Table designates a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted wheat. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant wheat after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(2) In addition to the provisions of section 4 (Insurance Period) of this endorsement, the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for wheat in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to wheat on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for wheat reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to wheat during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under any irrigated practice will be limited to the number of wheat acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for wheat in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than wheat, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of wheat acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of wheat on one optional unit and 40 acres of wheat on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more wheat acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to wheat in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted wheat in counties for which the Actuarial Table designates a spring final planting date, or the acreage reporting date for fall-planted wheat in counties for which the Actuarial Table designates a fall final planting date only, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Adequate stand*—a sufficient population of plants to produce at least the yield used to determine the guarantee.

(b) *Days*—calendar days.

(c) *Final planting date*—the date contained in the Actuarial Table by which the insured wheat must initially be planted in order to be insured for the full production guarantee.

(d) *Harvest*—completion of combining, threshing, or cutting for hay or silage on any acreage.

(e) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated wheat acreage.

(f) *Late planted*—acreage planted during the late planting period.

(g) *Late planting period*—(applicable only to spring-planted wheat acreage and fall-planted wheat acreage only where insurance is not offered for spring-planted wheat)-the period which begins the day after the final planting date for wheat and ends twenty-five (25) days after the wheat final planting date.

(h) *Latest wheat final planting date*—

(1) The final planting date for spring-planted wheat in all counties for which the Actuarial Table designates a final planting date for spring-planted wheat only;

(2) The final planting date for fall-planted wheat in all counties for which the Actuarial Table designates a final planting date for fall-planted wheat only; or

(3) The final planting date for spring-planted wheat in all counties for which the Actuarial Table designates final planting dates

for both spring-planted and fall-planted wheat.

(i) *Prevented planting*—inability to plant wheat with proper equipment by:

(1) The latest wheat final planting date in the county; or

(2) The end of the late planting period.

You must have been unable to plant wheat due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the latest wheat final planting date in the county or within the late planting period.

(j) *Production guarantee*—the number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(k) *Timely planted*—wheat planted by the final planting date, as established by the Actuarial Table, for wheat in the county to be planted for harvest in the crop year.

[52 FR 28447, July 30, 1987, as amended at 53 FR 36781, Sept. 22, 1988; 54 FR 20504, May 12, 1989; 58 FR 33508, June 18, 1993; 58 FR 67631, Dec. 22, 1993; 60 FR 56934, Nov. 13, 1995]

§ 401.102 The winter coverage option for wheat.

The Winter Coverage Option for wheat is available in the following counties and states beginning in the 1988 through 1994 crop years:

SOUTH DAKOTA

Bennett	Hughes
Brule	Hyde
Buffalo	Jackson
Butte	Jones
Stanley	Tripp
Charles Mix	Lawrence
Custer	Lyman
Dewey	Meade
Fall River	Mellette
Sully	Ziebach
Gregory	Pennington
Haakon	Perkins
Hand	Potter
Harding	Shannon
Todd	

The provisions of the Winter Coverage Option for Wheat for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Wheat Endorsement—Winter Coverage Option

(This is a continuous Option)

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

In consideration of the additional premium as set by the Actuarial Table (FCI–35), the insurance provided is attached to and made part of the Wheat Endorsement subject to the following terms and conditions:

1. You must have a wheat endorsement.

2. Coverage under this option for fall-planted wheat will begin at the time of planting and will end on the spring final planting date for wheat in the county.

3. When there is not an adequate stand on the spring final planting date to produce the farm unit production guarantee, you have the option to:

a. Continue to provide sufficient care for the insured wheat crop through harvest;

b. Replant all destroyed acreage to a spring variety of wheat and receive a replanting payment in accordance with subsection 9.h. of the general crop insurance policy and subsection 6.b. of the wheat endorsement; or

c. Accept our appraisal of the production to count, destroy the remaining crop on the acreage and be paid any indemnity due under the terms of the general crop insurance policy and the wheat endorsement.

4. In case of damage to the wheat under this option, you must provide us with written notice prior to the spring final planting date for wheat.

Insured's Signature _____
Date _____
Agent's Signature _____
Date _____

[52 FR 28447, July 30, 1987, as amended at 60 FR 56934, Nov. 13, 1995]

§ 401.103 Barley endorsement.

The provisions of the Barley Crop Insurance Endorsement for the 1988 through the 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Barley Endorsement

1. Insured Crop

a. The crop insured will be barley planted for harvest as grain. A mixture of barley with either oats or wheat or both planted for harvest as grain may also be insured if provided by the actuarial table. The production from such mixture will be considered as barley on a weight basis.

b. In addition to the barley not insurable in section 2 of the general crop insurance policy, we do not insure any barley:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such barley; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the barley policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy the following will apply:

a. Insurance attaches on each unit or part of a unit when the barley is planted except that:

(1) In counties with an April 15 cancellation date, insurance will attach on fall-planted barley on April 16 following planting if it is determined that there is an adequate stand on this date to produce a normal crop;

(2) If you have optional winter coverage in effect, or if optional winter coverage is provided in the county and you purchase such coverage before the winter barley sales closing date, insurance will attach at the time of planting; or

(3) If optional winter coverage is provided in the county and you fail to purchase such coverage, and it is determined that there is an adequate stand on the spring final planting date to produce a normal crop, insurance will attach on the spring final planting date.

b. Insurance ends on each unit at the earliest of:

(1) Total destruction of the barley;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which barley is normally harvested:

(a) Alaska, September 25;

(b) All other states, October 31.

5. Unit Division

Barley acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured barley is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and all of Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The barley is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured barley is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Barley planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

a. In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the barley for silage or hay. After such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For the purposes of this section and Section 8 of the general crop insurance policy, the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

b. A replant payment is available under this endorsement only in those counties where a Barley Winter Coverage Option is available and only if the insured has elected the Barley Winter Coverage Option. The replant payment will be the actual cost of replanting not to exceed the lesser of 20 percent of the production guarantee or 3 bushels multiplied by the price election multiplied by your share.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of barley to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature barley production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.5 percent; or

(2) Mature barley production which, due to insurable causes, has a test weight of less than 40 pounds per bushels or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act contains: less than 85 percent sound barley; more than 8 percent damaged kernels; more than 35 percent thin barley; more than 5 percent black barley; or grades smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured barley by the price per bushel of U.S. No. 2 barley which does not grade smutty, garlicky, or ergoty; and

(b) Multiplying the result by the number of bushels of such barley.

The applicable price for No. 2 barley will be the local market price on the earlier of the day the loss is adjusted or the day the insured barley is sold.

(3) Any harvested production from other volunteer plants growing in the barley will be counted as barley on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good barley farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of barley becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation date	Termination date
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado Counties south and east thereof; Connecticut; Kansas; Massachusetts; and New York.	Sept. 30.	Nov. 30.
New Mexico except Taos County; Oklahoma; Missouri; Illinois; Indiana; Ohio; Pennsylvania; New Jersey; and all states south and east thereof.	Sept. 30.	Sept. 30.
Arizona; California; Clark and Nye Counties, Nevada.	Oct. 31	Nov. 30.
All other Colorado Counties; all other Nevada Counties; Taos County, New Mexico, and all other states.	Apr. 15	Apr. 15.

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and August 15 preceding the cancellation date for all other counties.

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.3.(4) and 21.o of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to barley during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted

acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(i)). This notice must be given not later than three (3) days after:

(1) The latest barley final planting date in the county if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For all spring-planted barley acreage (and fall-planted barley acreage only where insurance is not offered for spring-planted barley) which is planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the barley continues after the final planting date, or you are prevented from planting barley during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting barley (see subparagraph 11.(i)), you may elect:

(i) To plant barley during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. In counties for which the Actuarial Table designates a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted barley. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant barley after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(2) In addition to the provisions of section 4 (Insurance Period) of this endorsement, the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for barley in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to barley on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for barley reduced by any acreage reduction applicable to the farm under any program administered by

the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to barley during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice is limited to the number of barley acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for barley in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than barley, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purposes of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of barley acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of barley on one optional unit and 40 acres of barley on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more barley acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to barley in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted barley in counties for which the Actuarial Table designates a spring final planting date, or the acreage reporting date for fall-planted barley in counties for which the Actuarial Table designates a fall final planting date only, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Adequate stand*—a sufficient population of plants to produce at least the yield used to determine the guarantee.

(b) *Days*—calendar days.

(c) *Final planting date*—the date contained in the Actuarial Table by which the insured barley must initially be planted in order to be insured for the full production guarantee.

(d) *Harvest*—completion of combining, threshing, or cutting for hay or silage on any acreage.

(e) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated barley acreage.

(f) *Late planted*—acreage planted during the late planting period.

(g) *Later planting period*—(applicable only to spring-planted barley acreage and fall-planted barley acreage only where insurance is not offered for spring-planted barley)—the period which begins the day after the final planting date for barley and ends twenty-five (25) days after the final planting date.

(h) *Latest barley final planting date*—

(1) The final planting date for spring-planted barley in all counties for which the Actuarial Table designates a final planting date for spring-planted barley only;

(2) The final planting date for fall-planted barley in all counties for which the Actuarial Table designates a final planting date for fall-planted barley only; or

(3) The final planting date for spring-planted barley in all counties for which the Actuarial Table designates final planting dates for both spring-planted and fall-planted barley.

(i) *Prevented planting*—inability to plant barley with proper equipment by:

(1) The latest barley final planting date in the county; or

(2) The end of the late planting period.

You must have been unable to plant barley due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the latest barley final planting date in the county or within the late planting period.

(j) *Production guarantee*—the number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(k) *Timely planted*—barley planted by the final planting date, as established by the Actuarial Table, for barley in the county to be planted for harvest in the crop year.

[52 FR 28447, July 30, 1985, as amended at 54 FR 20504, May 12, 1989; 58 FR 33508, June 18, 1993; 58 FR 67633, Dec. 22, 1993; 60 FR 56934, Nov. 13, 1995]

§ 401.104 Winter coverage option for barley.

The Winter Coverage Option for Barley is not available in any counties for the 1988 crop year.

The provisions of the Winter Coverage Option for Barley for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Barley Endorsement—Winter Coverage Option

(This is a continuous Option)

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

In consideration of the additional premium as set by the Actuarial Table (FCI–35), the insurance provided is attached to and made part of the Barley Endorsement subject to the following terms and conditions:

1. You must have a barley endorsement.

2. Coverage under this option for fall-planted barley will begin at the time of planting and will end on the spring final planting date for barley in the county.

3. When there is not an adequate stand on the spring final planting date to produce the farm unit production guarantee, you have the option to:

a. Continue to provide sufficient care for the insured barley crop through harvest;

b. Replant all destroyed acreage to a spring variety of barley and receive a replanting payment in accordance with subsection 9.h. of the general crop insurance policy, and subsection 6.b. of the Barley Endorsement; or

c. Accept our appraisal of the production to count, destroy the remaining crop on the acreage and be paid any indemnity due under the terms of the general crop insurance policy and the barley endorsement.

4. In case of damage to the barley under this option, you must provide us with written notice prior to the spring final planting date for barley.

Insured's Signature _____
Date _____
Agent's Signature _____
Date _____

[52 FR 28447, July 30, 1987, as amended at 60 FR 56934, Nov. 13, 1995]

§ 401.105 Oat endorsement.

The provisions of the Oat Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Oat Endorsement

1. Insured Crop

a. The crop insured will be oats planted for harvest as grain and grain mixtures in which oats are the predominant grain.

b. In addition to the oats not insurable in section 2 of the general crop insurance policy, we do not insure any oats:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such oats; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the oat policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy, the following will apply:

a. Insurance attaches on each unit or part of a unit when the oats are planted except that, in counties with an April 15 cancellation date, insurance on fall-planted oats attaches on April 16 following planting if it is determined that there is an adequate stand on April 16 to produce a normal crop.

b. Insurance ends on each unit at the earliest of:

(1) Total destruction of the oats;

(2) Combining, threshing, harvesting for silage or hay, or removal from the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which oats are normally harvested:

(a) Alaska, September 25;

(b) All other states, October 31.

5. Unit Division

Oat acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for a least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured oats is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in all of Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The oats are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured oats is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and a nonirrigated practice are carried out, provided:

(1) Oats planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the oats for silage or hay. After such notice is given, we will appraise the potential grain production. If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For purposes of this section and Section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of oats to be counted (see subsection 7.b);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature oat production which otherwise is not eligible for quality adjustment will be

reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(2) Mature oat production which, due to insurable causes, has a test weight of less than 27 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains less than 80 percent sound oats or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured oats by the price per bushel of U.S. No. 2 oats which do not grade smutty, garlicky, or ergoty; and

(b) Multiplying the result by the number of bushels of such oats. The applicable price for No. 2 oats will be the local market price on the earlier of the day the loss is adjusted or the day the insured oats are sold.

(3) Any harvested production from other volunteer plants growing in the oats will be counted as oats on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good oat farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of oats becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause before the acreage is put to another use and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation and termination date
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; New Mexico except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia and all counties east thereof.	Sept. 30.
Arizona; California except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties.	Oct. 31.
All other California counties; Taos County, New Mexico; all other Virginia counties and all other states.	Apr. 15.

9. Contract Changes

The contract change date is December 31 preceding the cancellation date for counties with an April 15 cancellation date and August 15 preceding the cancellation date for all other counties.

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to oats during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(i)). This notice must be given not later than three (3) days after:

(1) The latest oat final planting date in the county if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For all spring-planted oat acreage (and fall-planted oat acreage only where insurance is not offered for spring-planted oats) planted after the final planting date, but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the oats continues after the final planting date, or you are prevented from planting oats during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevent Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting oats (see subparagraph 11(i)), you may elect:

(i) To plant oats during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. In counties for which the Actuarial Table designates a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted oats. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant oats after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(2) In addition to the provisions of section 4 (Insurance Period) of this endorsement, the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for oats in the county.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to oats on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS based acreage for oats reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to oats during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of oats acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for oats in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than oats, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of oat acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you

planted 60 acres of oats on one optional unit and 40 acres of oats on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more oat acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to oats in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted oats in counties for which the Actuarial Table designates a spring final planting date, or the acreage reporting date for fall-planted oats in counties for which the Actuarial Table designates a fall final planting date only, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Adequate stand*—a sufficient population of plants to produce at least the yield used to determine the guarantee.

(b) *Days*—calendar days.

(c) *Final planting date*—the date contained in the Actuarial Table by which the insured oats must initially be planted in order to be insured for the full production guarantee.

(d) *Harvest*—completion of combining, threshing, or cutting for hay or silage on any acreage.

(e) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated oat acreage.

(f) *Late planted*—acreage planted during the late planting period.

(g) *Late planting period*—(applicable only to spring-planted oat acreage and fall-planted oat acreage only where insurance is not offered for spring-planted oats)—the period which begins the day after the final planting date for oats and ends twenty-five (25) days after the oat final planting date.

(h) *Latest oat final planting date*—

(1) The final planting date for spring-planted oats in all counties for which the Actuarial Table designates a final planting date for spring-planted oats only;

(2) The final planting date for fall-planted oats in all counties for which the Actuarial Table designates a final planting date for fall-planted oats only; or

(3) The final planting date for spring-planted oats in all counties for which the Actuarial Table designates final planting dates for both spring-planted and fall-planted oats.

(i) *Prevented planting*—inability to plant oats with proper equipment by:

(1) The latest oat final planting date in the county; or

(2) The end of the late planting period.

You must have been unable to plant oats due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the latest oat final planting date in the county or within the late planting period.

(j) *Production guarantee*—the number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(k) *Timely planted*—oats planted by the final planting date as established by the Actuarial Table, for oats in the county to be planted for harvest in the crop year.

[52 FR 28447, July 30, 1987, as amended at 54 FR 20504, May 12, 1989; 58 FR 33508, June 18, 1993; 58 FR 67634, Dec. 22, 1993; 60 FR 56934, Nov. 13, 1995]

§ 401.106 Rye endorsement.

The provisions of the Rye Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Rye Endorsement

1. Insured Crop

a. The crop insured will be rye planted for harvest as grain.

b. In addition to the rye not insurable in section 2 of the general crop insurance policy, we do not insure any rye:

(1) If the seed has not been mechanically incorporated into the soil;

(2) If the seed is planted where an established grass or legume exists unless we agree, in writing, to insure such rye; or

(3) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

c. A late planting agreement will be available for all spring-planted rye where insurance is offered and for fall-planted rye only where insurance is not offered for spring-planted rye.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the rye policy for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

The calendar date for the end of the insurance period is October 31 of the year in which the rye is normally harvested.

5. Unit Division

Rye acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. The acreage planted to insured rye is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The rye is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured rye is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Rye planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice if you want to harvest the rye for silage or hay. After such notice is given, we will appraise the potential grain production.

If we are unable to do so before harvest, you may harvest the crop provided representative samples are left for appraisal purposes. For purposes of this section and section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of rye to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include all harvested and appraised production.

(1) Mature rye production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 16 percent; or

(2) Mature rye production which, due to insurable causes, has a test weight of less than 52 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains: more than 7 percent damaged kernels; more than 25 percent thin rye; or is smutty, garlicky, or ergoty, will be adjusted by:

(a) Dividing the value per bushel of the insured rye by the price per bushel of U.S. No. 2 rye which does not grade smutty, garlicky, or ergoty; and

(b) Multiplying the result by the number of bushels of such rye. The applicable price for No. 2 rye will be the local market price on the earlier of the day the loss is adjusted or the day the insured rye is sold.

(3) Any harvested production from other volunteer plants growing in the rye will be counted as rye on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good rye farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of rye becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination date for all states is September 30.

9. Contract Changes

The date by which contract changes will be available in your service office is August 15 preceding the cancellation date.

10. Meaning of Terms

a. *Adequate stand* means a sufficient population of plants to produce at least the yield used to determine the guarantee.

c. *Harvest* means combining, threshing, or cutting for hay or silage.

[52 FR 28447, July 30, 1987, as amended at 54 FR 20504, May 12, 1989; 58 FR 33508, June 18, 1993; 60 FR 56934, Nov. 13, 1995]

§ 401.107 Late planting agreement option.

(a) *General.* The provisions contained in the Late Planting Agreement Option, are a duplication of 7 CFR part 400, subpart A, with minor editorial changes to provide compatibility with the General Crop Insurance Regulations (7 CFR part 401), and become effective when elected by producers on the crop insurance endorsements herein which are eligible for the Late Planting Agreement Option.

(b) *Availability of the Late Planting Agreement.* The Late Planting Agreement will be offered under the provisions contained in 7 CFR part 401, within limits prescribed by and in accordance with the Federal Crop Insurance Act, as amended 9 U.S.C. 1501 *et seq.*), only on those crops identified in section 4 of this subpart. All provisions of the applicable endorsement for the insured crop apply, except those provisions which are in conflict with this subpart.

(c) *Definitions.* For the purposes of the Late Planting Agreement Option:

(1) *Final planting date* means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(2) *Late Planting Agreement* means that agreement executed by the final planting date, between the FCIC and the insured whereby the insured elects, and FCIC provides, insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days that the acreage is planted after the final planting date.

(3) *Production guarantee* means the guaranteed amount of production under the provisions of the applicable endorsement for crop insurance (sometimes expressed in amounts of insurance).

(d) *Responsibilities of the insured.* The insured is solely responsible for the

completion of the Late Planting Agreement Option and for the accuracy of the data provided on that Agreement. The provisions of this subpart do not relieve the insured of any responsibilities under the provisions of the insurance endorsement.

(e) *Applicability to crops insured.* (1) The provisions of this section for insuring crops for the 1995 and subsequent crop years will be applicable only under the following endorsements:

401.114 Canning and Processing Tomato Endorsement.
401.118 Canning and Processing Bean Endorsement.
401.123 Safflower Seed Endorsement.
401.126 Onion Endorsement.
401.129 Tobacco (guaranteed plan) Endorsement.

(2) The Late Planting Agreement Option will be available in all counties in which the Corporation offers insurance on these crops unless limited by the actuarial table, crop endorsement, or crop endorsement option.

(f) The provisions of the Late Planting Agreement are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Late Planting Agreement

Insured's Name _____
Address _____
Contract No. _____
Crop Year _____
Crop _____

Notwithstanding the provisions of section 2 of the General Crop Insurance Regulations (7 CFR 401) regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted within twenty days after such date. Upon my making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced ten percent for each five days or portion thereof that the acreage is planted after the final planting date. Each ten percent reduction will be applied to the production guarantee or amount of insurance applicable on the final planting date.

The premium will be computed based on the guarantee or amount of insurance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option.

If planting continues under this Agreement after the acreage reporting date on file in the service office, the acreage reporting date will be extended to five days after the completion of planting the acreage to which insurance will attach under this Agreement.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
Date _____

[52 FR 28447, July 30, 1987, as amended at 60 FR 40056, Aug. 7, 1995]

§ 401.108 Prevented planting endorsement.

(a) The provisions contained in the Prevented Planting Endorsement are a duplication of 7 CFR part 442, with minor editorial changes made to provide compatibility with the General Crop Insurance Regulations (7 CFR part 401), and become effective when elected by producers on the crop insurance endorsements therein which are eligible for the Prevented Planting Endorsement.

(b) The provisions of the prevented planting endorsement are as follows:

FEDERAL CROP INSURANCE CORPORATION

Prevented Planting Endorsement

A prevented planting crop insurance endorsement on the qualifying crop will be available to all insureds having a qualifying crop insurance endorsement under the provisions of this Part and who participate in the ASCS Acreage Reduction Program or Set-aside Program. This endorsement is not continuous. Application must be made annually for the prevented planting endorsement not later than the sales closing date established by the actuarial table for the applicable qualifying crop.

(THIS IS AN ANNUAL ELECTION TO BE MADE BY THE INSURED BEFORE THE DATE SPECIFIED IN SECTION 10.)

AGREEMENT TO INSURE: We will provide the insurance described in this endorsement in return for the premium and your compliance with all applicable provisions.

1. Applicable Provisions

All provisions of the qualifying crop insurance endorsement and the prevented planting crop insurance application not in conflict with this endorsement are applicable.

2. Causes of Loss

a. This insurance is against your being unavoidably prevented from planting insurable acreage to the qualifying crop or any other non-conserving crop during the insurance period. (You are required to plant to another

non-conserving crop during the insurance period after you know or should have known that it is no longer feasible to plant the qualifying crop and you are not prevented from planting the other non-conserving crop by an insurable cause.) You must be prevented from planting by drought, flood, or other natural disaster which occurs within the insurance period. Limitations, exceptions, or exclusions on the causes insured against may be contained in the actuarial table.

b. We will not insure against any prevention of planting:

(1) If your failure to plant was due to a cause other than those listed in subsection 2.a.; or

(2) If most producers in the surrounding area in similar circumstances were able to plant the qualifying crop or any other non-conserving crop.

3. Acreage and Share Insured

a. The acreage insured for each crop year will be the cultivated acreage in the county intended to be planted for harvest to the qualifying crop, in which you have a share, as reported by you or as determined by us, whichever we elect, and for which a premium rate is provided by the actuarial table.

b. The insured share is your share as landlord, owner-operator or tenant in the qualifying crop if the crop had been planted at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the prevented planting date.

c. Unless otherwise specified by the actuarial table, we will not insure any acreage unless you have a valid crop insurance endorsement for the current crop year on the qualifying crop and the acreage is insurable under that endorsement.

d. You must participate in the ASCS acreage reduction or set-aside program for the qualifying crop in the applicable crop year on at least one farm which is part of the insured unit under this endorsement.

4. Report of Acreage, Share, Type, and Practice

You must report on our form:

a. All the cultivated acreage intended for planting to the qualifying crop in the county in which you have a share;

b. The intended type and practice; and

c. Your share at the time of reporting.

You must designate separately any cultivated acreage that is intended for planting to the qualifying crop that is not insurable. This report must be submitted not later than the sales closing date for the qualifying crop. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine the insured acreage and share or we may deny liability on the unit. Any report submitted by you may be revised only upon our approval.

5. Amounts of Insurance and Coverage Levels

a. The amount of insurance per acre is computed by multiplying the qualifying crop yield guarantee times the price election selected for the qualifying crop, times 0.35.

b. The coverage level is the same as that selected under your crop insurance endorsement for the qualifying crop.

6. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share.

b. Interest will accrue at the same rate and terms on any unpaid premium balance as on the qualifying crop insurance endorsement.

7. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payment due you or from any replanting payment, or 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, and from any amount due you from any other United States Government Agency.

8. Insurance Period

In lieu of section 7 of the general policy, prevented planting insurance attaches on the sales closing date of the qualifying crop insurance endorsement for the crop year and ends at the earlier of:

a. Planting of the insured acreage to the qualifying crop or any other non-conserving crop; or

b. The prevented planting date.

9. Notice of Damage or Loss and Claim for Indemnity

a. If you are prevented from planting the insured acreage and expect to claim an indemnity on the unit, you must give us notice in writing not later than five days after the prevented planting date.

b. Any claim for indemnity must be submitted to us on our form prior to the time a claim is or should be filed for the qualifying crop.

c. We will not pay any indemnity unless you:

(1) Establish that any prevention of planting on insured acreage was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed; and

(2) Furnish all information we require concerning the loss.

d. The indemnity will be determined for the unit by:

(1) Multiplying the insured acreage times the amount of insurance as determined in section 5 of this endorsement;

(2) Subtracting therefrom the amount obtained by multiplying the planted acreage, times the amount of insurance; and

(3) Multiplying this result by your share.

e. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section.

10. Life of Contract: Cancellation and Termination

a. This endorsement will be in effect only for the crop year specified on the application and may not be canceled by you for such crop year.

b. This endorsement may be renewed for each succeeding crop year if:

(1) You apply and report your intended acreage for planting not later than the sales closing date of the qualifying crop; and

(2) The qualifying crop insurance endorsement is not cancelled or terminated for the crop year.

11. Meaning of Terms

For the purposes of prevented planting crop insurance:

a. *Cultivated acreage intended for planting* means land that was ready or, except for insured causes, could have been made ready for planting, but does not include land:

(1) On which a perennial forage crop is being grown or on which the qualifying crop or other non-conserving crop was planted prior to the prevented planting acreage reporting date; or

(2) Which was not or would not have been planted to comply with any other United States Department of Agriculture or State programs or for any other reason.

b. *Farm* means the land which is designated by ASCS under a single farm serial number.

c. *Insurable acreage* means the land classified as insurable by us for the qualifying crop and shown as such by the actuarial table.

d. *Non-conserving crop* means any crop planted for harvest as food, feed, or fiber.

e. *Planted acreage* means the insurable acreage:

(1) Planted to the qualifying crop or any non-conserving crop during the insurance period; or

(2) Which could have been planted to the qualifying crop or any non-conserving crop during the insurance period.

f. *Prevented planting date* means the latest final spring planting date established by the crop actuarial tables for any insurable crop in the county, except tobacco, plus any extended date or final planting date offered under any late planting agreement option. (In areas where there are no spring planting dates, we will use the latest final fall planting date.)

g. *Qualifying crop* means barley, oats, or wheat.

h. *Unit* means all insurable acreage in the county which you intend for planting to the qualifying crop prior to the prevented planting date for the crop year at the time insurance first attaches under this endorsement for the crop year. The unit will be determined when the acreage is reported.

i. *Yield guarantee* means the result of multiplying your yield for the qualifying crop by your coverage level for that crop.

[52 FR 28447, July 30, 1987, as amended at 58 FR 64874, Dec. 10, 1993]

§ 401.109 Hybrid sorghum seed endorsement.

The provisions of the Hybrid Sorghum Seed Endorsement for the 1988 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Hybrid Sorghum Seed Endorsement

1. Insured Crop

a. The crop insured will be female grain sorghum which is:

(1) Planted for harvest and the production is intended for use as commercial seed to produce grain sorghum, forage sorghum, or sorghum sudan; and

(2) Grown under a written contract executed with a seed company before the acreage reporting date.

b. An instrument in the form of a ''lease'' under which you retain control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price will be treated as a contract under which you have a share in the crop.

c. In addition to the female grain sorghum not insurable in section 2 of the general crop insurance policy, we do not insure any female grain sorghum:

(1) In rows planted with a mixture of female and male plants;

(2) Planted for any purpose other than for commercial seed;

(3) Grown under a contract with any seed company and that seed company refuses to provide us with the records we require to determine the dollar value per bushel of seed production for each hybrid variety; or

(4) Destroyed or put to another use in order to comply with other U.S. Department of Agriculture programs.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy we will not insure against any loss of production due to:

(1) The use of unadapted, incompatible, or genetically deficient male or female seed;

(2) Deficiencies determined during grow-out of a sample of the insured seed crop, including inadequate purity or poor vigor;

(3) Failure to follow the grower provisions of the contract executed with the seed company;

(4) Frost or freeze after the date set by the actuarial table;

(5) Inadequate germination of the hybrid seed crop even though such inadequate germination was a direct result of an insured cause of loss unless inspected and accepted by us before harvest is completed; or

(6) Failure to plant the male seed at a time sufficient to assure adequate pollination of the female plants.

3. Report of Acreage, Share, Type, and Practice (Acreage Report)

In addition to the information required in section 3 of the general crop insurance policy for the acreage report, you must report the crop type.

4. Annual Premium

The annual premium amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time of planting.

5. Insurance Period

In addition to the provisions in section 7 of the general crop insurance policy the following will apply:

a. Insurance attaches on each unit or part of a unit when both the male plant seed and the female plant seed are completely planted in accordance with the production management practices of the seed company.

b. The calendar date for the end of the insurance period is November 30 of the crop year.

6. Unit Division

Female grain sorghum acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table, and if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; and

b. The acreage planted to insured female grain sorghum is located in separate legally identifiable sections, or in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The female grain sorghum is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy, in case of damage or probable loss you must give us written notice of probable loss at least 15 days before the beginning of harvest if you anticipate a germination rate of less than 80 percent on any unit. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

8. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre;

(2) Subtracting from this product the sum of:

(a) The dollar amount obtained by multiplying seed production to count for each type and variety by the respective dollar value per bushel determined by us; plus

(b) The dollar amount obtained by multiplying non-seed production to count by the local market price of such production on the earlier of the date the loss is adjusted or the date such production is sold; and

(c) Multiplying this result by your share.

b. The total production to be counted for a unit will include all harvested and appraised seed and all harvested and appraised non-seed production.

(1) Total seed production to be counted will include:

(a) All production delivered to and accepted by the seed company;

(b) All production with a germination rate of 80 percent or more as determined by a certified seed test conducted from a cleaned sample taken at the time of delivery to the seed company or, if the mature production is appraised, at the time of appraisal; and

(c) All harvested and appraised production which does not qualify under (a) or (b) above because of damage caused by uninsured causes or the failure to follow grower provisions of the contract executed with the seed company.

(2) Total non-seed production to be counted will include all production that does not qualify as seed production.

(3) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good hybrid sorghum seed farming practices;

(b) Potential production lost due to failure to follow the grower provisions of the contract executed with the seed company;

(c) Not less than the dollar amount of insurance for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Any unharvested production.

c. Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(1) Not put to another use before harvest of hybrid sorghum seed becomes general in the county and is reappraised by us;

(2) Further damaged by an insured cause and is reappraised by us; or

(3) harvested.

d. To determine the quantity of mature production, seed and non-seed production will be:

(1) Adjusted .12 percent for each .1 percentage point of moisture to 13.0 percent; and

(2) Measured at 56 pounds of production equaling one bushel.

e. When records of seed production provided by the seed company have been adjusted to a basis of 13.0 percent moisture and 56 pound test weight, (d) above will not apply for harvested production and the records of the seed company will be used to determine the amount of indemnity if such production records are based on the same moisture and test weight criteria used to determine the dollar value per bushel of seed production.

9. Cancellation and Termination Dates

The cancellation and termination dates are April 15.

10. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date.

11. Production Reporting

The production reporting provision contained in section 4 of the general crop insurance policy will not be applicable to this contract.

12. Late Planting and Prevented Planting

(a) In lieu of subparagraphs (2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced amounts of insurance for such acreage. The reduced amounts of insurance will be combined with the amount of insurance for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 200 acres of the same type and variety of which 150 acres are occupied by the female plant. Fifty acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the amount of insurance for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre amount of insurance for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre amount of insurance for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for

prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date the amount of insurance for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share and Practice (Acreage Report)) of the General Crop Insurance Policy (§401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the insured crop continues after the final planting date, or you are prevented from planting the insured crop during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Acturial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 13(o)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be fifty percent (50%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 100 dollars per acre (200 dollars multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 8b through e; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting amount of insurance will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) An amount of insurance equal to twenty-five percent (25%) of the amount of insurance for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 50 dollars per acre (200 dollars multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid sorghum seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid sorghum seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer

the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) Eligible acreage will not exceed the number of acres required to be grown in the current crop year under a contract executed with a seed company prior to the acreage reporting date.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting amount of insurance the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

13. Meaning of Terms

(a) *Adjusted average yield*—an expected yield level for a specific variety, in bushels

per acre, determined by us and used to establish the value of seed production for the purpose of determining the amount of indemnity.

(b) *Amount of insurance*—the number of dollars per acre that results from subtracting the minimum payment (in bushels) provided by the seed company from the county yield contained in the Actuarial Table for the selected coverage level and multiplying the result by the selected price election. If the minimum payment provided by the seed company is stated as a dollar amount, it will be converted to a bushel equivalent by dividing the dollar amount by the selected price election.

(c) *Commercial seed*—the offspring produced by crossing two individual seeds of different genetic character. The resultant offspring is the product intended for use on a commercial basis by an agricultural producer to produce a field crop type for grain sorghum, forage sorghum, or sorghum sudan.

(d) *Days*—calendar days.

(e) *Dollar value per bushel*—the value determined by dividing the amount of insurance per acre for timely planted acreage by the result of multiplying the adjusted average yield by the coverage level percentage you elect.

(f) *Female plants*—the plants grown for the purpose of producing commercial seed and from which the commercial seed is harvested.

(g) *Final planting date*—the date contained in the Actuarial Table by which the insured crop must initially be planted in order to be insured for the full amount of insurance.

(h) *Grow-out*—the growing of a sample of the insured crop to determine progeny characteristics.

(i) *Harvest*—combining, threshing, or picking of the seed and non-seed production on any acreage.

(j) *Inadequate germination*—less than 80 percent of the seed produced from female plants germinated as determined by a warm test using clean seed.

(k) *Irrigated practice*—a method of producing a crop by which water artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated amount of insurance on the irrigated insured crop acreage.

(l) *Late planted*—acreage planted during the late planting period.

(m) *Late planting period*—the period which begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(n) *Male plants*—the plants grown for the purpose of pollinating female plants.

(o) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

(p) *Seed company*—a company which contracts with a grower to produce or grow plants for the production of hybrid seed.

(q) *Timely planted*—the insured crop planted by the final planting date, as established by the Acturial Table, for the insured crop in the county to be planted for harvest in the crop year.

(r) *Type*—grain sorghum, forage sorghum, or sorghum sudan.

(s) *Variety*—the seed produced from a pair of genetically identifiable parents.

[52 FR 28447, July 30, 1987, as amended at 58 FR 67635, Dec. 22, 1993; 60 FR 62720, 62721, Dec. 7, 1995]

§ 401.110 Almond endorsement.

The provisions of the Almond Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Almond Endorsement

1. Insured Crop

a. The crop insured will be almonds.

b. In addition to the almonds not insurable in section 2 of the general crop insurance policy, we do not insure any almonds:

(1) Which are not irrigated; or

(2) On which the trees on the sales closing date have not reached the seventh growing season after being set out unless we agree in writing to insure such acreage.

c. Insurance may attach only by written agreement with us on any acreage with less than 90 percent of a stand, based on the original planting pattern.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Wildlife;

d. Earthquake;

e. Volcanic eruption;

f. Direct Mediterranean Fruit Fly damage; or

g. Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Report of Acreage, Share, and Practice (Acreage Report)

The date by which you must annually submit the acreage report described in section 3 of the general crop insurance policy is January 15.

4. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the almond policy for the 1985 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

5. Insurance Period

Insurance attaches for each crop year on January 1. The calendar date for the end of the insurance period is November 30 of the calendar year in which the almonds are normally harvested.

6. Unit Division

Almond acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and if for each proposed unit:

a. You maintain written, verifiable records of acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. The acreage of insured almonds is located on non-contiguous land.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of almonds to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (total meat pounds) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good almond farming practices;

(b) Not less than the guarantee for any acreage which is abandoned damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any appraised production on unharvested acreage.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and is reappraised by us; or

(b) Harvested.

(3) Almonds which cannot be marketed due to insurable causes will not be considered production.

8. Cancellation and Termination Dates

The cancellation and termination dates are December 31.

9. Contract Changes

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date.

10. Meaning of Terms

a. *Direct Mediterranean Fruit Fly damage* means the actual physical damage to the almonds which causes such almonds to be considered unmarketable and will not include unmarketability of such almonds as a result of a quarantine, boycott, or refusal to accept the almonds by any entity without regard to the actual physical damage to such almonds.

b. *Harvest* means the removal of the almonds from the orchard.

c. *Non-contiguous Land* means land which is not touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

d. *Total Meat Pounds* means the total pounds of good almond meats (whole, chipped and broken, and inshell meats) and rejects, except those resulting from insurable causes as determined by us. Unshelled almonds will be converted to meat pounds.

[52 FR 28447, July 30, 1987, as amended at 54 FR 20504, May 12, 1989]

§ 401.111 Corn endorsement.

The provisions of the Corn Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Corn Endorsement

1. Insured Crop

a. The crop insured will be field corn (''corn'') planted for harvest as grain (or silage if a silage amendment is obtained).

b. In addition to the corn not insurable under section 2 of the general crop insurance policy, we do not insure any corn:

(1) On which the corn was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(2) Unless the acreage is planted in rows far enough apart to permit mechanical cultivation; or

(3) Planted for silage unless a silage amendment has been obtained.

c. If the actuarial table for the county provides a ''silage only guarantee'', coverage is only available with the completion of the silage amendment.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the corn policy for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply;

(5) Participation must be continuous from prior to 1984.

4. Insurance Period

The calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof—September 30;

(b) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington—October 31;

(c) All other counties where our actuarial table shows:

(a) only a silage guarantee; or

(b) both a grain and a silage guarantee on any acreage of corn harvested for silage—September 30;

(d) All other counties and states—December 10.

5. Unit Division

Corn acreage that would otherwise be one unit, as defined in section 17 of the general crop insured policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year. Production reports by unit based on those records should be filed as early as possible but must be filed by no later than the date required by subsection 4.d. of the general crop insurance policy and either;

a. Acreage planted to the insurance corn crop is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The corn is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

b. Acreage planted to the insured corn is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and non-irrigated practices are carried out, provided:

(1) Corn planted on the irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insured corn are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing, and harvesting are carried out in accordance with recognized good irrigated and non-irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. An indenmity will be determined for each grain unit by:

(1) Multiplying the insured grain acreage by the production guarantee;

(2) Subtracting therefrom the total production of grain to be counted (See subsection 7.d.);

(3) Multiplying this product by the grain price election; and

(4) Multiplying this result by your share.

b. When the actuarial table provides a bushel guarantee only or a bushel and tonnage guarantee (and you do not have a timely signed silage amendment) all appraisals will be made in bushels.

c. When the actuarial table provides a tonnage guarantee, and a corn silage amendment is in effect, the indemnity will be determined in accordance with the procedure shown in the corn silage amendment.

d. The total production (bushels) to be counted for a unit with a grain guarantee will include:

(1) All harvested production and may be adjusted for moisture or quality as follows:

(a) Mature grain which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 15.5 through 30.0 percent and .2 percent for each .1 percentage point of moisture from 30.1 through 40.0 percent; or

(b) Mature grain which, due to insurable causes, has a moisture over 40 percent; test weight below 49 pounds per bushel; or kernel damage more than 10 percent as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, will be adjusted by:

(1) Dividing the value per bushel of such corn by the price per bushel of U.S. No. 2 corn at 15.5% moisture; and

(2) Multiplying the result by the number of bushels of such corn.

The applicable price for No. 2 corn will be the local market price on the earlier of the day the loss is adjusted or the day such corn was sold.

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to an uninsured causes and failure to follow recognized good corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Appraised production on unharvested acreage;

(d) For any acreage of corn reported as grain and harvested as silage, indemnity calculations will be converted to a bushel basis at the conversion rate shown in the form FCI–35 for silage harvested or appraised from a grain variety.

(e) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of corn becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

e. A replanting payment is available under this endorsement. The replanting payment will not exceed 8 bushels multiplied by the price election, multiplied by your share. When the crop is replanted by a practice that was uninsurable as an original planting, any indemnity will be reduced by the amount of the replanting payment.

8. Cancellation and Termination Dates

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	February 15.

State and county	Cancellation and termination dates
Alabama: Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas Counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31.
All other Texas counties and all other states ..	April 15.

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (February 15, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (February 15, 1992, for the 1992 crop year only), for all other counties.

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to corn during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph (11.(g)). This notice must be given no later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the corn continues after the final planting date, or you are prevented from planting corn during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting corn (see subparagraph 11.(g)), you may elect:

(i) To plant corn during the late planting period. The production guarantee for such acreage will be determined in accordance with section 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 70 bushels per acre, your prevented planting production guarantee would be equivalent to 35 bushels per acre (70 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop,

as long as such crop is not intended for harvest; or

(iii) To plant corn after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 70 bushels per acre, your prevented planting production guarantee would be equivalent to 35 bushels per acre (70 bushels multiplied by 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.d.

(2) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for corn.

(3) The acreage to which prevented planting coverage applies will be limited as follows:(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to corn on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for corn reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to corn during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of corn acres properly prepared to carry out an irrigation practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for corn in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than corn, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and will be reduced by the number of corn acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of corn on one optional unit and 40 acres of corn on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more corn acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to corn in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Days*—calendar days.

(b) *Final planting date*—the date contained in the Actuarial Table by which the insured corn must initially be planted in order to be insured for the full production guarantee.

(c) *Harvest*—completion of combining or picking corn for grain on any acreage.

(d) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with

the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated corn acreage.

(e) *Late planted*—acreage planted during the late planting period.

(f) *Late planting period*—the period which begins the day after the final planting date for corn and ends twenty-five (25) days after the final planting date.

(g) *Prevented planting*—inability to plant corn with proper equipment by:

(1) The final planting date for corn in the county; or

(2) The end of the late planting period.

You must have been unable to plant corn due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(h) *Production guarantee*—the number of bushels (tons if the Corn Silage Option is in effect) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(i) *Replanting*—performing the cultural practices necessary to replace the corn seed, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(j) *Silage*—corn harvested by severing the stalk from the land and chopping the stalk and the ear for the purpose of livestock feed.

(k) *Timely planted*—corn planted by the final planting date, as established by the Actuarial Table, for corn in the county to be planted for harvest in the crop year.

[52 FR 45143, Nov. 25, 1987, as amended at 53 FR 4589, Feb. 17, 1988; 54 FR 20504, May 12, 1989; 56 FR 58302, Nov. 19, 1991; 57 FR 2008, Jan. 17, 1992; 58 FR 3205, Jan. 8, 1993; 58 FR 67637, Dec. 22, 1993; 60 FR 56934, Nov. 13, 1995]

§ 401.112 Corn silage option.

The provisions of the Corn Silage Crop Insurance Option to the Corn Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Corn Silage Option

Insured's Name	Contract No.
Address	Crop Year
	Identification No.
	SSN Tax

Upon our approval, this amendment is applicable for the 1988 through 1994 crop years.

1. You must have a corn endorsement in force. The corn endorsement provides guaranteed protection on a bushel basis for corn harvested as grain only.

2. All provisions of the corn endorsement not in conflict with this option remain applicable. If a conflict exists between the terms of the endorsement and this silage option, the terms of the silage option apply.

3. A properly executed Corn Silage Option must be submitted to us on or before the sales closing date if you wish to insure your corn as silage under this option.

4. The silage option remains in force and need not be renewed annually. If you desire to cancel the option, you must do so in writing by the cancellation date shown in the actuarial table. The silage option is mandatory if required by the actuarial table.

5. Failure to submit a properly executed silage option by the sales closing date will result in all your corn being insured under the terms and conditions of the corn endorsement.

6. All production and appraisals under this option will be in tons. When the corn is harvested as silage and a grain appraisal is made concurrently with a silage appraisal, and the grain/silage appraisal is less than 4.5 bushels per ton, the production will be reduced 1 percent for each 1 tenth of a bushel below 4.5 bushels. The representative sample required by subsection 8.a(3) of the general policy must be at least 10 feet wide and the entire length of the field. If a representative sample is not left unharvested, no reduction for harvested silage will be allowed.

7. If the actuarial table shows both a grain and silage guarantee, and the normal silage harvesting period has ended, we may increase any tonnage appraisal or any harvested silage production to 65 percent moisture equivalent to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

8. A replanting payment will be available in accordance with subsection 9.h. of the general policy if it is practical to replant. The payment will not exceed 1 ton, multiplied by the price election, multiplied by your share.

Your premium rate under this option is that specified for silage corn on the actuarial table. If only one premium rate is shown by the actuarial table it will be applied to both grain and silage. Mixtures of corn and grain sorghum are insurable for silage only if the sorghum does not exceed 20 percent of the stand.

The end of the insurance period under the silage option is September 30 for the crop year. The silage option is not available in

corn counties which offer coverage only on a bushel basis.

Insured's Signature	(Date)
Agent's Signature	(Date)
Approved by Company	(Date)

[52 FR 45146, Nov. 25, 1987, as amended at 60 FR 56934, Nov. 13, 1995]

§ 401.113 Grain sorghum endorsement.

The provisions of the Grain Sorghum Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Grain Sorghum Endorsement

1. Insured Crop

a. The crop insured will be combine type hybrid grain sorghum planted for harvest as grain.

b. In addition to the grain sorghum not insurable in section 2 of the general crop insurance policy, we do not insure any grain sorghum, which was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the grain sorghum policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous from at least prior to the 1984 crop year.

4. Insurance Period

The calendar date for the end of the insurance period is the date immediately following planting as follows: (a) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties south thereof: September 30. (b) All other Texas counties and all other States: December 10.

5. Unit Division

Grain sorghum acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year. Production reports by unit based on those records should be filed as early as possible but must be filed by no later than the date required by subsection 4.d. of the general crop insurance policy and either;

a. Acreage planted to the insured grain sorghum crop is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The grain sorghum is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured grain sorghum is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigated and non-irrigated practices are carried out, provided:

(1) Grain sorghum planted on the irrigated acreage does not continue into non-irrigated acreage in the same rows or planting pattern

(Non-irrigated corners of a center pivot irrigation system planted to insurable grain sorghum are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine the unit yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and non-irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

For the purpose of section 8 of the general crop insurance policy, representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grain sorghum to be counted (see subsection 7.d.);

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include:

(1) All harvested production which may be adjusted for moisture and quality as follows:

(a) Mature grain sorghum production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; or

(b) Mature grain sorghum production which, due to insurable causes has a test weight of less than 51 pounds per bushel or contains more than 15.0 percent kernel damage, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, will be adjusted by:

(i) Dividing the value per bushel of the insured grain sorghum by the price per bushel of U.S. No. 2 grain sorghum; and

(ii) Multiplying the result by the number of bushels of insured grain sorghum.

The applicable price for No. 2 grain sorghum will be the local market price on the earlier of the day the loss is adjusted or the day the insured grain sorghum is sold; and

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to an uninsured causes and failure to follow recognized good grain sorghum farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Appraised production on unharvested aceage;

(d) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of grain sorghum becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

c. A replanting payment is available under this endorsement. The replanting payment per acre will not exceed 7 bushels multiplied by the price election, multiplied by your share. When the crop is replanted by a practice that was uninsurable as an original planting, any indemnity will be reduced by the amount of the replant payment.

8. Cancellation and Termination Dates

State and County	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties south thereof.	Feb. 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Uptown, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	Mar. 31.
All other Texas counties and all other States	Apr. 15.

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (February 15, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (February 15, 1992, for the 1992 crop year only), for all other counties.

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to grain sorghum during the late planting period (see subparagraph (c)), and acreage

you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(g)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the grain sorghum continues after the final planting date, or you are prevented from planting grain sorghum during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting grain sorghum (see subparagraph 11.(g)), you may elect:

(i) To plant grain sorghum during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant grain sorghum after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(2) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for grain sorghum.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to grain sorghum on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for grain sorghum reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to grain sorghum during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of grain sorghum acres properly prepared to carry out an irrigation practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit, whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for grain sorghum in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than grain sorghum, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of grain sorghum acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of grain sorghum on one optional unit and 40 acres of grain sorghum on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more grain sorghum acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to grain sorghum in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Days*—calendar days.

(b) *Final planting date*—the date contained in the Actuarial Table by which the insured grain sorghum must initially be planted in order to be insured for the full production guarantee.

(c) *Harvest*—completion of combining or threshing grain sorghum for grain on any acreage.

(d) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated grain sorghum acreage.

(e) *Late planted*—acreage planted during the late planting period.

(f) *Late planting period*—the period which begins the day after the final planting date for grain sorghum and ends twenty-five (25) days after the final planting date.

(g) *Prevented planting*—inability to plant grain sorghum with proper equipment by:

(1) The final planting date for grain sorghum in the county; or

(2) The end of the late planting period.

You must have been unable to plant grain sorghum due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(h) *Production guarantee*—the number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(i) *Replanting*—performing the cultural practices necessary to replace the grain sorghum seed, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(j) *Timely planted*—grain sorghum planted by the final planting date, as established by the Actuarial Table, for grain sorghum in the county to be planted for harvest in the crop year.

[52 FR 45151, Nov. 25, 1987, as amended at 54 FR 20504, May 12, 1989; 56 FR 58302, Nov. 19, 1991; 57 FR 2008, Jan. 17, 1992; 58 FR 3207, Jan. 8, 1993; 58 FR 67638, Dec. 22, 1993; 60 FR 56934, Nov. 13, 1995]

§ 401.114 Canning and processing tomato endorsement.

The provisions of the Canning and Processing Tomato Endorsement for the 1988 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Canning And Processing Tomato Endorsement

1. Insured Crop

a. The crop insured will be tomatoes which are planted for harvest as canning or processing tomatoes.

b. In addition to the tomatoes not insurable in section 2 of the general crop insurance policy, we do not insure any tomatoes:

(1) Which are not grown under a written contract with a canner or processor or excluded from the canner or processor contract for, or during, the crop year. (Prior to the date you report your acreage, the contract must be completed to the extent that a binding agreement exists requiring the insured to deliver a stated amount of tomatoes and requiring the processor to accept that amount.); or

(2) Except in California, that are grown on acreage where tomatoes have been grown in either of the two previous crop years.

c. A late planting option will be available on tomatoes.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period.

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against under section 1 of the general crop insurance policy, we will not insure any loss of production due to failure to market the tomatoes unless such failure is due to actual physical damage from a cause specified in subsection 2.a.

3. Production Guarantees

a. The production guarantees per acre are progressive by stages and increase, at specified intervals, to the final stage production guarantee. The stages and production guarantees are:

(1) First stage is from planning until first fruit set, the first stage production guarantee is 50% of the final stage production guarantee;

(2) Second stage is from first fruit set until harvest, the second stage production guarantee is 80% of the final stage production guarantee; and

(3) Third stage (final stage) is harvested acreage, the third stage production guarantee is the final stage guarantee.

b. Any acreage of tomatoes damaged to the extent that growers in the area would not further care for the tomatoes, will be deemed to have been destroyed even though the tomatoes continue to be cared for. The production for such acreage will be the guarantee for the stage (either first or second) in which such damage occurs.

4. Annual Premium

a. The annual premium amount is computed by multiplying the final stage production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the canning and processing tomato policy for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

5. Insurance Period

The date the canner or processor no longer accepts production under the contract which covers the insured acreage planted for the contract year is added to Section 7 of the general crop insurance policy as one of the events which designates the end of the insurance period. The calendar date for the end of the insurance period in California is October 20 of the calendar year in which the tomatoes are normally harvested (October 10 in all other States).

6. Unit Division

Tomato acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; and either

a. Acreage planted to insured tomatoes is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage can be easily determined; and

(2) The tomatoes are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured tomatoes is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Tomatoes planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Notice of Damage or Loss

a. In addition to the notices required in section 8 of the general crop insurance policy, if you are going to claim an indemnity on any unit, you must give us notice within 72 hours:

(1) Of when harvest would normally start if any acreage on the unit is not to be harvested;

(2) Of discontinuance of harvest on the unit; or

(3) If you are unable to deliver production to the canner or processor.

b. The tomato vines on any hard-harvested acreage must not be destroyed until inspected by us if an indemnity is to be claimed on the unit.

c. For the purpose of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

8. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tomatoes to be counted (see subsection 8.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (tons) to be counted for a unit will include:

(1) All harvested tomato production marketed and any tomato production which does not meet the quality requirements of the canner or processor contract due to not being timely marketed;

(2) All appraised production which will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tomato farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent, or damaged solely by an uninsured cause;

(c) For acreage which does not qualify for the final period guarantee, any amount of appraised and harvested production in excess of the difference between the final period guarantee and the guarantee applicable to such acreage;

(d) Production lost due to uninsured causes; and

(e) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of tomatoes becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested.

9. Cancellation and Termination Dates

The cancellation and termination dates are February 15 in California and April 15 in all other states.

10. Contract Changes

The date by which contract changes will be available in your service is November 30 preceding the cancellation date for counties with a February 15 cancellation date and December 31 preceding the cancellation date for all other counties.

11. Meaning of Terms

a. *First fruit set* means the reproductive stage of the plant when 30% of the plants have produced a fruit that has reached a minimum of one inch in diameter.

b. *Harvest* means severance of tomatoes from the vines for the purpose of delivery to a canner or processor.

[52 FR 45599, Dec. 1, 1987, as amended at 54 FR 20504, May 12, 1989]

§ 401.115 Texas citrus endorsement.

The provisions of the Texas Citrus Crop Insurance Endorsement for the 1989 and subsequent crop year are as follows:

FEDERAL CROP INSURANCE CORPORATION

Texas Citrus Endorsement

1. Insured Crop

a. The crop insured will be any of the following citrus types you elect:

Type I Early and mid-season oranges;

Type II Late oranges (including temples);

Type III Grapefruit, except types IV and V;

Type IV Rio Red and Star Ruby grapefruit; or

Type V Ruby Red grapefruit.

b. In addition to the citrus not insurable in section 2 of the general crop insurance policy, we do not insure any citrus:

(1) Which is not irrigated;

(2) If the producing trees have not produced an average yield of three tons of oranges or grapefruit per acre the previous year unless the trees are inspected by us and we agree, in writing, to the amount of insurance coverage;

(3) If acceptable production records of at least the previous crop year are not available; or

(4) Which we inspect and consider not acceptable.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period.

(1) Freeze;

(2) Frost;

(3) Excess moisture;

(4) Hail;

(5) Fire;

(6) Tornado;

(7) Excess wind;

(8) Wildlife;

(9) Failure of the irrigation water supply; or

(10) Direct Mediterranean Fruit Fly damage; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any loss of production due to fire if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove. We also specifically do not insure against the inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production unless the refused production has actual physical damage due to a cause specified in subsection 2.a.

3. Report of Acreage, Share, Type, and Practice (Acreage Report)

a. In addition to the information required in section 3 of the general crop insurance policy, you must report the crop type.

b. The date by which you must annually submit the acreage report is June 30 of the calendar year the insured crop normally blooms.

4. Production Reporting and Production Guarantees

a. In addition to the production report required in section 4 of the general crop insurance policy, you must report:

(1) The number of bearing trees; and

(2) The number of trees topped, hedged, or pruned.

b. In lieu of the method described in section 4 of the general crop insurance policy to determine the yield used to compute your production guarantee, your second stage (final stage) production guarantee will be based on our appraisal of current crop potential. This appraisal will be performed on or before insurance attaches.

c. The production guarantees per acre are progressive by stages and increase, at specified intervals, to the final stage production guarantees. The stages and production guarantees are:

(1) First stage is from the date insurance attaches until May 1 of the calendar year of normal bloom, the production guarantee will be:

(a) Forty percent (40%) of the yield used to determine the previous year's production guarantee multiplied by the percentage of yield (coverage level) for the current crop year if you had insurance for the previous crop year; or

(b) Forty percent (40%) of your production for the previous year per acre multiplied by the percentage of yield (coverage level) for the current crop year if you did not have insurance for the previous crop year.

(2) Second stage (final stage) is from May 1 of the calendar year of normal bloom until the end of the insurance period, the production guarantee is the final stage production guarantee.

d. Any acreage of citrus damaged to the extent that growers in the area would not further care for the citrus, will be deemed to have been destroyed even though the citrus continues to be cared for. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

5. Premium

The premium amount is computed:

a. For citrus damaged in the first stage to the extent that growers in the area would not further care for the citrus, by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. If subsection 5.a. does not apply, by multiplying the second stage production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

6. Insurance Period

In lieu of section 7 of the General Crop Insurance Policy, insurance attaches on December 1 prior to the calendar year of normal bloom except if we accept your application for insurance after November 30, insurance will attach on the thirtieth (30th) day after you sign and submit a properly completed application. Insurance will not attach to any acreage inspected by us and determined to be unacceptable. Insurance ends on each unit at the earliest of:

(1) Total destruction of the citrus;

(2) Harvest;

(3) The date harvest would normally start on any acreage which will not be harvested;

(4) Final adjustment of a loss; or

(5) May 31 of the calendar year following the normal year of bloom.

7. Unit Division

a. Citrus acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided by citrus type.

b. Citrus acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if you agree to pay additional premium as required by the actuarial table and if, for each proposed unit, you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year. The acreage planted to insured citrus must be located in separate legally identifiable sections, the boundaries of the sections must be clearly identified, the insured acreage must be easily determined, and each unit must be non-contiguous. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

8. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy, if the insured citrus is damaged by excess moisture, you must give us notice of such damage within seventy-two (72) hours of occurrence.

9. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee for the applicable stage (see subsection 4.c.);

(2) Subtracting therefrom the total production of citrus to be counted (see subsection 9.e.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any citrus production which is not marketed as fresh fruit and, due to insurable causes, does not contain 120 or more gallons of juice per ton, will be adjusted by:

(a) Dividing the gallons of juice per ton obtained from the damaged citrus by 120; and

(b) Multiplying the result by the number of tons of such citrus. If records of actual juice content are not available, an average juice content will be used.

(2) Where the actuarial table provides for, and you elect the fresh fruit option, citrus production which is not marketable as fresh fruit due to insurable causes will be adjusted by:

(a) Dividing the value per ton of the damaged citrus by the price of undamaged citrus; and

(b) Multiplying the result by the number of tons of such citrus.

The applicable price for undamaged citrus will be the local market price the week before damage occurred, or the contract price if the contract was entered into between the producer and buyer before damage occurred.

(3) Any production will be considered marketed or marketable as fresh fruit unless due to insurable causes, such production was not marketed as fresh fruit.

(4) In the absence of acceptable records to determine the disposition of harvested citrus, we may elect to determine such disposition and the amount of such production to be counted for the unit.

(5) Any citrus on the ground which is not picked up and marketed will be considered lost if the damage was due to an insured cause.

(6) Appraised production to be counted will include:

(a) Unharvested production, and potential production lost due to uninsured causes and failure to follow recognized good citrus farming practices; and

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent.

(7) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and is reappraised by us; or

(b) Harvested.

10. Cancellation and Termination Dates

The cancellation and termination dates are November 30 prior to the calendar year of the normal bloom.

11. Contract Changes

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date.

12. Meaning of Terms

a. *Crop year* means the period beginning with the date insurance attaches to the citrus crop and extending through normal harvest time, and will be designated by the calendar year following the year in which the bloom is normally set.

b. *Direct mediterranean fruit fly damage* means the actual physical damage to the citrus on the unit which causes such citrus to be unmarketable and will not include inability to market such citrus as a direct result of a quarantine, boycott, or refusal to accept the citrus by any entity without regard to actual physical damage to such citrus.

c. *Excess moisture* means that more than 20 inches of precipitation have fallen on the grove within a 72 hour period.

d. *Excess wind* means a natural movement of air which has sustained speeds in excess of 58 miles per hour recorded at the U.S. Weather Service reporting station nearest to the crop at the time of crop damage.

e. *Freeze* means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees Fahrenheit.

f. *Frost* means the condition that exists when the air temperature around the tree falls to 32 degrees Fahrenheit or below.

g. *Harvest* means the severance of mature citrus from the tree either by pulling, picking, or by mechanical or chemical means, or picking up the marketable fruit from the ground.

h. *Hedged* means to cut back the side branches for better or more fruitful growth.

i. *Non-contiguous land* means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

j. *Topped* means to cut back the upper branches for better or more fruitful growth.

[53 FR 6966, Mar. 4, 1988]

§ 401.116 Flaxseed endorsement.

The provisions of the Flaxseed Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Flaxseed Endorsement

1. Insured Crop

a. The crop insured will be flaxseed planted for harvest as seed.

b. In addition to the flaxseed not insurable in section 2 of the general crop insurance policy, we do not insure any flaxseed if the seed has not been mechanically incorporated into the soil in rows unless another method of planting is specifically allowed by the actuarial table.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table

in the flax policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

The calendar date for the end of the insurance period is October 31 following planting.

5. Unit Division

Flaxseed acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided by the actuarial table and if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either;

a. Acreage planted to the insured flaxseed is located in separate, legally identifiable sections or, in the absence of section descriptions the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified, and the insured acreage can be easily determined; and

(2) The flaxseed is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured flaxseed is located in a single section or ASCS Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Flaxseed planted on the irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insurable flaxseed are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

For purposes of Section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. An indemnity will be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of flaxseed to be counted (see subsection 7.b.);

Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include:

(1) All harvested production and may be adjusted for moisture or quality as follows:

(a) Mature flaxseed production which, due to insurable causes, has a test weight or less than 47 pounds per bushel or, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains more than 15 percent damaged flaxseed, will be adjusted by:

(i) Dividing the value per bushel of the insured flaxseed by the price per bushel of U.S. No. 2 flaxseed; and

(ii) Multiplying the result by the number of bushels of insured flaxseed.

(b) The applicable price for No. 2 flaxseed will be the local market price on the earlier of the day the loss is adjusted or the day the insured flaxseed is sold.

(2) All appraised production will include:

(a) Unharvested production on harvested acreage and potential production lost due to an uninsured causes and failure to follow recognized good flaxseed farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use (other than harvest) without our prior written consent or damaged solely by an uninsured cause;

(c) Appraised production on unharvested acreage; and

(d) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of flax becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

8. Cancellation and Termination Date.

The cancellation and termination date for all states is April 15.

9. Contract Changes

Contract changes will be available at your service office by December 31 prior to the cancellation date.

10. Meaning of Terms

a. *Harvest* of flaxseed on the unit means combining, or removal from the field.

b. *Section* is a unit of measure under the rectangular survey system describing a tract of land generally one mile square, usually consisting of approximately 640 acres.

[53 FR 4379, Feb. 16, 1988, as amended at 54 FR 20504, May 12, 1989; 60 FR 56934, Nov. 13, 1995]

§ 401.117 Soybean endorsement.

The provisions of the Soybean Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Soybean Endorsement

1. Insured Crop

a. The crop insured will be soybeans planted for harvest as beans.

b. In addition to the soybeans not insurable under section 2 of the general crop insurance policy, we do not insure any soybeans if the seed has not been mechanically incorporated into the soil in rows during the planting process unless another method is specifically allowed by the actuarial table.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

Unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table, because:

(1) You have not selected optional units; or

(2) You are eligible for a good insuring experience discount.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1983 crop year under the terms of the experience table contained in the soybean policy in effect for the 1984 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

In accordance with the provisions of section 7 of the general crop insurance policy the calendar date for the end of the insurance period in all states is December 10 immediately following planting.

5. Unit Division

Soybean acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to the insured soybeans is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage is easily determined; and

(2) The soybeans are planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured soybeans is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and non-irrigated practices are carried out, provided:

(1) Soybeans planted on the irrigated acreage do not continue into non-irrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and non-irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your soybean acreage is not divided into optional units as provided in this section, your premium amount will be reduced by the factor contained in the actuarial table.

6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. An indemnity will be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of soybeans to be counted (see subsection 7.b.);

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

b. The total production (bushels) to be counted for a unit will include:

(1) All harvested production and may be adjusted for moisture or quality as follows:

(a) Mature soybean production which is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 13.0 percent.

(b) Soybean production which, due to insurable causes, has a test weight of less than 49 pounds per bushel or is of distinctly low quality as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act will be adjusted by:

(i) Dividing the value per bushel of such soybeans by the price per bushel of U.S. No. 1 soybeans; and

(ii) Multiplying the result by the number of bushels of such soybeans.

(c) The applicable price for No. 2 soybeans will be the local market price on the earlier of the day the loss is adjusted or the day the insured soybeans are sold.

(2) All appraised production and will include:

(a) Unharvested production on harvested acreage and potential production lost due to an uninsured causes and failure to follow recognized good soybean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use (other than harvest) without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage;

(d) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of soybeans becomes general in the county and reappraised by us;

(ii) Further damaged by an insured cause and reappraised by us; or

(iii) Harvested.

c. A replanting payment is available under this endorsement. The replanting payment will not exceed 3 bushels multiplied by the price election, multiplied by your share. When the crop is replanted by a practice that was uninsurable as an original planting, any indemnity will be reduced by the amount of the replanting payment.

8. The Cancellation and Termination Dates

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31.
All other Texas counties and all other states ..	April 15.

9. Contract changes.

Contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date (February 15, 1992, for the 1992 crop year only), and by November 30 preceding the cancellation date (February 15, 1992, for the 1992 crop year only), for all other counties.

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to soybeans during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced

production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by fifty percent (0.50) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(h)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the soybeans continues after the final planting date, or you are prevented from planting soybeans during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting soybeans (see subparagraph 11.(h)), you may elect:

(i) To plant soybeans during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant soybeans after the late planting period. The production guarantee for such acreage will be fifty percent (0.50) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be equivalent to 15 bushels per acre (30 bushels multiplied by 0.50). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(2) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for soybeans.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to soybeans on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date); or

(B) One hundred percent (100%) of the simple average of the number of acres planted to soybeans during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of soybean acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for soybeans in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than soybeans, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of soybean acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of soybeans on one optional unit and 40 acres of soybeans on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more soybean acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to soybeans in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Days*—calendar days.

(b) *Distinctly low quality*—(1) Exceeding 8.0 percent kernel damage (excluding heat damage); (2) Having a musty, sour, or commercially objectionable foreign odor which causes the beans to grade U.S. Sample grade; or (3) Graded as ''Garlicky.''

(c) *Final planting date*—the date contained in the Actuarial Table by which the insured soybeans must initially be planted in order to be insured for the full production guarantee.

(d) *Harvest*—completion of combining or threshing of soybeans on any acreage.

(e) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated soybean acreage.

(f) *Late planted*—acreage planted during the late planting period.

(g) *Late planting period*—the period which begins the day after the final planting date for soybeans and ends twenty-five (25) days after the final planting date.

(h) *Prevented planting*—inability to plant soybeans with proper equipment by:

(1) The final planting date for soybeans in the county; or

(2) The end of the late planting period.

You must have been unable to plant soybeans due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(i) *Production guarantee*—the number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(j) *Replanting*—performing the cultural practices necessary to replace the soybean seed, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(k) *Timely planted*—soybeans planted by the final planting date, as established by the Actuarial Table, for soybeans in the county to be planted for harvest in the crop year.

[52 FR 45153, Nov. 25, 1987; 53 FR 1001, Jan. 15, 1988, as amended at 54 FR 48072, Nov. 21, 1989; 55 FR 42552, Oct. 22, 1990; 55 FR 50813, Dec. 11, 1990; 56 FR 58302, Nov. 19, 1991; 57 FR 2008, Jan. 17, 1992; 58 FR 3209, Jan. 8, 1993; 58 FR 67639, Dec. 22, 1993; 60 FR 56934, Nov. 13, 1995]

§ 401.118 Canning and processing bean endorsement.

The provisions of the Canning and Processing Bean Endorsement for the 1988 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Canning and Processing Bean Endorsement

1. Insured Crop and Acreage

a. The crop insured will be fresh beans (snap and lima) which are planted for harvest as canning or processing beans.

b. In addition to the beans not insurable under section 2 of the general crop insurance policy, we do not insure any beans;

(1) Not grown under a contract with a canner, processor or broker or excluded from the canner, processor or broker contract for, or during, the crop year (The contract must be executed and effective before you report your acreage);

(2) Planted for the fresh market; or

(3) Planted to snap beans, lima beans, green peas, mint, rye, soybeans, or sunflowers the previous crop year unless otherwise provided for on the actuarial table.

c. An instrument in the form of a ''lease'' under which you retain control of the acreage on which the insured beans are grown and which provides for delivery under certain conditions and at a stipulated price will, for the purpose of this endorsement, be treated as a contract under which you have a share in the beans.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes not insured against in section 1 of the General Crop Insurance Policy, we will not insure against any loss of production due to the crop not being timely harvested unless such delay in harvesting is solely and directly due to adverse weather conditions which preclude harvesting equipment from entering into and moving about the unit.

3. Annual premium.

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, applying any applicable premium adjustment percentage (as shown in the actuarial table), for which you may qualify because you have not selected optional units.

4. Insurance period

In addition to the provisions in section 7 of the general crop insurance policy, for unharvested acreage, the date by which acreage should have been harvested is added as one of the dates, the earliest of which is used to designate the end of the insurance period. The calendar date for the end of the insurance period is the applicable date of the year in which the beans are normally harvested, as follows:

Delaware, Maryland, and New Jersey—All Beans.	October 15.
New York—Snap Beans	September 30.
Utah—All Beans	October 5.
All other states—Snap Beans	September 20.
All other states—Lima Beans	October 5.

5. Unit division.

In addition to units defined in section 17 of the General Crop Insurance Policy, canning and processing bean acreage may be divided into units by type (smap or lima). For Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, New York, Oregon, Pennsylvania, Tennessee, Utah, Washington, and Wisconsin, bean acreage that would otherwise be one unit may be further divided, if for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and either:

a. Acreage planted to the insured beans is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage can be easily determined; and

(2) The beans are planted in such a manner that the planting pattern does not continue

into the adjacent section or ASCS Farm Serial Number; or

b. The acreage planted to the insured beans is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Beans planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system planted to insurable beans are part of the irrigated unit. Production on the total unit, both irrigated and non-irrigated, will be combined to determine the yield for the purpose of determining the guarantee for the unit); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to the notices required in section 8 of the general crop insurance policy if you are going to claim an indemnity on any unit which is not to be harvested or on which harvest has been discontinued, you must give us notice not later than 48 hours:

(1) After the time harvest would normally start; or

(2) After discontinuance of harvest.

For the purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total bean production (tons) to be counted;

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (tons) to be counted for a unit will include all harvested and appraised production.

(1) The tons of harvested production will be either the total net tons delivered to the processor or broker for which payment was received, as shown on the processor or broker settlement sheet, or will be determined by dividing the dollar amount received from the processor or broker by the contract price for the sieve size or grade factor designated by the actuarial table.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good bean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Appraised production on unharvested acreage.

(d) If any acreage is not timely harvested, the production to count will be the greater of:

(i) That designated by the actuarial table;

(ii) The appraised production; or

(iii) The dollar amount received from the processor divided by the processor's base contract price per ton.

(e) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of beans becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates for all states are April 15.

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date.

10. Meaning of Terms

a. *Harvest* means the mechanical picking of bean pods from the vines for the purpose of delivery to the canner or processor.

[53 FR 6560, Mar. 2, 1988, as amended at 53 FR 9100, Mar. 21, 1988; 54 FR 20503, May 12, 1989; 55 FR 1785, Jan. 19, 1990]

§ 401.119 Cotton endorsement.

The provisions of the Cotton Crop Insurance Endorsement for the 1990 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Cotton Endorsement

1. Insured Crop and Acreage

a. The crop insured will be American Upland lint cotton.

b. The acreage insured of skip-row cotton will be the acreage occupied by rows of cotton after eliminating the skipped-row portions.

c. In addition to the cotton not insurable under section 2 of the general crop insurance policy, we do not insure any cotton:

(1) Which is not irrigated and, in the same calendar year, is grown:

(a) Where a hay crop was harvested; or

(b) Where a small grain crop reached the heading stage.

(2) Planted in excess of any mandatory acreage limitations applicable to the farm by any program administered by the United States Department of Agriculture; or

(3) Destroyed, or put to another use in order to comply with other United States Department of Agriculture programs.

d. In lieu of subsection 2.e.(7) of the general crop insurance policy, we do not insure any cotton planted with another spring planted crop.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment factor for which you may qualify as contained in the actuarial table, because: (1) You have not selected optional units; or (2) You are eligible for good insuring experience discount.

4. Insurance Period

a. In lieu of subsection 7.b of the general crop insurance policy (harvest of the unit), insurance will end upon removal of the cotton from the field.

b. The calendar dates for the end of the insurance period are as follows:

(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson counties, Texas, and all Texas counties lying South thereof.	September 30.
(2) Arizona, California, New Mexico, Oklahoma, and all other Texas counties.	January 31.
(3) All other states	December 31.

5. Unit Division

Cotton acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one optional unit, if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured cotton is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The cotton is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured cotton is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Cotton planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your cotton acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided on the actuarial table.

6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include:

(1) All harvested production; and

(2) All appraised production which will include:

(a) Mature and potential production on unharvested acreage;

(b) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(c) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Not less than 25 percent of the production guarantee per acre for any acreage of cotton that is immature when we determine that harvest of cotton becomes general in the county.

(e) Production on insured acreage for which we have given written consent to be put to another use, unless such acreage is:

(i) Not put to another use before harvest of cotton becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested; and

(f) Production of not less than the harvested guarantee on acreage where the stalks have been destroyed without our written consent.

c. When mature cotton (harvested or unharvested) has been damaged solely by insured causes, the production to count will be reduced if, on the date the final notice of loss is given by the insured, the price quotation for cotton of like quality (price quotation ''A'') for the applicable growth area is less than 75 percent of price quotation ''B.'' Price quotation ''B'' will be that day's growth area price quotation for the same area for cotton of the grade, staple length, and micronaire reading shown by the actuarial table for this purpose. The pounds of production to be counted will be determined by multiplying the number of pounds (harvested and appraised) of mature cotton by price quotation ''A'' and dividing the result by 75 percent of price quotation ''B.''

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and County:	
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	March 31.
All other Texas counties and all other States.	April 15.

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 preceding the cancellation date for all other Counties.

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to cotton during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consist of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by thirty-five percent (0.35) and multiply the result by the 50

acres eligible for prevented planting coverage.

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) You must provide written notice to us if you were prevented from planting (see subparagraph 11.(k)). This notice must be given not later than three (3) days after:

(1) The final planting date if you have unplanted acreage that may be eligible for prevented planting coverage; and

(2) The date you stop planting within the late planting period on any unit that may have acreage eligible for prevented planting coverage.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the cotton continues after the final planting date, or you are prevented from planting cotton during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (including Planting After the Late Planting Period).

(1) If you were prevented from planting cotton (see subparagraph 11.(k)), you may elect:

(i) To plant cotton during the late planting period. The production guarantee for such acreage will be determined in accordance with subparagraph 10.(c)(1);

(ii) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be equivalent to 245 pounds per acre (700 pounds multiplied by 0.35). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(iii) To plant cotton after the late planting period. The production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be equivalent to 245 pounds per acre (700 pounds multiplied by 0.35). Production to count for such acreage will be determined in accordance with subparagraphs 7.b. and c.

(2) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8) and subparagraph 11.(b) (Meaning of Terms) of this endorsement, the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for cotton.

(3) The acreage to which prevented planting coverage applies will be limited as follows:

(i) Eligible acreage will not exceed the greater of:

(A) The number of acres planted to cotton on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(B) The ASCS base acreage for cotton reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to cotton during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres properly prepared to carry out an irrigated practice.

(iii) A prevented planting production guarantee will not be provided for:

(A) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(B) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for cotton in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(C) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(D) Land on which any crop, other than cotton, has been planted and is intended for

harvest, or has been harvested in the same crop year; or

(E) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of cotton acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more cotton acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(4) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to cotton in the crop year.

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date, even though you may elect to plant the acreage after the late planting period. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be providing for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Cotton*—only American Upland Cotton.

(b) *Crop year*—the period beginning at planting and extending through the end of the insurance period shown in section 4 and is designated by the calendar year in which the crop is normally planted.

(c) *Days*—calendar days.

(d) *Final planting date*—the date contained in the Actuarial Table by which the insured cotton must initially be planted in order to be insured for the full production guarantee.

(e) *Growth area*—a geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

(f) *Harvest*—the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

(g) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated cotton acreage.

(h) *Late planted*—acreage during the late planting period.

(i) *Late planting period*—the period which begins the day after the final planting date for cotton and ends twenty-five (25) days after the final planting date.

(j) *Mature cotton*—cotton which can be harvested either manually or mechanically and will include both unharvested and harvested cotton.

(k) *Prevented planting*—inability to plant cotton with proper equipment by:

(1) The final planting date for cotton in the county; or

(2) The end of the late planting period.

You must have been unable to plant cotton due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date or within the late planting period.

(l) *Production guarantee*—the number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for the row pattern planted, multiplied by the coverage level percentage you elect.

(m) *Skip-row*—planting patterns consisting of alternating rows of cotton and fallow rows or rows of another crop (not spring-planted) as defined by ASCS (if non-cotton rows are occupied by another crop any yield factor normally applied for skip-row cotton will not be applicable).

(n) *Timely planted*—cotton planted by the planting date, as established by the Actuarial Table, for cotton in the county to be planted for harvest in the crop year.

[54 FR 48074, Nov. 21, 1989, as amended at 58 FR 67641, Dec. 22, 1993; 60 FR 56934, Nov. 13, 1995]

§ 401.120 Rice endorsement.

The provisions of the Rice Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Rice Endorsement

1. Insured Crop

a. The crop insured will be rice which is planted for harvest as grain.

b. In addition to the rice not insurable under section 2 of the general crop insurance policy, we do not insure any rice:

(1) Destroyed or put to another use in order to comply with other United States Department of Agriculture programs; or;

(2) Which is not irrigated.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period.

(1) Adverse weather conditions (excluding drought);

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against under section 1 of the general crop insurance policy, we will not insure against my loss of production due to application of saline water.

3. Annual premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment percentage for which you may qualify as contained in the actuarial table, because;

(a) You have not selected optional units; or

(b) You are eligible for a good insuring experience discount.

4. Insurance Period

The calendar date for the end of the insurance period is October 31 of the calendar year on which the rice is normally harvested.

5. Unit Division

Rice acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to the insured rice is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in Florida) the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage is easily determined; and

(2) The rice is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number; or

c. If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your rice acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided by the actuarial table.

6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of rice to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include all harvested production including any production from a second rice crop harvested in the same crop year (Any mature production from volunteer rice growing in the rice will be counted as rice on a weight basis).

(1) Mature rough rice production which otherwise is not eligible for quality adjustment will be reduced in volume by .12 percent for each .1 percentage point of moisture in excess of 12.0 percent; or

(2) Mature rough rice production which, due to insurable causes:

(a) Has a total milling yield (heads, second heads, screening, and brewers) of less than 68 pounds per hundredweight;

(b) The whole kernel weight is less than 55 pounds per hundredweight for medium and short grain varieties;

(c) The whole kernel weight is less than 48 pounds per hundredweight for long grain varieties;

(d) Contains more than 4.0 percent chalky kernels in long grain varieties;

(e) Contains more than 6.0 percent chalky kernels in medium or short grain varieties;

(f) Contains more than 3.0 percent chalky kernels in other types; or

(g) Contains more than 2.5 percent red rice will have the production adjusted by:

(i) Dividing the value per pound of such rice, by the price per pound of U.S. No. 3 rough rice; and

(ii) Multiplying the result by the number of pounds of such rice.

(The applicable price for No. 3 rough rice will be the nearest mill center price on the earlier of the day the loss is adjusted or the day the rice was sold).

c. The production to be counted will include all appraised production as follows:

(1) All unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good rice farming practices;

(2) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(3) Appraised production on unharvested acreage.

(4) Appraised production on insured acreage for which we have given written consent to be put to another use unless such acreage is:

(i) Not put to another use before harvest of rice becomes general in the county and is reappraised by us;

(ii) Further damaged by an insured cause and is reappraised by us; or

(iii) Harvested.

d. A replanting payment is available under this endorsement. The replanting payment per acre will not exceed 400 pounds multiplied by the price election, multiplied by your share.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

State and county	Cancellation and termination dates
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, Dimmit Counties, Texas, and all Texas counties south thereof.	February 15.
Missouri	April 15.
Florida	March 15.
All other Texas counties and all other states	March 31.

9. Contract Changes

The date by which contract charges will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 preceding the cancellation date for all other counties.

10. Late Planting and Prevented Planting

(a) In lieu of subparagraphs 2.e.(4) and 21.o. of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage planted to rice during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced production guarantees for such acreage. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for the late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day

following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 10(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(c) Late Planting.

(1) For acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (0.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the rice continues after the final planting date, or you are prevented from planting rice during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting rice (see subsection 11(h)), you may elect:

(i) To plant rice during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 10(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 700 pounds per acre (2000 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 7b and c; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 2000 pounds per acre, your prevented planting production guarantee would be 350 pounds per acre (2000 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for rice in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a rice crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the rice coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to rice on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to rice during the crop years that you certified to determine your yield.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of rice acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of rice on one optional unit and 40 acres of rice on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report) of the General Crop Insurance Policy (§ 401.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be

due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Days*—calendar days.

(b) *Final planting date*—the date contained in the Actuarial Table by which the insured rice must initially be planted in order to be insured for the full production guarantee.

(c) *Harvest*—the completion of combining or threshing rice for grain on any acreage.

(d) *Late planted*—acreage planted during the late planting period.

(e) *Late planting period*—the period which begins the day after the final planting date for rice and ends twenty-five (25) days after the final planting date.

(f) *Mill center*—any location in which two or more mills are engaged in milling rough rice.

(g) *Planted*—uniform placement of an adequate amount of rice seed into a prepared seedbed by one of the following methods. Any acreage into which seed is placed in any other manner will not be considered as planted under the terms of this policy:

(1) Drill seeding—uniform placement of the rice seed into the prepared seedbed by use of a grain drill that incorporates the seed to a proper soil depth.

(2) Broadcast seeding—uniform distribution of the rice seed onto the surface of a prepared seedbed, followed by either mechanical incorporation of the seed to a proper soil depth in the seedbed or flushing the seedbed with water.

(3) Broadcast seeding into a controlled flood—uniform distribution of the rice seed onto a prepared seedbed that has been intentionally covered by water. The water must be free of movement and be completely contained on the acreage by properly constructed levees and gates.

(h) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

(i) *Production guarantee*—the number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(j) *Replanting*—performing the cultural practices necessary to replace the rice seed and replacing the rice seed in the insured acreage with the expectation of growing a successful crop.

(k) *Second crop rice*—regrowth of a stand of rice originating from the initially insured rice crop following harvest and which can be harvested in the same crop year.

(l) *Timely planted*—rice planted by the final planting date, as established by the Actuarial Table, for rice in the county to be planted for harvest in the crop year.

[52 FR 45605, Dec. 1, 1987; 54 FR 48076, Nov. 21, 1989; 57 FR 54682, Nov. 20, 1992; 58 FR 67642, Dec. 22, 1993; 60 FR 62721, 62722, Dec. 7, 1995]

§ 401.121 ELS cotton endorsement.

The provisions of the ELS Cotton Crop Insurance Endorsement for the 1990 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

EXTRA LONG STAPLE COTTON ENDORSEMENT

1. Insured Crop and Acreage

a. The crop insured will be Extra Long Staple cotton (''ELS'') and American Upland lint cotton (''AUP'') if the acreage was first planted in the crop year to ELS cotton.

b. The acreage of skip-row cotton insured will be the acreage occupied by the rows of cotton after eliminating the skipped-row portions.

c. In addition to the cotton not insurable in section 2 of the general crop insurance policy, we do not insure any cotton:

(1) Which is not irrigated if it is grown:

(a) Where a hay crop was harvested in the same calendar year; or

(b) Where a small grain crop reached the heading stage in the same calendar year;

(2) Planted in excess of any mandatory acreage limitations applicable to the farm by any program administered by the United States Department of Agriculture; or

(3) Destroyed, or put to another use in order to comply with other United States Department of Agriculture programs.

d. In lieu of subsection 2.e.(7) of the general crop insurance policy, we do not insure any cotton planted with another spring planted crop.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are expected, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table, because you have not selected optional units as provided by the actuarial table.

4. Insurance Period

a. In lieu of subsection 7.(b) of the general crop insurance policy, (harvest of the unit) insurance will end upon removal of the cotton from the field.

b. The calendar date for the end of the insurance period is January 31.

5. Unit Division

Cotton acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one optional unit, if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured cotton is located in separate, legally identifiable sections (except in Florida) or, in the absence of section descriptions (and in all of Florida), the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the sections or ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The cotton is planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

c. The acreage planted to the insured cotton is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Cotton planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing, and harvesting are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your cotton acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided on the actuarial table.

6. Notice of Damage or Loss

In addition to the provisions in section 8 of the general crop insurance policy;

a. You may not destroy any cotton on which an indemnity will be claimed until we give consent.

b. You must give us notice if you are going to replant any acreage originally planted to ELS cotton to AUP cotton.

c. For purposes of section 8 of the general crop insurance policy the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of cotton to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any mature ELS cotton production will be reduced when, due solely to insured causes, the quality of the ELS cotton produced is such that the price quotation for ELS cotton of like grade, staple length, and micronaire reading (price A) is less than 75 percent of price B. Price B is defined as the market price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in the actuarial table for this purpose. The price quotations for prices A and B will be the market price quotations at the recognized market closest to the unit on the earlier of the day the loss is adjusted or the day the damaged ELS cotton is sold. In the absence of a price quotation on such date, the price quotations for the nearest prior date for which an ELS cotton price quotation was listed for both prices A and B will be used. The pounds of production to be counted will be determined by multiplying the number of pounds of mature production by price A and dividing the result by 75 percent of price B.

(2) Any AUP cotton harvested from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price of the AUP cotton by the price of ELS cotton of the grade, staple length, and micronaire reading shown in our actuarial table. The prices will be determined at the closest recognized market to the insured unit of the earlier of the date the loss is adjusted or the date the AUP cotton was sold.

(3) Appraised production to be counted will include:

(a) Mature and potential production on unharvested acreage;

(b) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good cotton farming practices;

(c) Not less than the applicable guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Not less than 25 percent of the production guarantee per acre for any acreage of cotton that is immature when we determine that harvest of cotton becomes general in the county.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of cotton becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(5) Any appraisal of the AUP cotton on acreage originally planter to ELS cotton will be reduced by the factor determined in section 7.b.(2) above. If prices are not yet available, the previous year's season average price will be used.

(6) The cotton stalks must not be destroyed on any acreage for which an indemnity is claimed, until we give consent. An appraisal of not less than the guarantee may be made on acreage where the stalks have been destroyed without our consent.

8. Cancellation and Termination Dates

The cancellation and termination dates are:

States	Cancellation and termination dates
New Mexico	April 15
All other states	March 31

9. Contract Changes

The date by which contract changes will be available in your service office is November 30 preceding the cancellation date.

10. Prevented Planting (Including Planting after the Final Planting Date)

(a) In lieu of subparagraph 2.e.(4) of the General Crop Insurance Policy (§ 401.8), insurance will be provided for acreage you were prevented from planting (see subparagraph 11.(h)). This coverage provides a reduced production guarantee for such acreage. The reduced guarantee will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for eligible prevented planting acreage will be the same as that for timely planted acreage. For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 100 acres, of which 50 acres were planted by the final planting date and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely; and

(2) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by thirty-five percent (0.35) and multiply the result by the 50 acres eligible for prevented planting coverage.

The total of the two calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 100 acres in the unit.

(b) If you were prevented from planting ELS cotton (see subparagraph 11.(h)), you may elect:

(1) Not to plant this acreage to any crop that is intended for harvest in the same crop year. The production guarantee for such acreage which is eligible for prevented planting coverage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be equivalent to 210 pounds per acre (600 pounds multiplied by 0.35). This section does not prohibit the preparation and care of the acreage for conservation practices, such as planting a cover crop, as long as such crop is not intended for harvest; or

(2) To plant ELS cotton after the final planting date. The production guarantee for such acreage will be thirty-five percent (0.35) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, you prevented planting production guarantee would be equivalent to 210 pounds per acre (600 pounds multiplied by 0.35). Production to count for such acreage will be determined in accordance with subparagraph 7.b.

(c) In addition to the provisions of section 7 (Insurance Period) of the General Crop Insurance Policy (§ 401.8), the beginning of the insurance period for prevented planting coverage is the sales closing date designated in the Actuarial Table for ELS cotton.

(d) You must provide written notice to us if you were prevented from planting. This notice must be given not later than three (3)

days after the final planting date if you have unplanted acreage that may be eligible for prevented planting coverage.

(e) The acreage to which prevented planting coverage applies will be limited as follows:

(1) Eligible acreage will not exceed the greater of:

(i) The number of acres planted to ELS cotton on each ASCS Farm Serial Number during the previous crop year (adjusted for any reconstitution which may have occurred prior to the sales closing date);

(ii) The ASCS base acreage for ELS cotton reduced by any acreage reduction applicable to the farm under any program administered by the United States Department of Agriculture; or

(iii) One hundred percent (100%) of the simple average of the number of acres planted to ELS cotton during the crop years that were used to determine your yield;

unless we agree in writing, prior to the sales closing date, to approve acreage exceeding this limit.

(2) Acreage intended to be planted under an irrigated practice will be limited to the number of ELS cotton acres properly prepared to carry out an irrigation practice.

(3) A prevented planting production guarantee will not be provided for:

(i) Any acreage that does not constitute at least 20 acres or 20 percent (20%) of the acres in the unit whichever is less;

(ii) Land for which the Actuarial Table does not designate a premium rate unless you submit a written request for coverage for such acreage prior to the sales closing date for ELS cotton in the county. Upon your timely written request, we will provide a written insurance offer for such acreage;

(iii) Land used for conservation purposes or intended to be or considered to have been left unplanted under any program administered by the United States Department of Agriculture;

(iv) Land on which any crop, other than ELS cotton, has been planted and is intended for harvest, or has been harvested in the same crop year; or

(v) Land which planting history or conservation plans indicate would remain fallow for crop rotation purposes.

(4) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of ELS cotton acres timely planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single ASCS Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of ELS cotton on one optional unit and 40 acres of ELS cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero). If you report more ELS cotton acreage under this contract than is eligible for prevented planting coverage, we will allocate the eligible acreage to insured units based on the number of prevented planting acres and share you reported for each unit.

(f) When the ASCS Farm Serial Number covers more than one unit, or a unit consists of more than one ASCS Farm Serial Number, the covered acres will be pro-rated based on the number of acres in each unit or ASCS Farm Serial Number that could have been planted to ELS cotton in the crop year.

(g) In accordance with the provisions of section 3 (Report of Acreage, Share, and Practice (Acreage Report)) of the General Crop Insurance Policy (§ 401.8), you must report any insurable acreage you were prevented from planting. This report must be submitted on or before the acreage reporting date. Any acreage you report as eligible for prevented planting coverage which we determine is not eligible will be deleted from prevented planting coverage.

(h) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

11. Meaning of Terms

(a) *Cotton*—Extra Long Staple cotton and acreage replanted to American Upland Cotton after ELS was destroyed by an insured cause.

(b) *Days*—calendar days.

(c) *ELS Cotton*—Extra Long Staple cotton (also called Pima Cotton and American-Egyptian Cotton).

(d) *Final planting data*—the date contained in the Actuarial Table by which the insured ELS cotton must initially be planted in order to be insured for the full production guarantee.

(e) *Harvest*—the removal of the seed cotton on each acre from the open cotton boll or the severance of the open cotton boll from the stalk by either manual or mechanical means.

(f) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated ELS cotton acreage.

(g) *Mature cotton*—ELS cotton which can be harvested either manually of mechanically and will include both unharvested and harvested cotton.

(h) *Prevented planting*—inability to plant ELS cotton with proper equipment by the final planting date due to an insured cause of loss which is general in the area (i.e., most producers in the surrounding area are unable to plant due to similar insurable causes) and which occurs between the sales closing date and the final planting date.

(i) *Production guarantee*—the number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for the row pattern planted, multiplied by the coverage level percentage you elect.

(j) *Replanted*—performing the cultural practices necessary to replant acreage to AUP cotton and replacing the AUP cotton seed after ELS cotton was destroyed by an insured cause in the same growing season.

(k) *Skip-row*—planting patterns consisting of alternating rows of cotton and fallow rows as defined by ASCS (if non-cotton rows are occupied by another crop any yield factor normally applied for skip-row cotton will not be applicable).

(l) *Timely planted*—ELS cotton planted by the final planting date, as established by the Actuarial Table, for ELS cotton in the county to be planted for harvest in the crop year.

[54 FR 48068, Nov. 21, 1989, as amended at 58 FR 67643, Dec. 22, 1993; 60 FR 56934, Nov. 13, 1995]

§ 401.122 Stonefruit endorsement.

The provisions of the Stonefruit Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Stonefruit Endorsement

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Earthquake;

(3) Fire;

(4) Wildlife;

(5) Volcanic eruption;

(6) An insufficient number of chilling hours to effectively break dormancy; or

(7) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

Unless these causes of loss are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against under Section 1.b. of the general crop insurance policy, we will not insure against any loss of production due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the orchard;

(2) Insect infestation;

(3) Split pits regardless of cause; or

(4) Inability to market as a direct result of quarantine, boycott, or refusal of any entity to accept or harvest production unless production has actual physical damage due to a cause specified in subsection 1.a.

2. Insured Crop and Acreage

a. The crop insured will be any of the following stonefruit types you elect in writing prior to the sales closing date and grown for fresh market fruit or processing (whichever is applicable) for which we provide a guarantee and premium rate:

Type I—Apricots—Fresh
Type II—Apricots—Processing
Type III—Nectarines—Fresh
Type IV—Peaches, Cling—Processing
Type V—Peaches, Freestone—Processing
Type VI—Peaches, Freestone—Fresh

b. You may insure any fresh market Stonefruit of Type I Apricots or Type VI Freestone Peaches as processing Type II Apricots or Type V Freestone Peaches respectively by converting fresh market lugs, harvested or appraised, to equivalent processing tons using the weight equivalents provided in paragraph 12.d.

c. In lieu of the provisions of paragraph 2.e. of the general crop insurance policy, we do not insure any stonefruit acreage:

(1) Which is not irrigated;

(2) On which the trees have not reached the fifth growing season after being set out;

(3) Which has not produced at least 200 lugs fresh market production per acre (at least 2.2 tons per acre for processing types);

(4) For which acceptable production records for the type elected for at least the previous crop year are not provided;

(5) Which we inspect and consider not acceptable;

(6) Which is interplanted with another crop;

(7) On which is grown a type or variety: not established as adapted to the area; excluded by the actuarial table; or not regulated by the California Tree Fruit agreement or a related crop advisory board for the State (for applicable types);

(8) From which the fruit is harvested directly by the public; or

(9) If the orchard practices carried out are not in accordance with the orchard practices for which the premium rates have been established.

3. Report of Acreage, Share, Type, and Practice (Acreage Report)

The acreage report must be filed on or before January 31. You must report the crop

type in addition to the information required by the general crop insurance policy for the acreage report.

4. Production Reporting and Production Guarantees

a. In addition to the production report required in section 4 of the general crop insurance policy, you must report:

(1) The number of bearing trees;

(2) The number of trees planted per acre;

(3) Known tree damage or use of production practices which have or may reduce the yield from previous levels; and

(4) If the number of bearing trees (fifth growing season and older) is reduced more than 10% from the preceding calendar year. (The production guarantee will be reduced 1 percent (through adjustment to your average yield) for each 1 percent reduction in excess of 10 percent).

b. You may select only one coverage level and price election per type for the crop year.

c. The processing price elections will be applied to any applicable type (except type III—Nectarines) where an election:

(1) Has not been made by the insured; or

(2) Is not available in accordance with the provisions of the actuarial table.

5. Annual Premium

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches.

6. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy, coverage begins for each crop year on February 1. Insurance ends on each acre at the earliest of:

a. Total destruction of the insured crop by type;

b. Harvest;

c. The date harvest would normally start for the type if the crop is not to be harvested;

d. Final adjustment of a loss; or

e. In all counties, the calendar date immediately following February 1 as follows:

(1) all apricots—July 31.

(2) all nectarines and peaches—September 30.

7. Units

Stonefruit acreage of each type, grown on non-contiguous land, that would otherwise be one unit as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium as provided for by the actuarial table and if for each proposed unit you maintain written, verifiable records of acreage and harvested production for at least the previous crop year.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between units will cause the production from those units to be combined for the purpose of calculating an indemnity.

8. Notice of Damage or Loss

In lieu of the notices required in subsections 8.a.(2),(3), and (4) of the general crop insurance policy, in case of damage or probable loss you must give us written notice within 72 hours of the date of damage and indicate the cause of damage and whether a claim for indemnity is probable. Notwithstanding the previous sentence, if damage occurs within 72 hours of or during harvest, immediate notice stating the cause of damage and probability of a claim must be given to us. If notice is given under this paragraph, we must be notified of the time of harvest at least 72 hours before harvest begins.

9. Claim for Indemnity

In addition to Section 9 of the general crop insurance policy:

a. The indemnity will be determined separately for each unit of types I, III, and VI by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of fresh stonefruit by type to be counted (see section 9.b. or c.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by the insured share.

b. The total production (standard lug equivalents) (see section 12.d.) to be counted for a unit will include all production harvested, by type and all appraised production. For fresh apricots (Type I), such production must meet the California Department of Food and Agriculture minimum standards. For fresh nectarines (Type III) and fresh freestone peaches (Type VI), such production must meet U.S. #1 standards as modified by the latest California Tree Fruit Agreement Publication.

(1) Production of fresh stonefruit damaged by insurable causes within the insurance period, that could be marketed for any use as other than fresh packed stonefruit, will be determined by multiplying the number of tons that could be marketed by the value per ton of fruit or $50.00 per ton, whichever is greater, and dividing that result by the highest price election available for the type. This result will be the number of standard lug equivalents to be considered as production to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the applicable guarantee for any acreage which is abandoned, destroyed by you without our prior written consent, or not inspected by us prior to the completion of harvest;

(c) Any unharvested production where good stonefruit cultural practices were discontinued following an appraisal; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of stonefruit becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested type may be determined on the basis of orchard appraisals conducted after the end of the insurance period or discontinuance of harvest. We may appraise and consider as production to count, any insured fruit remaining on acreage not clean harvested.

(5) We may delay final appraisal until the extent of damage can be determined.

c. The total production in tons to be counted for a processing unit will include all production harvested and all appraised production:

(1) For processing apricots (Type II), such production must meet California Department of Food and Agriculture minimum standards:

(2) For processing clingstone peaches (Type IV), such production must be graded by the California State Inspection Service as #2 or better;

(3) For processing freestone peaches (Type V), such production must meet California Department of Food and Agriculture minimum standards and will include all production harvested and appraised which is acceptable to the processor;

(4) Appraised production to be counted for Types II, IV, and V will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good stonefruit production practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any unharvested production.

(5) Any appraisal for processing fruit types will be conducted based on procedure stated in subsection 9.b(2), (3), and (4).

d. In the absence of acceptable records to determine the disposition of harvested stonefruit, we may elect to determine such disposition and the amount of such production to be counted for the unit.

e. You must authorize us in writing to examine and obtain any records pertaining to production and marketing of the insured fruit under this contract from the broker, shipper, canner, advisory board, marketing order or any other source we deem necessary.

10. The Cancellation and Termination Dates

The cancellation and termination dates are January 31.

11. Contract Changes

The date by which contract changes will be available in your service office is October 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

12. Meaning of Terms

For the purpose of Stonefruit crop insurance:

a. *Appraisal* means an estimate of the potential production determined by our representative using our prescribed procedures.

b. *Crop Year* means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the insured type is normally harvested.

c. *Harvest* means the picking of mature fruit from the trees by hand or machine.

d. *Lug* means a container of fresh fruit of the weights shown below. All fresh production to count of varying lug sizes will be converted to standard lug equivalents on the basis of the following average net pounds of packed fruit:

Type	Pounds/lug
I Apricots	24
III Nectarines	25
VI Freestone Peaches	22

e. *Ton* means a volume of apricots or processing peaches of type II, IV, or V marketable through processing channels and equaling 2000 pounds.

[53 FR 6561, Mar. 2, 1988]

§ 401.123 Safflower seed crop endorsement.

The provisions of the Safflower Seed Crop Insurance Endorsement for the 1988 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Safflower Seed Crop Endorsement

1. Insured Crop

a. The crop insured will be safflower seed (''safflowers'').

b. In addition to the safflowers not insurable in section 2 of the general crop insurance policy, we do not insure any safflowers on which safflowers, sunflowers, dry beans, soybeans, mustard, rapeseed, or lentils have been grown the preceding crop year.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insect infestation;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9 of the general policy.

3. Annual Premium

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance Period

The calendar date for the end of insurance period is October 31 of the calendar year in which the safflowers are normally harvested.

5. Unit Division

Safflower acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year; and either

a. Acreage planted to insured Safflowers is located in separate legally identifiable sections or, in the absence of section descriptions the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The safflowers are planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; or

b. Acreage planted to safflowers is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Safflowers planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized good irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined for the purpose of calculating an indemnity.

6. Notice of Damage or Loss

The representative samples of unharvested safflowers as required in section 8 of the general crop insurance policy will be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from that result the total production of safflowers to be counted;

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature safflower production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 8.0 percent.

(2) Mature safflower production will be adjusted for quality when, due to insurable causes, such production has a test weight below 35 pounds per bushel or has seed damage in excess of 25 percent as determined by a grader licensed to grade safflowers by the Federal Grain Inspection Service.

(3) Mature safflower production which is eligible for quality adjustment, due to insurable causes, will be adjusted by:

(a) Dividing the value per pound of damaged safflowers by the average market price per pound for undamaged safflowers; and

(b) Multiplying the result by the number of pounds of such safflowers.

For the purpose of this insurance, the applicable price for damaged safflowers will be not less than 50 percent of the average market price for undamaged safflowers.

(4) Any harvested production from other volunteer plants growing in the safflowers

will be counted as safflowers on a weight basis.

(5) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(6) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of safflowers becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates for California are December 31, beginning December 31, 1991. For all other states, the cancellation and termination dates are April 15.

9. Contract Changes

Contract changes will be available at your service office by August 31 prior to the cancellation date for California, and by December 31 prior to the cancellation date for all other states.

10. Meaning of Terms

a. *Harvest* means the completion of combining or threshing of safflowers on the unit.

b. *Value per pound of damaged safflowers* means the value of the damaged safflowers (test weight below 35 pounds per bushel or seed damage in excess of 25 percent) at the local market but not less than 50 percent of the average market price for undamaged safflowers.

[52 FR 45159, Nov. 25, 1987, as amended at 54 FR 28795, July 10, 1989; 55 FR 40788, Oct. 5, 1990]

§ 401.124 Sunflower seed crop endorsement.

The provisions of the Sunflower Seed Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Sunflower Seed Crop Endorsement

1. Insured Crop

a. The crop insured will be sunflower seed (''sunflowers'').

b. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation; but, if such insured acreage is destroyed and replanted by broadcasting, drilling, or in rows too close to permit cultivation. it will be considered insured acreage.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;

c. Insects;

d. Plant disease;

e. Wildlife;

f. Earthquake;

g. Volcanic eruption; or

h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted. excluded, or limited by the actuarial table or section 9 of the general policy.

3. Annual Premium

a. The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the sunflower policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

The calendar date for the end of insurance period is November 30 of the calendar year in which the sunflowers are normally harvested.

5. Unit Division

Sunflower acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay additional premium as provided for by the actuarial table and if for each proposed unit you maintain written verifiable records of planted acreage and harvested production for at least the previous crop year; and either

a. Acreage planted to insured sunflowers is located in separate legally identifiable sections or, in the absence of section descriptions the land is identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the section or Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

(2) The safflowers are planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; or

b. The acreage planted to sunflowers is located in a single section or Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(1) Sunflowers planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine your yield for the purpose of determining the guarantee for the unit.); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized irrigated and nonirrigated farming practices for the area.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

The representative samples of unharvested sunflowers as required in section 8 of the general crop insurance policy will be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sunflowers to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature sunflower production (quantity) which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 10 percent; or

(2) Mature production will be adjusted for quality when, due to insurable causes, the insured sunflower seed crop grades below the following:

	Oil type	Non-oil type
Test weight	Less than 25 pounds	Less than 22 pounds.
Damaged kernels	More than 10% total	More than 5% total

Sunflowers grading below these standards will be adjusted by:

(a) dividing the value per pound by the price per pound of No. 2 sunflowers; and

(b) multiplying the result by the number of pounds of insured sunflowers.

The applicable price for No. 2 sunflowers will be the local market price on the earlier of the day the loss is adjusted or the day the sunflowers are sold.

(3) Any harvested production from other crops growing in the sunflowers will be counted as sunflowers on a weight basis.

(4) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good sunflower farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any unharvested production or harvested or unharvested acreage.

(5) Any appraisal we have made on insured acreage and given written consent for that acreage to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sunflowers becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

c. A replant payment is available under the Sunflower Endorsement. No replant payment will be made on acreage on which our appraisal exceeds 90 percent of the guarantee. The payment per acre will not exceed the product obtained by multiplying 175 pounds times the price election, times your share.

8. Replant Payment

In accordance with paragraph 9.h. of the general crop insurance policy a replant payment not to exceed the product by multiplying 175 pounds times the prime elective, times your share may be made.

9. Cancellation and Termination Date

The cancellation and termination date for all states is April 15.

10. Contract Changes

The date by which contract changes will be available in your service office will be December 31 preceding the cancellation date.

11. Meaning of Terms

a. *Harvest* means the completion of combining or threshing of sunflowers on the unit.

b. *Replanting* means performing the cultural practices necessary to replant insured acreage to sunflowers.

[52 FR 45155, Nov. 25, 1987, as amended at 53 FR 40718, Oct. 18, 1988; 54 FR 20369, May 11, 1989; 54 FR 20504, May 12, 1989; 54 FR 33493, Aug. 15, 1989; 60 FR 56934, Nov. 13, 1995]

§ 401.125 Fig endorsement.

The provisions of the Fig Crop Insurance Endorsement for the 1988 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Fig Endorsement

1. Insured Crop

a. The crop insured will be commercially grown dried figs.

b. In addition to the figs not insurable under section 2 of the general crop insurance policy, we do not insure any figs:

(1) Which are not irrigated;

(2) Which have not reached the seventh growing season after being set out;

(3) Grown for purposes other than for dried figs;

(4) Grown with another crop;

(5) Unless acceptable production records for at least the previous crop year are provided;

(6) With less than 90 percent of a stand based on the original planting pattern unless we agree, in writing, to insure such acreage;

(7) Which we inspect and consider not acceptable;

(8) For the crop year the application is filed unless such acreage has been inspected and accepted by us; or

(9) Acquired for the crop year unless such acreage has been inspected and accepted by us.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather;

(2) Earthquake;

(3) Fire;

(4) Volcanic eruption;

(5) Wildlife; and

(6) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against:

(1) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove; or

(2) The inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production.

3. Report of Acreage, Share, Type and Practice (Acreage Report)

a. In addition to the information required in section 3 of the general crop insurance policy, you must report the crop type.

b. You must submit the acreage report described in section 3 of the general crop insurance policy by March 1.

c. By applying for fig crop insurance, you authorize us to determine or verify your production and acreage from records maintained by the California Fig Advisory Board or the fig packer.

4. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

5. Insurance Period

In lieu of the provisions of section 7 of the general crop insurance policy insurance attaches on each unit on March 1 and insurance ends at the earliest of:

(1) Total destruction of the fig crop;

(2) The date harvest of the figs (by type) should have started on any acreage that will not be harvested;

(3) Harvest of the figs;

(4) Final adjustment of a loss; or

(5) October 31.

6. Unit Division

a. In addition to the provisions in subsection 17.q. of the general crop insurance policy, a unit will be all insurable acreage of an insurable type of fig in the county.

b. Fig acreage that would otherwise be one unit may be divided into more than one unit if you agree to pay additional premium as provided for by the acturial table and if for each proposed unit:

(1) You maintain written, verifiable records of acreage and harvested production for at least the previous crop year, and production reports based on those records are filed to obtain an insurance guarantee; and

(2) The acreage of insured figs is located on noncontiguous land. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of figs to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

b. The total production (pounds) to be counted for a unit will include all harvested and appraised marketable figs, as defined by the Marketing Order for Dried Figs, as amended.

(1) All substandard production must be inspected by us and we must give written consent to you prior to delivery to the substandard pool. If the substandard production is not inspected or we do not give written consent prior to the delivery to the substandard pool, all production will be counted as marketable production.

(2) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good fig farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any unharvested production.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such acreage is:

(a) Not harvested before the harvest of figs becomes general in the county;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates are February 28.

9. Contract Changes

The date on which contract changes will be available in your service office is October 31 preceding the cancellation date.

10. Meaning of Terms

a. *Harvest* means the picking of the figs from the trees or ground by hand or machine for the purpose of removal from the orchard.

b. *Non-contiguous land* means land which is not touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. *Substandard production* means production that does not meet minimum grade standards and is defined as ''substandard'' by the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

[53 FR 15015, Apr. 27, 1988, as amended at 60 FR 56934, Nov. 13, 1995]

§ 401.126 Onion endorsement.

The provisions of the Onion Endorsement for the 1988 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Onion Endorsement

1. Crop Insured

a. The crop insured will be onions planted for harvest as dry onions (bulb onions).

b. In addition to the onions not insurable under section 2 of the general crop insurance policy, we do not insure any onions planted for green (bunch) or seed onions, including chives, garlic, leek, or scallions.

c. A late planting agreement will be available.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;

b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

4. Insurance Period

In lieu of section 7 of the general crop insurance policy, insurance attaches on each unit or part of a unit when the onions are planted and ends at the earliest of:

(a) Total destruction of the onions on the unit;
(b) Five days after digging of the onions;
(c) Removal of the onions from the field;
(d) Final adjustment of a loss on a unit; or
(e) The following dates for the calendar year in which the onions are normally harvested:

Washington–Walla Walla Sweets and any other non-storage type onion—July 31
Colorado—September 30
All other Washington onions and all other states—October 15

5. Unit Division

Onion acreage that would otherwise be one unit, as defined in the general policy, may only be further divided into units by onion type (Red, Yellow, or White) if you agree to pay an additional premium as provided for by the actuarial table and if for each proposed unit by type:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports by type based on those records are filed to obtain an insurance guarantee.

b. The acreage boundaries between onion types is clearly identifiable, the insured acreage is easily determined and the onions are planted in such a manner that the planting pattern does not continue into the adjacent field of different type (maximum number of units, three); or

c. The acreage planted to onions consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Onions planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern (Nonirrigated corners of a center pivot irrigation system are part of the irrigated unit. The production from the total unit, both irrigated and nonirrigated, is combined to determine the unit yield for the purpose of determining the guarantee for the unit); and

(2) Planting, fertilizing and harvesting are carried out in accordance with recognized irrigated and nonirrigated farming practices for the area (maximum number of units, six; three irrigated and three non-irrigated).

6. Notice of Damage or Loss

In addition to the notices required in the general crop insurance policy and in case of damage or probable loss:

a. You must give us written notice if you want to harvest the onions (After such notice is given, we will appraise the potential production. If we are unable to do so before harvest, you may harvest the crop, provided representative samples are left for appraisal purposes.); and

b. Any representative sample must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying the result by the price election;

(3) Subtracting therefrom the dollar amount obtained by multiplying the total production of onions to be counted (see subsection 7b.) by the larger of your price election or the local market price at the time the onions are appraised; and

(4) Multiplying this result by your share.

b. The total production (in hundredweight) to be counted for a unit will include all harvested and appraised production.

(1) The extent of any loss may be determined no later than the date onions are placed in storage or delivered to a packer or processor, whichever is earlier.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than the guarantee for any acreage from which the harvested production is disposed of without our prior written consent and such disposition prevents accurate determination of production; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered production unless such acreage is;

(a) Not put to another use before harvest of onions becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination dates are March 1st.

9. Contract Changes

The contract change date is December 31 preceding the cancellation date.

10. Meaning of Terms

Harvest means the digging of onions and placement of the onions into a container.

[53 FR 19217, May 27, 1988]

§ 401.127 Cranberry endorsement.

The provisions of the Cranberry Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Cranberry Endorsement

1. Insured Crop

a. The crop insured will be cranberries which are grown for processing or fresh market.

b. Except by written agreement between you and us or unless provided by the actuarial table, we do not insure any acreage:

(1) Unless at least four growing seasons have elapsed between the date the vines were set out and the date insurance attaches;

(2) With less than 90 percent of a stand of bearing vines based on the original planting pattern; or

(3) That is being renovated and not being used to produce a full crop for the current year.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) adverse weather conditions;

(2) fire;

(3) wildlife;

(4) earthquake;

(5) volcanic eruption;

(6) insects;

(7) plant disease;

(8) if applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; or

(9) failure or breakdown of irrigation equipment or facilities due to direct damage to the irrigation equipment or facilities from an insurable cause of loss if the cranberry crop is damaged by freezing temperatures within 72 hours of such equipment or facilities failure and the equipment or facilities could not have been made operational or replaced within such 72-hour time period;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. We do not insure against any loss caused by the failure or breakdown of irrigation equipment or facilities except as provided in section 2.a.(9) above.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

4. Insurance Period

a. In addition to the provisions in section 7 of the general crop insurance policy, for unharvested acreage, the date by which acreage should have been harvested is added as one of the dates, the earliest of which is used to designate the end of the insurance period. The calendar date for the end of the insurance period is November 20. The calendar date for the beginning of the insurance period is November 21.

b. If you obtain any insurable acreage of cranberries on or before January 5 of any crop year, insurance will be considered to have attached to such acreage at the beginning of the insurance period if we inspect such acreage and accept it in writing. If you convey any acreage of cranberries on or before January 5 of any crop year, insurance will not be considered to have attached to such acreage for that crop year.

5. Unit Division

Cranberry acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if you agree to pay an additional premium if required by the actuarial table and if for each proposed unit:

a. you maintain written verifiable records of acreage and harvested production for at least the previous crop year and production reports based on those records are timely filed to obtain an insurance guarantee; and

b. the acreage planted to insured cranberries in the county is located on non-contiguous land.

If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

6. Notice of Damage or Loss

In addition to section 8 of the general crop insurance policy, in case of damage or probable loss:

a. You must immediately give us written notice of the loss or probable loss, including the dates of damage, if probable loss is determined within 15 days prior to or during harvest.

b. If you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(1) Total destruction of the cranberries on the unit;

(2) Discontinuance of harvest of any acreage on the unit; or

(3) The date harvest would normally start in the area if any acreage on the unit is not to be harvested.

c. Unless notice has been given under section b. above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, you must give us written notice not later than 10 days after the earlier of:

(1) Harvest of the unit; or

(2) November 20 of the crop year.

7. Claim for Indemnity

a. In addition to the provisions of subsection 9.b. of the general crop insurance policy, we will not pay any indemnity unless you authorize us, in writing, to examine and obtain any records from any person or entity pertaining to the production and marketing of the insured cranberries.

b. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from that result the total production of cranberries to be counted (see subsection 7.c.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

c. The total production (in barrels) to be counted for a unit will include all harvested and appraised production.

(1) Cranberry production which, due to insurable causes, is determined not to meet quality requirements of the receiving handler, would not meet those requirements if properly handled, and has a value of less than 75 percent of the market price for cranberries meeting the minimum requirements will be adjusted by:

(a) Dividing the value per barrel of such cranberries by the market price per barrel for cranberries meeting the minimum requirements; and

(b) Multiplying the result by the number of barrels of such cranberries.

(2) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good cranberry farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent; and

(c) Any unharvested production.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such acreage is:

(a) Not harvested before the harvest of cranberries becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) We may determine the amount of production of any unharvested cranberries on the basis of field appraisals conducted after the end of the insurance period.

8. Cancellation and Termination Date

The cancellation and termination date is November 20.

9. Contract Changes

All contract changes will be available at your service office by August 31 preceding the cancellation date.

10. Meaning of Terms

a. *Barrel* means 100 pounds of cranberries.

b. *Direct damage* means actual physical damage to the equipment or facilities which is the direct result of an insurable cause of loss.

c. *Harvest* means picking of the cranberries from the vines for the purpose of removal from the land.

d. *Irrigation equipment, facilities, and water supply* means the supply of water and the mechanical and constructed equipment and facilities used to deliver the water to the cranberry crop so as to prevent damage due to drought or freeze.

e. *Non-contiguous land* means land which is not touching at any point. Land that is separated only by a public or private right-of-way will be considered contiguous.

[54 FR 20501, May 12, 1989]

§ 401.129 Tobacco (guaranteed plan) endorsement.

The provisions of the Tobacco (Guaranteed Plan) Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Tobacco (Guaranteed Plan) Endorsement

1. Insured Crop and Acreage

a. The crop insured will be any of the following tobacco types you elect which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table:

Flue Cured
Type 11A
Type 11B
Type 12
Type 13
Type 14
Maryland
Type 32
Cigar Filler
Type 41
Type 42
Type 44
Cigar Wrapper
Type 61
Type 55
Fire Cured
Type 21
Type 22
Type 23
Burley
Type 31
Dark Air
Type 35
Type 36
Type 37
Cigar Binder
Type 51
Type 52
Type 54

b. In addition to the acreage not insurable under section 2 of the general crop insurance policy, we do not insure any acreage:

(1) On which the tobacco was destroyed or put to another use for the purpose of conforming with any other program administered by the United States Department of Agriculture; or

(2) Planted to tobacco of a discount variety under provisions of the tobacco price support program.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

a. The annual premium amount is computed by multiplying the production guarantee for the unit times the applicable price election, times the premium rate, times the insured acreage, times your share at the time of planting, applying any applicable premium adjustment percentage for which you may qualify as shown on the actuarial table.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insurance experience through the 1985 crop year under the terms of the experience table contained in the guaranteed tobacco policy in effect for the 1986 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction amount will not increase because of favorable experience;

(3) The premium reduction amount will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1986 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

4. Insurance Period

In lieu of the provisions of section 7 of the general crop insurance policy the following will apply:

Insurance attaches on each unit or part of a unit when the tobacco is planted (see subsection 10(e)) and ends at the earliest of:

a. Total destruction of the tobacco;
b. Weighing-in at the tobacco warehouse;
c. Removal of the tobacco from the unit (except for curing, grading, packing, or immediate delivery to the tobacco warehouse);
d. Final adjustment of a loss; or
e. On the following dates of the crop year:

(1) Types 11 and 12—November 30;
(2) Type 13—October 31;
(3) Type 14—October 15;
(4) Types 31 & 36—February 28;
(5) Types 21, 35 and 37—March 15;
(6) Types 22 and 23—April 15;
(7) Type 32—May 15;
(8) All other types—April 30.

5. Unit Division

1. Tobacco acreage of an insurable type that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee; and

b. Acreage planted to insured tobacco is located on land identified by separate ASCS Farm Serial Numbers, provided:

(1) The boundaries of the ASCS Farm Serial Numbers are clearly identified and the insured acreage is easily determined; and

(2) The tobacco is planted in such a manner that the planting pattern does not continue into an adjacent ASCS Farm Serial Number.

If you have a loss on any unit, production records for all harvested units must be provided. If your tobacco acreage is not in a divided unit as provided above, your premium will be reduced as provided by the actuarial table. Production that is commingled between optional units will cause those units to be combined for insurance purposes only.

6. Notice of Damage or Loss

For purposes of section 8 of the general crop insurance policy; the representative sample of the unharvested crop must be at least 10 feet wide and the entire length of each field.

7. Claim for Indemnity

a. An indemnity will be determined for each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tobacco to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the applicable price election; and

(4) Multiplying this result by your share.

b. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Harvested tobacco production which, due to insurable causes, has a value less than the market price for tobacco of the same type, will be adjusted by:

(a) Dividing the average value per pound of the harvested production by the market price per pound; and

(b) Multiplying that result by the number of pounds of such damaged harvested tobacco.

(c) If due to insurable causes there is no market price available for the grade being adjusted, the production to count will be reduced 20% for each grade that the production falls below the lowest grade with a market price (see subsection 10.d.(2)).

(2) All harvested tobacco production which is not damaged by insurable causes and cannot be sold in the current market year will be considered production to count.

(3) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be allowed:

(a) To inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of; and

(b) At our option to obtain additional offers on your behalf.

(4) Appraised production to be counted will include:

(a) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(b) Not less than 35 percent of the guarantee for all unharvested acreage;

(c) Unharvested production on harvested acreage; and

(d) Potential production lost due to uninsured cause and to failure to follow recognized good tobacco farming practices.

(5) We may appraise any acreage of tobacco types 11, 12, 13, or 14 on which the stalks have been destroyed without our consent at not less than the guarantee.

(6) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county and reappraised by us; or

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(7) The commingled production of units will be prorated to such units in proportion to our liability on the harvested acreage of each unit.

(8) No replanting payment will be made under this endorsement.

8. Cancellation and Termination Dates

State and county	Cancellation and termination dates
Alabama; Florida; Georgia; South Carolina; and Surry, Wilkes, Caldwell, Burke, and Cleveland Counties, North Carolina, and all North Carolina counties east thereof..	March 31
All other North Carolina Counties and all other states.	April 15

9. Contract Changes

Contract changes will be available at your service office by December 31 prior to the cancellation date.

10. Meaning of Terms

a. *Average value per pound* means the total value of all harvested production from the unit divided by the harvested pounds and may include the value of any harvested production which is not sold.

b. *County* means the land defined in the general crop insurance policy and any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

c. *Harvest* means the completion of cutting or priming of tobacco on any acreage from which at least 20 percent of the production guarantee per acre shown by the actuarial table is cut or primed with the intent of marketing.

d. *Market price:*

(1) For types, 11, 12, 13, 14, 21, 22, 23, 31, 35, 36, 37, 42, 44, 54, and 55, means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program (if for any crop year price support for the insured type is not in effect, we will use the season average price in the belt or area through the day tobacco sales are completed on any unit or part thereof which is harvested); and

(2) For types 32, 41, 51, 52, and 61 means the season average price for the applicable type of tobacco, (such price will be the season average price for the current crop year for any unit or part thereof which is harvested) and may be established by including the value of sold and unsold production.

e. *Planting* means transplanting the tobacco plant from the bed into the field.

[54 FR 48070, Nov. 21, 1989]

§ 401.130 Grape endorsement.

The provisions of the Grape Crop Insurance Endorsement for the 1990 (in California) and subsequent crop years (in all other States) are as follows:

FEDERAL CROP INSURANCE CORPORATION

Grape Endorsement

1. Insured Crop

a. The crop insured;

(1) For California only, will be any insurable variety of grapes you elect which are grown for wine, juice, raisins or canning.

(2) For all other states, will be all insurable varieties of grapes which are grown for wine, juice, raisins or canning.

b. In addition to the grapes not insurable under section 2 of the General Crop Insurance Policy, we do not insure any grapes:

(1) If the producing vines, after being set out or grafted, have not reached the number of growing seasons designated by the actuarial table;

(2) If the producing vines have not produced an average of two (2) tons of grapes per acre; or

(3) Produced by vines where there is less than a ninety percent (90%) stand of bearing vines based on the current planting pattern;

unless inspected by us and we agree, in writing, to insure such grapes.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) If applicable, failure of the irrigation water supply; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the General Crop Insurance Policy.

b. In addition to the causes of loss not insured against under section 1 of the General Crop Insurance policy, we will not insure against any loss of production due to fire if weeds and other forms of undergrowth have not been controlled or vine pruning debris has not been removed from the vineyard. We also specifically do not insure against the inability to market the grapes as a direct result of quarantine, boycott, or refusal of any entity to accept production, unless production has actual physical damage due to a cause specified in subsection 2.a. above.

3. Report of Acreage, Share, Practice, and Type (Acreage Report)

In addition to the information required by section 3 of the General Crop Insurance Policy, you must report the crop type and variety.

4. Coverage Levels and Price Elections

Only one coverage level (50%, 65%, or 75%) and only one price election set (high, medium, or low) will be applicable to all your insurable grapes.

5. Production Reporting and Production Guarantees

In addition to the information required in section 4 of the General Crop Insurance Policy, you must report:

a. The number of bearing vines; and

b. Any vine damage or change in farming practices which may reduce yields from previous levels.

6. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches, times

any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table.

7. Insurance Period

a. The calendar date on which insurance attaches is:

(1) November 21 in Idaho, Oregon, and Washington;

(2) February 1 in California; and

(3) December 11 in all other states.

b. The date harvest should have started on any acreage which is not harvested, is added to section 7 of the General Crop Insurance Policy as one of the items which ends the insurance period.

c. The calendar date for the end of the insurance period is:

(1) October 10 in Mississippi;

(2) November 10 in California, Idaho, Oregon, and Washington; and

(3) December 10 in all other states.

d. If you acquire an insurable share in any insurable acreage on or before the acreage reporting date of any crop year and if we inspect, consider acceptable, and agree in writing, to insure such acreage, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. If you relinquish your insurable interest on any acreage of grapes on or before the acreage reporting date of any crop year insurance will not be considered to have attached to such acreage for that crop year unless a transfer of right to an indemnity is entered into by all affected parties and the service office is notified in writing of such transfer prior to the acreage reporting date.

8. Unit Division

a. In California only, in addition to units as defined in section 17 of the General Crop Insurance Policy, each grape variety will be a separate unit. Grape acreage that would otherwise be one unit, as provided herein and in section 17 of the General Crop Insurance Policy, may be divided into more than one optional unit if, for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; production reports based on those records are filed to obtain an insurance guarantee; and the insured grapes are located on land owned by you which is noncontiguous. Land rented by you for cash, a fixed commodity payment or any consideration other than a share in the insured crop will be considered owned by you.

b. In all other states, grape acreage that would otherwise be one unit as defined in section 17 of the General Crop Insurance Policy may be divided into more than one optional unit if, for each proposed unit you maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year; production reports based on those records are filed to obtain an insurance guarantee; and

(1) The insured grapes are designated in the actuarial table as separate group A or group B varieties;

(2) The insured grapes are located on noncontiguous land;

(3) The acreage of insured grapes is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate ASCS Farm Serial Numbers, provided:

(a) The boundaries of the section or ASCS Farm Serial Number are clearly identified and the insured acreage can be easily determined; and

(b) The grapes are planted in such a manner that the planting pattern does not continue into the adjacent section or ASCS Farm Serial Number; or

(4) The acreage of insured grapes is located in a single section or ASCS Farm Serial Number and consists of acreage on which both an irrigated and nonirrigated practice are carried out, provided:

(a) Grapes planted on irrigated acreage do not continue into nonirrigated acreage in the same rows or planting pattern; and

(b) Farming practices are carried out in accordance with recognized good dryland and irrigated farming practices for the area.

c. If you have a loss on any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined.

9. Notice of Damage or Loss

In addition to the notices required in section 8 of the General Crop Insurance Policy, and if you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:

a. After total destruction of the grapes on the unit;

b. After discontinuance of harvest on the unit; or

c. Before harvest would normally start if any acreage on the unit is not to be harvested.

If notice is given under this subsection, the notice requirement under subsection 8.a.(4) of the General Crop Insurance Policy is not applicable.

10. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting the dollar amount obtained by multiplying the total production to be

counted (see subsection 9.c.) by the price election; and

(4) Multiplying this result by your share.

b. If a unit contains acreage to which more than one price election applies, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for such acreage and then added together to determine the total amount for the unit.

c. The total production (tons) to be counted for a unit will include all harvested and appraised production:

(1) Grapes which, due to insurable causes, have a value less than 75 percent of the average market price of undamaged grapes of the same variety will be eligible for quality adjustment. In California, the average market price will be the price shown by the Federal State Market News California Wine Report for the same week in which the damaged grapes were valued. In all other states, the average market price will be determined by averaging the prices being paid by usual marketing outlets for the area during the week in which the damaged grapes were valued. Damaged production will be adjusted by:

(a) Dividing the value per ton of the grapes by the highest price election available for such grapes; and

(b) Multiplying the result (not to exceed 1) by the number of tons of such grapes.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good grape management practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and reappraised by us; or

(b) Harvested.

(4) If any grapes are harvested before or after normal maturity or for a special use (such as champagne or Botrytis affected grapes), the production of such grapes will be increased by the factor obtained by dividing the price per ton received for such grapes by the price per ton for fully matured grapes of the type for which the claim is being made.

11. Cancellation and Termination Dates

a. The cancellation date in:

(1) California is January 31 of the calendar year in which the crop normally blooms;

(2) Idaho, Oregon, and Washington is November 20 of the calendar year prior to the year of normal bloom; and

(3) All other states is December 10 of the calendar year prior to the year of normal bloom.

b. The termination date in:

(1) California is January 31 of the calendar year following the year of normal bloom;

(2) Idaho, Oregon, and Washington is November 20 of the calendar year in which the crop normally blooms; and

(3) All other states is December 10 of the calendar year in which the crop normally blooms.

12. Contract Changes

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date for all states except California, and October 31 preceding the cancellation date for California.

13. Meaning of Terms

a. *Crop Year* means the period beginning with the date insurance attaches to the grape crop and extending through normal harvest time, and will be designated by the calendar year in which the grapes are normally harvested.

b. *Harvest* means the mechanical or manual removal of grapes from the vines.

c. *Noncontiguous Land* means any land whose boundaries do not touch at any point. Land which is separated by a public or private right-of-way, waterway or irrigation canal will be considered to be touching (contiguous).

d. *Ton* means 2,000 pounds.

[54 FR 43270, Oct. 24, 1989]

§ 401.131 High-risk land exclusion option.

The provisions of the High-Risk Land Exclusion Option for the 1990 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

High-Risk Land Exclusion Option

This is a continuous Option. Refer to item 5 of this Option.

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____
Crops _____
County _____
Identification No. _____
SSN _____
TAX _____

Upon our approval of this Option, we agree to amend your Federal Crop Insurance Policy to exclude from crop insurance coverage all high-risk land for the identified crops and county in which you have a share, subject to the following terms and conditions:

1. The Option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to exclude high-risk land.

2. In the event of a loss on any insured unit, you must provide separate production records showing planted acreage and harvested production for any acreage which is excluded from crop insurance coverage under this Option.

3. By signing this Option, you are declining crop insurance coverage under the general crop insurance policy and the crop endorsement on your high-risk land.

4. As used in this Option, ''high-risk'' land is any land which is not classified as an ''R'' classification contained in the actuarial table.

5. This Option may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the policy, preceding such crop year.

6. You must report, on the acreage report for each crop year, the acreage of the crop planted on high-risk land.

7. All other provisions of the policy not in conflict with this Option are applicable.

Insured's Signature
Date

Corporation Representative's Signature and Code Number
Date

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

To the extent that the information requested herein relates to the information supplier's individual capacity as opposed to the supplier's entrepreneurial (business) capacity, the following statements are made in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552(a)). The authority for requesting information to be furnished on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*) and the Federal Crop Insurance Corporation Regulations contained in 7 CFR Chapter IV.

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, determine and collect premiums, and pay indemnities. Furnishing the Tax Identification Number (Social Security Number) is voluntary and no adverse action will result from the failure to furnish that number. Furnishing the information required by this form, other than the Tax identification (Social Security) Number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of or substantial reduction in any claim for indemnity, ineligibility for insurance, and a unilateral determination of the amount of premium due. (See below for information on the consequences of furnishing false or incomplete information).

The information furnished on this form will be used by federal agencies, FCIC employees, and contractors who require such information in the performance of their duties. The information may be furnished to: FCIC contract agencies, employees and loss adjusters; reinsured companies; other agencies within the United States Department of Agriculture; the Internal Revenue Service; the Department of Justice, or other federal or State law enforcement agencies; credit reporting agencies and collection agencies; and in response to judicial orders in the course of litigation.

A false claim made to the Corporation, or a false statement made on a matter within the jurisdiction of the Corporation, may subject the maker to criminal and civil penalties (18 U.S.C. 1001, 1006; 31 U.S.C. 3729, 3730).

[54 FR 43273, Oct. 24, 1989]

§ 401.133 Sugarcane endorsement.

The provisions of the Sugarcane Crop Insurance Endorsement for the 1991 through 1995 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION
SUGARCANE ENDORSEMENT

1. Insured Crop and Acreage

a. The crop insured will be sugarcane grown for processing for sugar or for seed.

b. The acreage insured for each crop year will be plant and stubble cane grown on insurable acreage.

2. Causes of Loss

The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

a. Adverse weather conditions;
b. Fire;
c. Insects;
d. Plant disease;
e. Wildlife;
f. Earthquake;
g. Volcanic eruption; or
h. If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

3. Annual Premium

The annual premium amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches, times any applicable premium adjustment percentage for which you may qualify as shown in the actuarial table.

4. Insurance Period

In addition to the provisions in section 7 of the general crop insurance policy, the following will apply.

a. Insurance attaches on plant cane at the time of planting unless otherwise provided for in writing by us and on stubble cane on the first day following harvest unless the cane was damaged by conditions occurring before harvest. If the stubble cane was damaged before harvest, insurance will attach on the later of April 15 or 30 days following harvest. Notwithstanding the first sentence of this paragraph, insurance will attach on stubble cane in Louisiana, after the second crop year, only on the later of April 15 or 30 days after harvest.

b. The calendar dates for the end of insurance period are:

(1) Louisiana.....January 31;

(2) All other states.....April 30.

5. Unit Division

Sugarcane acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if for each proposed unit:

a. You maintain written, verifiable records of planted acreage and harvested production for at least the previous crop year and production reports based on those records are filed to obtain an insurance guarantee;

b. The acreage planted to insured sugarcane is located in separate, legally identifiable sections or, in the absence of section descriptions, the land is identified by separate Agricultural Stabilization and Conservation Service (ASCS) Farm Serial Numbers, provided:

(1) The boundaries of the sections or Farm Serial Numbers are clearly identifiable and the insured acreage can be determined; and

(2) The sugarcane is planted in such a manner that the planting pattern does not continue into the adjacent section or Farm Serial Number; and

c. The acreage planted to the insured sugarcane is located in a single section or Farm Serial Number and consists of acreage on which both irrigated and nonirrigated practices are carried out, provided:

(1) Sugarcane planted on irrigated acreage does not continue into nonirrigated acreage in the same rows or planting pattern; and

(2) Planting, fertilizing and harvesting are carried out in accordance with applicable recognized good dry-land and irrigated farming practices for the area.

If you have a loss of any unit, production records for all harvested units must be provided to us. Production that is commingled between optional units will cause those units to be combined. If your sugarcane acreage is not divided into optional units as provided in this section, your premium will be reduced as provided by the actuarial table.

6. Notices

a. You must give us notice at least 15 days before you begin cutting any sugarcane for seed. During this time we may make an appraisal for the sugar potential. If we do not appraise the acreage, the production to count will be the per acre production guarantee for the unit. Your notice must include the unit number and the number of acres you intend to harvest as seed.

b. For the purposes of section 8 of the general crop insurance policy, in case of damage or probable loss and you intend to harvest, the required representative samples of unharvested sugarcane must be at least 10 feet wide and the entire length of the field.

7. Claim for Indemnity

If an indemnity is to be claimed on any unit, you must leave the stalks on unharvested acreage and the stubble on harvested acreage intact until inspected by us.

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar to be counted (see subsection 7.b.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

(b) The total production (in pounds of sugar) to be counted for a unit will include all harvested and appraised production.

(1) Sugar production to count from acreage damaged by freeze within the insurance period, which cannot be processed for sugar by the boiling house operation, will be determined by dividing the dollar amount received from the mill for the damaged sugarcane by the price per pound of raw sugar (The applicable price for raw sugar will be the local market price on the earlier of the day the loss is adjusted or the day such sugar is sold);

(2) Appraised production to be counted will include:

(a) Any appraisal under subsections 6.(a), 7.b.(3) and 7.b.(4);

(b) Unharvested production on harvested acreage, potential production lost due to uninsured causes, and failure to follow recognized good sugarcane farming practices;

(c) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(d) Any unharvested production.

Appraisals and harvested production not processed for sugar will be given in pounds of sugar.

(3) We will make an appraisal of not less than the production guarantee per acre on any harvested acreage on which the stubble is destroyed prior to our inspection.

(4) An appraisal for inadequate stand will be made at the time of inspection on sugarcane acreage where insurance did not attach the first day following harvest. If the product of the number of stalks per acre multiplied by 2, multiplied by the factor (percentage of sugar) contained in the actuarial table for that purpose does not equal the per-acre guarantee, the per acre appraisal for inadequate stand will be the difference between the appraised production and the production guarantee.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production to count unless such acreage is:

(a) Not put to another use before harvest of sugarcane becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

8. Cancellation and Termination Dates

The cancellation and termination date is September 30.

9. Contract Changes

The date by which contract changes will be available in your service office is August 15 preceding the cancellation date.

10. Report of Production

There is a one-year lag period for reporting your sugarcane production. You must report production for the previous crop year before the cancellation date for the subsequent crop year.

11. Meaning of Terms

a. *Crop year* means the period from planting for plant cane and the day following harvest for stubble cane until the end of the insurance period and is designated by the calendar year in which the sugarcane harvest normally begins in the county.

b. *Harvest* means the cutting and removing of sugarcane from the field.

c. *Plant cane* (see definition of sugarcane).

d. *Stubble cane* (see definition of sugarcane).

e. *Sugarcane* means either:

(1) Plant cane growing from seed planted that crop year; or

(2) Stubble cane growing from the stubble left to produce another crop from previously harvested sugarcane.

[55 FR 25955, June 26, 1990, as amended at 58 FR 33509, June 18, 1993; 60 FR 56934, Nov. 13, 1995]

§ 401.134 Texas citrus tree endorsement.

The provisions of the Texas Citrus Tree Endorsement for the 1989 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Texas Citrus Tree Endorsement

1. Insured Crop

a. The crop insured will be any of the following insurable citrus tree types (hereafter called trees) you elect:

Type I Early and mid-season orange trees;
Type II Late orange (including Temple) trees;
Type III Grapefruit trees except types IV and V;
Type IV. Rio Red and Star Ruby grapefruit trees; or
Type V Ruby Red grapefruit trees;

which are set out for the purpose of harvesting citrus as fresh fruit or juice.

b. In addition to the citrus trees not insurable in section 2 of the general crop insurance policy, we do not insure any citrus trees;

(1) Which are not irrigated;

(2) For the crop year the application for insurance is filed unless we inspect the acreage and consider it acceptable;

(3) Which have been grafted onto existing root stock or nursery stock within the one year period prior to the date insurance attaches; or

(4) In any established groves which do not have the potential to produce at least 70 percent of the area average yield for the type and age, unless we agree in writing to insure such trees;

c. We may exclude from insurance or limit the amount of insurance on any acreage which was not insured by us the previous crop year.

2. Causes of Loss

a. The insurance provided is against unavoidable damage to citrus trees resulting from the following causes occurring within the insurance period:

(1) Freeze;

(2) Excess moisture;
(3) Hail;
(4) Fire;
(5) Tornado;
(6) Excess wind; or
(7) Failure of the irrigation water supply;

unless those causes are excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any damage to trees due to fire if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove.

3. Report of Acreage, Share, Number, Type, Age of Trees, and Practice (Acreage Report)

a. In addition to the information required in section 3 of the general crop insurance policy, you must report:
(1) The number and type of trees;
(2) The date of original set out; and
(3) The date of replacement or dehorning, if more than 10 percent of the trees on any unit have been replaced or dehorned in the previous 5 years.

b. If any insurable acreage of trees is set out after June 1, and you elect to insure such acreage during that crop year, you must report to us within 72 hours of the completion of set out the acreage, practice, type, number of trees, date set out is completed, and your share.

c. The date by which you must annually submit the acreage report is June 30 of the calendar year in which insurance attaches.

4. Amounts of Insurance

a. The amount of insurance shown on the actuarial table will be reduced for any acreage which has not reached the fourth growing season after being set out or the fifth year following dehorning. The amount of insurance will be the product obtained by multiplying the amount of insurance contained in the actuarial table by:
(1) 33 percent the year of set out or the year following dehorning (insurance will be limited to this amount until trees that are set out are one year of age or older on June 1);
(2) 60 percent the first growing season after being set out or the second year following dehorning;
(3) 80 percent the second growing season after being set out or the third year following dehorning; or
(4) 90 percent the third growing season after being set out or the fourth year following dehorning.

b. The amount of insurance will be reduced proportionately for any unit on which the stand is less than 90 percent, based on the original planting pattern.

5. Annual Premium

The annual premium amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time insurance attaches.

6. Insurance Period

a. In lieu of section 7 of the general crop insurance policy, insurance attaches on June 1 for each crop year except that for the first crop year insured if the application is accepted by us after June 1:
(1) The insurance against excess wind and freeze will attach the tenth day after the properly completed application is submitted to the service office; and
(2) If any insurable acreage is set out after June 1, insurance will attach on the date set out is completed for the unit if the acreage is reported within 72 hours after the date of completion, except for excess wind and freeze; and
(3) For all other instances, insurance attaches on the date the application is accepted.

b. The insurance period ends at the earlier of:
(1) May 31 following the beginning of the crop year; or
(2) Total destruction of the insured trees.

7. Unit Division

a. Citrus tree acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided by citrus type.

b. Citrus tree acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if you agree to pay additional premium if required by the actuarial table and the insured trees are located on non-contiguous land.

If you have a loss on any unit, production records for all harvested units must be provided.

8. Notice of Damage or Loss

a. In lieu of section 8 of the general crop insurance policy and in case of damage or probable loss, you must within 10 days give us written notice of:
(1) The dates of damage; and
(2) The causes of damage.

b. If you are going to claim an indemnity on any unit, we must inspect all insured acreage and damaged trees before pruning, dehorning, or removal.

9. Claim for Indemnity

a. In addition to the requirements in section 9 of the general crop insurance policy

you must furnish records to us concerning all trees on the unit.

b. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Multiplying this result by the applicable percent of loss determined by subtracting from the actual percent of damage determined in accordance with subsection 9.c., the following applicable amount:

(a) 25 percent (for Coverage Level 3) and dividing the result by 75 percent;

(b) 35 percent (for Coverage Level 2) and dividing the result by 65 percent; or

(c) 50 percent (for Coverage Level 1) and dividing the result by 50 percent; and

(3) Multiplying this result by your share.

c. The total amount of indemnity will include both trees damaged and trees destroyed due to an insurable cause.

(1) The percent of damage to count will be:

(a) The percent of damage determined by dividing the number of scaffold limbs (scaffold limbs are limbs directly attached to the trunk) damaged in an area from the trunk to a length equal to one-fourth (¼) the height of the tree, by the total number of scaffold limbs before damage occurred, (any trees with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out);

(b) Any grove with over 80 percent actual damage will be counted as 100 percent damaged unless the damage occurs within one year of set out; or

(c) The percent of damage resulting from insurable causes occurring during the crop year of set out as follows:

(i) 100 percent if the trees are killed back to the root stock; or

(ii) 90 percent if the trees have less than 12 inches of live wood above the bud union, (however, no damage will be considered if more than 12 inches of wood above the bud union is alive).

(2) Any percentage of damage by uninsured causes, will not be included in the percent of damage.

d. The amount of indemnity will be determined at the earlier of:

(1) Total destruction of the trees; or

(2) The calendar date for the end of the insurance period.

10. Cancellation and Termination Dates

The cancellation and termination dates are May 31 prior to the date insurance attaches.

11. Contract Changes

The date by which contract changes will be available in your service office is February 28 preceding the cancellation date.

12. Meaning of Terms

a. *Crop year* means the period beginning June 1 and extending through May 31 of the following year and is designated by the calendar year in which the insurance period ends.

b. *Dehorning* means the cutting back of each scaffold limb to a length that is no longer than ¼ the height of the tree.

c. *Destroyed* means trees which are damaged to the extent that removal is required.

d. *Excess wind* means a natural movement of air which has sustained speeds in excess of 58 miles per hour recorded at the U.S. Weather Service reporting station nearest to the crop at the time of crop damage.

e. *Freeze* means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause tree damage.

f. *Non-contiguous land* means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

g. *Set out* means transplanting the citrus tree from the nursery to the grove.

h. *Total destruction* means the occurrence of damage by unit to the trees which have been set out more than one year in excess of 80 percent.

[53 FR 9101, Mar. 21, 1988]

§ 401.135 Malting barley option.

The provisions of the Malting Barley Option for the 1989 through 1994 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Barley Insurance Malting Barley Option

(This is a continuous Option. Refer to section 15 of the General Crop Insurance Policy)

Insured's name _____

Contract No. _____

Crop Year

Address

Identification No. _____

SSN _____

Tax _____

It is hereby agreed to amend the Federal Crop Insurance General Crop Insurance Policy and Barley Endorsement under, and in accordance with, the following terms and conditions:

1. The option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your malting barley acreage under this option.

2. You must have a Federal Crop Insurance General Crop Insurance Policy and Barley Endorsement (''Basic Policy'') in force.

3. You must provide by the acreage reporting date:

a. Acceptable records of the sale of malting barley for malting purposes for 3 of the previous 5 crop years; or

b. A binding written contract with a buyer of malting barley for malting purposes, which states the quantity contracted and purchase price or method for determining such price.

4. All barley acreage in the county planted to an approved malting variety in which you have a share, will be insured under this option (''Malting Barley''). All barley acreage of any non-malting variety will be insured under the terms of the Basic Policy (''Basic Barley''). Malting barley and basic barley acreage will be separate units. Further unit division may be allowed in accordance with the provisions of the basic policy.

5. You must elect the highest price election provided for basic barley.

6. Your premium rate for malting barley will be provided by the actuarial table.

7. In lieu of section 7.b. (1) and (2) of the Barley Endorsement:

a. Mature malting barley production which otherwise is not eligible for quality adjustment will be reduced .12 percent for each one tenth (.1) percentage point of moisture in excess of 13.0 percent; or

b. Mature malting barley production, which due to insurable causes, is not accepted by a buyer of malting barley and will not meet the applicable standards for two-rowed or six-rowed malting barley (see §10.a.), will be adjusted by:

(1) Dividing the value per bushel for the insured malting barley (see 10.d.) by the price election for malting barley; and

(2) Multiplying the result (not to exceed one (1.0)) by the number of bushels of such barley.

c. All grade determinations must be made by a grader licensed to grade barley under the Unted States Grain Standards Act from samples obtained by a licensed sampler or our loss adjuster. Any production which is not sampled and graded as provided by this section will be considered as malting barley meeting the applicable standards.

8. All provisions of the basic policy not in conflict with this option are applicable.

9. Contract changes will be available at your service office by September 1 preceding the cancellation date.

10. As used in this option:

a. *Applicable standards* for two-rowed and six-rowed malting barley are defined in the Official United States Grain Standards.

b. *Approved malting variety* means the varieties specified in the actuarial table or approved in writing by us.

c. *Buyer* means any business enterprise regularly engaged in the malting of barley or brewing of malt beverages for human consumption, or its representative which is authorized to engage in the purchase of malting barley on behalf of or for sale to the malting or brewing company.

d. *Value per bushel* for the insured malting barley means;

(1) The local market price of U.S. No. 2 barley (basic barley) if the insured mature malting barley production, due to insurable causes, has a test weight of at least 40 pounds per bushel and, as determined by a grain grader licensed by the Federal Grain Inspection Service or licensed under the United States Warehouse Act, contains more than 85 percent sound barley; less than 8 percent damaged kernels; less than 35 percent thin barley; less than 5 percent black barley; and does not grade smutty, garlicky, or ergoty; or

(2) The local market price of basic barley of the same quality as the insured malting barley, if the malting barley does not meet all the standards in §10.d.(1).

The local market price for basic barley as identified in §10.d.(1) and (2) above will be the price on the earlier of the day the loss is adjusted or the day the insured barley is sold.

Insured's Signature _____

Date _____

Corporation Representative's Signature and Code Number _____

Date _____

[53 FR 27664, July 22, 1988, as amended at 53 FR 34022, Sept. 2, 1988; 60 FR 56935, Nov. 13, 1995]

§401.137 Fresh market tomato minimum value option.

The provisions of the Fresh Market Tomato Minimum Value Option for the 1991 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Fresh Market Tomato Minimum Value Option

(This is a continuous option. Refer to section 15 of the General Crop Insurance Policy)

Insured's Name_____
Contract No._____
Address_____
Crop Year_____
Identification No._____
SSN_____Tax_____

It is hereby agreed to amend the Dollar Plan of Fresh Market Tomato Endorsement in accordance with the following terms and conditions.

1. This option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your tomatoes under this Option.

2. You must have a Federal Crop Insurance General Policy and Dollar Plan Fresh Market Tomato Endorsement (''basic policy'') in force.

3. You must select either Option I or II below by marking the appropriate space below. All insurable acreage in which you have a share in the county will be covered under the option you select.

[ ] Option I:

(a) Upon purchase of this option, subsection 9.b.(1)(a) of the Dollar Plan of Fresh Market Tomato Endorsement will be amended to change the reference from $3.00 to $2.00 in determining the total value of harvested production to count.

(b) The premium rate for this option will be an additional 30 percent of your premium for basic coverage.

[ ] Option II:

(a) Upon purchase of this option, subsection 9.b.(1)(a) of the Dollar Plan Fresh Market Tomato Endorsement will not apply to your tomato acreage. The total value of harvested production will be the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes sold by the price received minus allowable costs as contained in the actuarial table; however, such price must not be less than zero for any carton.

(b) The premium rate for this option will be an additional 50 percent of your premium for basic coverage.

4. All provisions of the General Policy and Dollar Plan of Fresh Market Tomato Endorsement not in conflict with this Option are applicable.

5. All determinations under this Option will be made by us.

6. This Option may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the ''basic policy,'' preceding such crop year.

Insured's Signature_____
Date_____
Corporation Representative's
Signature and Code Number_____
Date_____

[54 FR 48073, Nov. 21, 1989]

§ 401.138 Fresh market sweet corn endorsement.

The provisions of the Fresh Market Sweet Corn Endorsement for the 1991 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Fresh Market Sweet Corn Endorsement

1. Insured Crop

a. The crop insured will be sweet corn planted for harvest as fresh market sweet corn, grown on insurable acreage, and for which an amount of insurance and premium rate are set by the actuarial table.

b. In addition to the sweet corn insurable in section 2 of the general crop insurance policy we do not insure any acreage of sweet corn:

(1) Grown by any entity if that entity had not previously:

(a) grown sweet corn for commercial sales; or

(b) participated in the management of a sweet corn farming operation.

(2) Grown for direct consumer marketing;

(3) Which is not irrigated; or

(4) Unless the acreage is planted in rows far enough apart to permit mechanical cultivation.

c. Paragraph 2.e.(2) of the general crop insurance policy is not applicable to ths endorsement.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from one or more of the following causes occurring within the insurance period:

(1) Frost;

(2) Freeze;

(3) Hail;

(4) Fire;

(5) Tornado;

(6) Wind or excess precipitation occurring in conjunction with a cyclone; or

(7) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to causes of loss specified in section 1 of the general policy as not insured,

we will not insure against any loss of production due to:

(1) Disease

(2) Insect infestation; or

(3) Failure to market the sweet corn unless such failure is due to actual physical damage from a cause specified in subsection 2.a. of this endorsement.

3. Report of Acreage, Share, and Practice (Acreage Report)

In addition to the information required by section 3 of the general crop insurance policy, you must report by unit for each planting period all the acreage of fall, winter, and spring-planted sweet corn (as applicable) in the country in which you have a share.

4. Amount of Insurance

a. Subsection 4.d. of the general crop insurance policy is not applicable to this endorsement.

b. The amount of insurance per acre as shown on you policy confirmation is progressive by plant growth stage. The stages and amounts of insurance are:

(1) First stage (from planting until the beginning of tasselling, (tassel visible above the whorl)) is 65 percent of the final stage amount of insurance; and

(2) Final stage (from tasselling until the acreage is harvested) is the final stage amount of insurance (100 percent) as contained in the applicable actuarial table.

c. Any acreage of fresh sweet corn damaged in the first stage to the extent that we determine it should not be further cared for, will be deemed to have been destroyed, even though you continue to care for it. The amount of insurance for such acreage will not exceed the first stage guarantee.

5. Annual Premium

The annual premium amount is computed by multiplying the final stage amount of insurance times the premium rate, times the insured acreage, times you share at the time of planting, times any applicable premium adjustment factor for which you may qualify as shown by the actuarial table.

6. Insurance Period

In lieu of the provision in section 7 of the general crop insurance policy, insurance attaches when the sweet corn is planted in each planting period and ends at the earliest of:

a. Total destruction of the insured crop on the unit;

b. Discontinuance of harvest of sweet corn on the unit;

c. The date harvest should have started on the unit on any acreage which has not been harvested;

d. Completion of harvest on a unit; or

e. Final adjustment of a loss on a unit.

f. The calendar date for the end of the planting period contained in the actuarial table.

7. Unit Division

All insurable sweet corn acreage, by planting period, that would otherwise be one unit, as defined in subsection 17.q. of the general crop insurance policy, may be divided into more than one unit if, for each proposed unit you maintain, written verifiable records of planted acreage and harvested production for a least the previous crop year. Acreage planted to the insured sweet corn must be located in separate, legally identifiable sections or, in the absence of section descriptions, on acreage identified by separate ASCS Farm Serial Numbers, provided:

a. The boundaries of the section or ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

b. The sweet corn is planted in such a manner that the planting pattern does not continue into an adjacent section or ASCS Farm Serial Number.

If you have a loss on any unit, production records for all harvested units, whether insured or uninsured, must be provided to us. Production that is commingled between optional units will cause those units to be combined for insurance purposes. If your sweet corn acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided by the actuarial table.

8. Notice of Damage or Loss

In lieu of the notices required in subsections 8.a. (3), and (4) of the general crop insurance policy, in case of damage or probable loss you must give us written notice within three (3) days of the date of damage and indicate the cause of damage and whether a claim for indemnity is probable. In the event damage occurs within three (3) days of or during harvest, immediate notice stating the cause of damage and probability of a claim must be given to us. If a notice has been given, we must be notified of the expected time of harvest at the time of notice or not later than 72 hours before harvest begins, whichever is applicable.

9. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre for the stage of plant growth as defined in subsection 4.c;

(2) Subtracting therefrom the total dollar value of sweet corn production to be counted (see subsection 9.c.); and

(3) Multiplying this result by your share.

b. In lieu of subsection 9.d. of the general crop insurance policy, if the information reported by you under section 3 of this endorsement results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

c. The total value of production to be counted for a unit will include the value for all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 42 pound crates of sweet corn harvested on the unit by the minimum value shown for the planting period in the actuarial table; or

(b) The dollar amount obtained by multiplying the number of 42 pound crates of sweet corn sold by the price per crate received minus the allowable cost established by the actuarial table (subtraction of the allowable cost from the price received may not result in an amount per crate less than zero).

(2) The value of any appraised production will not be less than the dollar amount obtained by multiplying the appraised number of 42 pound crates of sweet corn by the minimum value per crate shown on the actuarial table for the planting period and will include:

(a) The value of any potentially marketable production;

(b) The value of unharvested production on harvested acreage and the value of any potential production lost due to uninsured causes; and

(c) Not less than the final stage dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause, or for which notice of damage was not given as required by section 8 of this endorsement and of the general crop insurance policy.

(3) Unharvested sweet corn damaged or defective due to insurable causes and which is not marketable sweet corn will not be counted as production.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sweet corn becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

d. A replanting payment is available in accordance with subsection 9.h. of the general crop insurance policy. The acreage to be replanted must have sustained a loss in excess of 25 percent of the plant stand. In lieu of subsection 9.h.(1)(c) of the general crop insurance policy, no replanting payment will be made on acreage on which a replanting payment has been made during the current planting period for the crop year. The replanting payment will not exceed the product obtained by multiplying $65.00 per acre by your share.

10. Cancellation and Termination Dates

State and county	Cancellation and termination dates
Florida; Atkinson, Baker, Brantley, Camden, Colquitt, Cook, Early, Mitchell, and Ware Counties; Georgia and all Georgia counties south thereof which have a ''fall planting period.''.	July 31
Alabama; all other Georgia counties and South Carolina.	February 15
All other states	April 15

11. Contract Changes

Contract changes will be available at your service office by April 30 preceding the cancellation date for Florida and Georgia Counties with a fall planting period, and by November 30 preceding the cancellation date in all other states.

12. Meaning of Terms

For the purposes of fresh market sweet corn crop insurance:

a. *Crop year* means the period within which the sweet corn is normally grown, beginning July 15 and continuing through the harvesting of the spring-planted sweet corn. It is designated by the calendar year in which spring-planted sweet corn is normally harvested.

b. *Cyclone* means a large-scale, atmospheric wind-and-pressure system (without regard to the time of year), named by the United States Weather Service and characterized by low pressure at its center and counterclockwise, circular wind motion, in which the minimum sustained surface wind (1–minute mean) is 34 knots (39 miles per hour) or more at the time of loss as recorded by the U.S. Weather Service reporting station nearest to the crop damage.

c. *Freeze* means the condition that exists when air temperature over a widespread area remains at or below 32 degrees Fahrenheit, and causes damage to plant tissue.

d. *Frost* means a deposit or covering of minute ice crystals formed from frozen water vapor which causes damage to plant tissue.

e. *Harvest* means the final picking of marketable sweet corn on the unit.

f. *Marketable sweet corn* means the sweet corn which meets the standards for grading U.S. #1 or better and will withstand normal handling and shipping.

g. *Planting period* means the period of time within the dates set by the actuarial table, and is designated as ''fall-planting period,'' ''winter-planting period,'' or ''spring-planting period.''

h. *Plant stand* means the number of live plants per acre before the plants were damaged due to insurable causes.

i. *Potential production* means the number of 42# crates of sweet corn which would have been produced per acre by the end of the insurance period.

j. *Sweet corn* means a type of corn with kernels containing a high percentage of sugar and adapted for table use.

k. *Sweet corn grown for direct consumer marketing* means sweet corn grown for the purpose of selling from the farm directly to the consumer without the intervention of a wholesaler, retailer, or packer.

[55 FR 21739, May 29, 1990]

§ 401.139 Fresh market tomato (dollar plan) endorsement.

The provisions of the Fresh Market Tomato Crop lnsurance Endorsement for the 1991 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION FRESH MARKET TOMATO (DOLLAR PLAN) ENDORSEMENT

1. Insured Crop

a. The crop insured will be tomatoes (excluding plum and cherry-type tomatoes) planted for harvest as fresh market tomatoes.

b. In lieu of section 2.e.(11) of the general policy, we will insure newly cleared land planted to tomatoes.

c. In addition to the fresh tomatoes not insurable under section 2 of the general crop insurance policy we do not insure any acreage grown by any entity if that entity had not previously:

(1) Grown tomatoes for commercial sale; or

(2) Participated in the management of the tomato farming operation.

d. We do not insure any acreage of tomatoes:

(1) Grown for direct consumer marketing;

(2) Which is not irrigated;

(3) Which is not grown on plastic mulch unless allowed for by the actuarial table;

(4) On which tomatoes, peppers, eggplants, or tobacco have been grown and the soil was not fumigated or otherwise properly prepared before planting tomatoes;

(5) Which was planted to tomatoes the preceding planting period, unless the tomato plants of the preceding planting period were destroyed prior to reaching stage 2 production as defined in section 3 of this endorsement.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Excessive rain;

(2) Frost;

(3) Freeze;

(4) Hail;

(5) Fire;

(6) Tornado;

(7) Wind or excess precipitation occurring in conjunction with a cyclone; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

Unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss specified in section 1 of the general policy as not insured, we will not insure against any loss of production due to:

(1) Disease or insect infestation; or

(2) Failure to market the tomatoes unless such failure is due to actual physical damage from a cause specified in subsection 2.a.

3. Insurance Guarantees

a. The insurance guarantees per acre are by stages and increase at specified intervals, up to the final stage guarantee. The stages and guarantees are as follows:

(1) First stage is from planting until qualifying for stage 2. The first stage guarantee is 50 percent of the final stage guarantee.

(2) Second stage is 60 days (30 days for transplants) after planting, and until qualifying for stage 3. The second stage guarantee is 75 percent of the final stage guarantee.

(3) The third stage is 90 days (60 days for transplants) after planting until qualifying for the final stage. The third stage guarantee is 90 percent of the final stage guarantee.

(4) The final stage begins the earlier of 105 days (75 days for transplants) after planting, or the beginning of harvest.

b. Any acreage of tomatoes damaged to the extent that growers in the area would not further care for the tomatoes, will be deemed to have been destroyed even though the tomatoes continue to be cared for. The insurance guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

4. Report of Acreage, Share, and Practice

In addition to the information required in section 3 of the general crop insurance policy, you must report the row width. You must report on or before the acreage reporting date for each planting period all the acreage of fall, winter, and spring-planted tomatoes as applicable in the county in which you have a share.

5. Annual Premium

The amount is computed by multiplying the final stage amount of insurance times the premium rate, times the insured acreage, times your share at the time of each planting, times any applicable premium adjustment percentage for which you may qualify (as shown in the actuarial table), because you have not selected optional units.

6. Insurance Period

In lieu of section 7 of the general crop insurance policy, insurance attaches on each unit when the tomatoes are planted in each planting period and ends at the earliest of:

a. Total destruction of the tomatoes on the unit;

b. Discontinuance of harvest of tomatoes on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. 140 days after the date of direct seeding, transplanting, or replanting;

e. Final harvest; or

f. Final adjustment of a loss.

7. Unit Division

In addition to units defined in section 17 of the general crop insurance policy, insurable tomato acreage will contain units by planting period. Insurable tomato acreage which otherwise would be one unit as provided above, may be divided into two or more optional units. Written, verifiable records of planted and harvested acreage and production for each optional unit must be provided to us at our request. For optional unit division, acreage planted to the insured tomatoes must be located in separate, legally identifiable sections or, in the absence of section descriptions, on land identified by separate ASCS Farm Serial Numbers, provided:

a. The boundaries of the section or farms designated by ASCS Farm Serial Number are clearly identified, and the insured acreage can be easily determined; and

b. The tomatoes are planted in such a manner that the planting pattern does not continue into an adjacent section or farm designated by ASCS Farm Serial Number.

If you have a loss on any unit, preharvest appraisals for that loss unit and production records for all harvested units, whether insured or uninsured, must be provided to us. Production that is commingled between optional units may cause those units to be combined. If your tomato acreage is not divided into optional units as provided in this section, your premium amount will be reduced as provided by the actuarial table.

8. Notice of Damage or Loss

a. If a loss is anticipated by you on any unit within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(1) Total destruction of the tomatoes on the unit;

(2) Discontinuance of harvest of any acreage on the unit;

(3) The date harvest would normally start if any acreage on the unit is not to be harvested; or

(4) 140 days after the direct seeding, transplanting, or replanting of the tomatoes (see section 6).

b. You must not destroy any tomato acreage within a unit until inspected by us if an indemnity is to be claimed or the unit.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance, times the percentage for the stage of production defined in section 3;

(2) Subtracting therefrom the total value of production to be counted (see subsection 9.b.); and

(3) Multiplying this result by your share.

b. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes harvested in the unit by $3.00; or

(b) The dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes sold by the price received minus allowable cost set by the actuarial table (however, such price must not be less than zero for any carton).

(2) The value of appraised production to be counted will include:

(a) The value of the potential production (see subsection 13.k.) on tomato acreage that has not been harvested the second time for ground-cultured tomatoes (the third time for staked tomatoes);

(b) The value of unharvested potential production in excess of 30 cartons after the second harvest for ground culture tomatoes (third harvest for staked tomatoes);

(c) The value of the potential production lost due to uninsured causes; and

(d) An amount not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 25-pound cartons of tomatoes appraised by $3.00.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tomatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

c. A replanting payment is available under this endorsement. The acreage to be replanted must have sustained a loss in excess of 50 percent of the plant stand. The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $175.00 per acre by your share.

10. Cancellation and Termination Date

The cancellation and termination date is July 31.

11. Contract Changes

All contract changes will be available at your service office by April 30 preceding the cancellation date.

12. Production Reporting Dates

The production reporting provision found in section 4 of the general crop insurance policy does not apply to this contract.

13. Meaning of Terms

For the purpose of tomato crop insurance:

a. *Acre* means 43,560 square feet of land on which row widths do not exceed 6 feet, or if row width exceeds 6 feet, the land on which at least 7260 linear feet rows are planted.

b. *Crop Year*, in lieu of the definition in the General Policy, means the period within which the tomatoes are normally grown beginning August 1 and continuing through harvesting of the spring-planted tomatoes and is designated by the calendar year in which the spring-planted tomatoes are normally harvested.

c. *Cyclone* means a large-scale, atmospheric wind-and-pressure system (without regard to the time of year), named by the United States Weather Service and characterized by low pressure at its center and counterclockwise, circular wind motion, in which the minimum sustained surface wind (1-minute mean) is 34 knots (39 miles per hour) or more at the time of loss as recorded by the U.S. Weather Service reporting station nearest to the crop damage.

d. *Direct consumer marketing* means the method of selling tomatoes from the farm directly to the consumer without the intervention of a wholesaler, retailer, or packer.

e. *Excessive rain* means more than 10 inches of rain on the tomato field within a 24-hour period, after the tomatoes have been seeded or transplanted.

f. *Freeze* means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees Fahrenheit, and cause damage to plant tissue.

g. *Frost* means a deposition or covering by minute ice crystals formed from frozen water vapor, which causes damage to plant tissue.

h. *Harvest* means the picking of marketable tomatoes on the unit.

i. *Mature green tomato* means a tomato which:

(1) Has heightened gloss because of the waxy skin that cannot be torn by scraping;

(2) Has well-formed, jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so that they are pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

j. *Planting* means transplanting the tomato plants into the field or direct seeding in the field.

k. *Planting period* means tomatoes planted within the dates set by the actuarial table, as fall-planted, winter-planted, or spring-planted.

l. *Plant stand* means the number of live plants per acre before the plants were damaged due to insurable causes.

m. *Potential production* means the number of 25-pound cartons of mature green or ripe tomatoes with classification size of 6 × 7 (2 9/32 inch minimum diameter) or larger, which the tomato plants would produce or, would have produced per acre, by the end of the insurance period.

n. *Replanting* means performing the cultural practices necessary to replant insured acreage to tomatoes.

o. *Ripe Tomato* means a tomato which has a definite break in color from green to tannish-yellow, pink or red.

p. *Tomatoes grown for direct consumer marketing* means tomatoes initially intended for direct consumer marketing.

[55 FR 1783, Jan. 19, 1990]

§ 401.140 Pear endorsement

The provisions of the Pear Crop Insurance Endorsement for the 1989 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION PEAR ENDORSEMENT

1. Insured Crop

a. The crop insured will be all pear varieties established as adapted to the area and classified as follows:

(1) Type I: Green Bartlett; and

(2) Type II: all others.

b. In addition to the pears not insurable in section 2 of the general crop insurance policy, we do not insure any pears:

(1) Of any type which has not produced an average of 4 tons per acre of first grade canning or U.S. number 1 pears in at least one of the four previous crop years;

(2) Which we inspect and consider not acceptable; or

(3) Which do not have production records acceptable to us.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from any of the following causes occurring within the insurance period:

(1) Drought;

(2) Earthquake;

(3) Excess wind;

(4) Fire;

(5) Flood;

(6) Freeze;

(7) Frost;

(8) Fruit-set failure;

(9) Hail;

(10) Volcanic eruption; or

(11) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against, contained in section 1 of the general crop insurance policy, we will not insure against any loss of production due to fire if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the orchard. We also specifically do not insure against failure of the fruit to color properly, or the inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production.

3. Report of Acreage, Share, and Type (Acreage Report)

a. In addition to the information required in section 3 of the general crop insurance policy, you must report the crop type.

b. The date you must annually submit the acreage report is December 15 of the calendar year insurance attaches in California and January 15 of the calendar year the insured crop normally blooms in all other states.

4. Production Reporting and Production Guarantees

a. In addition to the information required by section 4 of the general crop insurance policy, you must report by variety:

(1) The number of bearing trees;

(2) The number and age of trees per acre and the current planting pattern; and

(3) Any tree damage or change in farming practices which will or may reduce yields from previous levels.

5. Annual Premium

The annual premium amount is computed by multiplying the production guarantee (in tons) times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

6. Insurance Period

a. The calendar date on which insurance attaches is November 21.

b. The calendar date for the end of the insurance period is the following applicable date of the calendar year in which the pears are normally harvested:

Variety	*Date*
Bartlett (green and red)	September 15.
Star Crimson (Crimson Red)	September 15.
all others	October 15.

7. Unit Division

a. Pear acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy may be divided between type I and type II. However, alternating rows of, or interplanting of type I and II pears will not be divided into separate units.

b. Pear acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be further divided into more than one unit if:

(1) You agree to pay an additional premium if provided for by the actuarial table;

(2) For each proposed unit you maintain written, verifiable records of acreage and harvested production for at least the previous crop year and production reports based on those records are timely filed to obtain an insurance guarantee; and

(3) The acreage of insured pears is located on non-contiguous land.

c. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

8. Notice of Damage or Loss

In addition to the notices required in the general crop insurance policy and in case of damage or probable loss you must give us notice of the date and cause of damage within 10 days of such damage.

9. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this product by the price election;

(3) Subtracting the dollar amount obtained by multiplying the total production to be counted (see subsection 9.c.) by the price election; and

(4) Multiplying the result by your share.

b. If a unit contains acreage to which both type I and type II pear guarantees apply, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for each type and then added together to determine the total amount for the unit.

c. The total production to be counted for a unit will include:

(1) All harvested and appraised production that meets the following applicable U.S.D.A. grade standards except those pears specified in subsection 9.d.:

(a) For Type I pears, first grade canning (under California Tree Fruit Agreement Standards) or U.S. Number 1 (under U.S. Standards for summer and fall pears) in California, or U.S. Number 1 (under either U.S. standards for summer and fall pears or processing pears) in states other than California; or

(b) For Type II pears, U.S. Number 1 (under U.S. standards for summer and fall or winter pears); and

(2) All production that due to insurable causes does not meet the grade requirements in subsection 9.c.(1) but could be marketed for any use. The amount of such production to be counted will be determined by:

(a) Dividing the value of the pears per ton by the highest price election available for the insured type and;

(b) Multiplying the result by the number of tons of such pears.

c. The amount of size 180 and smaller pears in excess of 10 percent of the total production of a type will not be considered as production to count except under the provisions of subsection 9.c.(2) if the quantity of such pears is the result of an insured cause of loss. (This adjustment is not applicable to the Forelle, Seckel, or Winter Nelis varieties.)

d. Appraised production will include:

(1) Mature and potential production on unharvested acreage;

(2) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good pear farming practices; and

(3) Not less than the guarantee for any pears which are abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent.

e. Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(1) Further damaged by an insured cause and is reappraised by us; or

(2) Harvested.

f. If you are going to claim an indemnity on any unit, all production must be inspected by us prior to the beginning of harvest and we must give you written consent prior to disposal or sale of any damaged fruit. If you fail to meet the requirements of this subsection all such production may be considered undamaged and included as production to count.

10. Cancellation and Termination Dates

The cancellation and termination dates are November 20.

11. Contract Changes

The date by which contract changes will be available in your service office is August 31 preceding the cancellation date.

12. Meaning of Terms

a. *Crop year* means the period beginning with the date insurance attaches and extending through normal harvest time and is designated by the calendar year in which the pears are normally harvested.

b. *Excess wind* means a natural movement of air of sufficient velocity to separate pears from the trees.

c. *Freeze* means the condition that exists when air temperature over a widespread area fall to or below 32 degrees fahrenheit, and cause damage to plant tissue or fruit.

d. *Frost* means a deposit or covering of minute ice crystals formed from frozen water vapor which causes damage to plant tissue or fruit.

e. *Fruit-set failure* means failure of the pear trees to develop blossoms or set fruit due only to adverse weather conditions.

f. *Harvest* means the picking of pears from the trees or removing the fruit from the ground.

g. *Non-contiguous Land* means any land owned by you or rented by you for cash, a fixed commodity payment or any consideration other than a share in the insured crop, whose boundaries do not touch at any point. Land which is separated by a public or private right-of-way, waterway or irrigation canal will be considered to be touching (contiguous).

h. *Ton* means 2,000 pounds. All production in varying container sizes will be converted to tons.

[54 FR 7527, Feb. 22, 1989]

§ 401.142 Raisin endorsement.

The provisions of the Raisin Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Raisin Endorsement

1. Crop, Tonnage, and Share Insured

a. The crop insured will be raisins of grape varieties designated as insurable by the actuarial table.

b. The tonnage insured will be the tonnage in which you have a share (as reported by you or as determined by us, whichever we elect).

c. In lieu of subsection 2.c.(2) of the general crop insurance policy, for the purpose of determining the amount of indemnity, your share will not exceed your share at the time the raisins are removed from the vineyard.

d. In addition to the raisins not insurable under section 2 of the general crop insurance policy, we do not insure any raisins:

(1) Laid on trays after September 8 in vineyards with north-south rows in Merced or Stanislaus Counties or after September 20 in all other instances;

(2) Made from table grape strippings; or

(3) Made from vines that have had manual, mechanical, or chemical treatment to produce table grape sizing.

2. Causes of Loss

The insurance provided is against the unavoidable loss of production resulting from rain, occurring within the insurance period, while raisins are in the vineyard, on trays or in rolls, for drying unless limited by the actuarial table.

3. Report of Tray Count, Tonnage, and Share (Tonnage Report)

By execution of the application for insurance you authorize us to determine or verify the insured tonnage from records maintained by the raisin packer, raisin reconditioner, Raisin Administrative Committee established under the United States Department of Agriculture, or any other party who may have such records.

In lieu of section 3 of the general crop insurance policy, you must report on our form:

a. For all raisins which are not damaged, the delivered tons of insured raisins produced in the county in which you have a share and your share as soon as delivery records are available, but in any event no later than March 1 following the crop year;

b. For insured raisins which are damaged:

(1) The variety;

(2) The location of the vineyard;

(3) The number of trays upon which the raisins have been placed for drying; and

(4) Your share.

c. You must report separately any tonnage that is not insurable. You must report if you do not have a share in any insurable tonnage in the county. This report must be submitted annually on or before March 1 of the year following the crop year. Indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may determine by unit the insured tonnage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval. Errors in reporting units may be corrected by us to conform to applicable guidelines at the time of adjusting a loss.

4. Amounts of Insurance and Production Reporting

a. The amount of insurance for the unit will be determined by multiplying the insured tonnage times the amount of insurance per ton, times your share. Insured tonnage is determined for raisins:

(1) Not damaged by rain, by the raisins delivered (delivered tons); or

(2) Damaged by rain, by adding raisins delivered (delivered tons), if any, to any verifiable loss of production due to rain damage in the vineyard. Tray weights will only be used to establish raisin tonnage on trays or in rolls not removed from the vineyard.

b. Subsection 4.d. of the general crop insurance policy is not applicable to this crop.

5. Annual Premium

The annual premium amount is computed by multiplying the amount of insurance per ton times the premium rate, times the insured tonnage, times your share on the date insurance attaches, times any applicable premium adjustment percentage shown on the actuarial table.

6. Insurance Period

In lieu of section 7 of the general crop insurance policy, insurance attaches at the time the raisins are placed on trays for drying and ends the earlier of:

a. October 20;

b. The date the raisins are boxed; or

c. The date the raisins are removed from the vineyard.

7. Unit Division

a. Raisin acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into units by grape variety.

b. Raisin acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit if, for each proposed (optional) unit:

(1) You maintain written, verifiable records of raisin production for at least the previous crop year; and

(2) The acreage of insured raisins is located on noncontiguous land.

If you have a loss on any unit, production records for all harvested units must be maintained and be made available to us at our request. Production that is commingled between optional units will cause those units to be combined.

8. Notice of Damage or Loss

In lieu of section 8 of the general crop insurance policy, if you are going to claim an indemnity on any unit, we must be given notice within 72 hours of the time the rain fell on the raisins. We may reject any claim for indemnity if such damage is not reported within 72 hours.

9. Claim for Indemnity

a. In lieu of subsection 9.a. of the general crop insurance policy any claim for indemnity must be submitted to us on our form not later than March 31 after the calendar date for the end of the insurance period.

b. In addition to the requirements in subsection 9.b. of the general crop insurance policy, we will not pay any indemnity unless we are allowed in writing to examine and obtain any records pertaining to the production and marketing of any raisins in which you have a share from the raisin packer, raisin reconditioner, Raisin Administrative Committee established under order of the United States Department of Agriculture, or any other party who may have such records.

c. The indemnity will be determined on each unit by:

(1) multiplying the insured tonnage of raisins by the amount of insurance per ton;

(2) subtracting therefrom the total value of all insured damaged and undamaged raisins; and

(3) multiplying this result by your share.

d. Undamaged raisins or raisins damaged solely by uninsured causes will be valued at the insurance price (see subsection 12.c.).

e. Raisins damaged partially by rain and partially by uninsured causes will be valued at the highest prices obtainable, adjusted for any reduction in value due to uninsured causes.

f. Raisins damaged by rain, but which are reconditioned and meet the Raisin Administrative Committee (RAC) standards for raisins, will be valued at the insurance price. An allowance for reconditioning will be deducted from the value only if you obtained our written consent prior to reconditioning. The allowance for reconditioning will be made only when the raisins have been inspected by the USDA and, due to rain damage while on the tray are found to contain mold, embedded sand, excessive moisture, or micro-organisms in excess of RAC tolerances.

The reconditioning allowance will be made based on the actual (unadjusted) weight of raisins to be reconditioned. Additionally, when raisins contain excessive moisture due to rain, the reconditioning allowances will be made only when the moisture is determined to be in excess of 18.0 percent and the raisins are wash-and-dry reconditioned. The maximum allowance for reconditioning is contained in the actuarial table, but the total reconditioning allowance will not exceed the value of the raisins after reconditioning. We may require you to recondition a representative sample of not more than 10 tons of raisins to determine if they meet RAC standards for marketable raisins. On the basis of determinations made after such sampling, we may require you to recondition all raisins, or we may value such raisins at the insurance price. If the representative sample does not meet RAC standards for marketable raisins, the cost of reconditioning the sample will be deducted from the total value of the raisins for the unit.

g. The value to count for any raisins produced on the unit and not removed from the vineyard will be the larger of the appraised salvage value or $35.00 per ton. You must box and deliver any raisins that can be removed from the vineyard.

h. We may acquire all the rights and title to your share of any raisins damaged by rain. In such event, the raisins will be valued at ‘‘zero’’ in determining the amount of loss and we will have the right of ingress or egress to the extent necessary to take possession of, care for, and remove such raisins.

i. Raisins destroyed without USDA inspection or put to another use without our consent will be valued at the amount of insurance.

10. Cancellation and Termination Dates

The cancellation and termination dates are July 31.

11. Contract Changes

The date by which contract changes will be available in your service office is April 30 preceding the cancellation date.

12. Meaning of Terms

a. *Crop year* means the calendar year in which the raisins are placed on trays for drying.

b. *Delivered ton* means a ton of raisins or raisin material delivered to a packer, processor, buyer or a reconditioner, before any adjustment for B and better maturity standards, and after adjustment for moisture over 16 percent and adjusted for substandard raisins over 5 percent. Raisin tonnage will be reduced 0.12 percent for each 0.10 percent moisture in excess of 16.0 percent.

c. *Insurance price* means the value established by us for raisin tonnage for the purpose of determining indemnities. This value is shown in the actuarial table.

d. *Noncontiguous land* means land which is not touching at any point. Land which is separated by only a public or private right-of-way will be considered to be touching (contiguous).

e. *Raisins* mean specific varieties of grapes, designated insurable by the actuarial table, which have been laid on trays or are in rolls in the vineyard to dry.

f. *Raisin tonnage report* means a form prescribed by us for annually reporting all the tonnage of raisins in the county in which you have a share.

g. *Substandard* means a quality of raisins that fail to meet the requirements of U.S. Grade C except that layer or cluster raisins with seeds or Zante Currant raisins will be considered substandard if they fail to meet the requirements of U.S. Grade B.

h. *Table grapes* mean grapes which are grown for commercial sales as fresh grapes on acreage where the cultural practices to produce fresh marketable grapes were carried out.

i. *Ton* means 2,000 pounds. Raisin tonnage may be computed on the basis of one ton of raisins insured for every four and one-half tons of fresh grapes when first placed on trays for drying.

j. *USDA inspection* means the actual determination by a USDA inspector of all defects. Limited inspections or inspections on submitted samples are not considered ''USDA inspections.''

[54 FR 43275, Oct. 24, 1989]

§ 401.143 Florida citrus endorsement.

The provisions of the Florida Citrus Endorsement for the 1990 through 1997 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION—FLORIDA CITRUS ENDORSEMENT

1. Insured Crop

a. The crop insured will be any of the following citrus types you elect:

Type I Early and mid-season oranges;

Type II Late oranges;

Type III Grapefruit for which freeze damage will be adjusted on a juice basis for white grapefruit and on a fresh-fruit basis for pink and red grapefruit;

Type IV Navel oranges, tangelos and tangerines;

Type V Murcott Honey Oranges (also known as Honey Tangerines) and Temple Oranges;

Type VI Lemons; or

Type VII Grapefruit for which freeze damage will be adjusted on a fresh basis for all grapefruit.

If you insure grapefruit, you must insure all of your grapefruit under a single type designation (type III or type VII). ''Meyer Lemons'' and oranges commonly know as ''Sour Oranges'' or ''Clementines'' will not be included in any of the insurable types of citrus.

b. In addition to the citrus not insurable in section 2 of the general crop insurance policy, we do not insure any citrus;

(1) Which cannot be expected to mature each crop year within the normal maturity period for the type;

(2) Produced by trees that have not reached the tenth growing season after being set out, unless otherwise provided in the actuarial table or we agree to insure such citrus in writing;

(3) Of the Robinson tangerine variety, for any crop year in which you have elected to exclude such tangerines from insurance (you must elect this exclusion prior to April 30 preceding the crop year for which the exclusion is to become effective except that for the first crop year, you must elect this exclusion by the later of April 30 or the time you submit the application for insurance);

c. Upon our approval, you may elect to insure or exclude from insurance for any crop year any insurable acreage in any unit which has a potential of less than 100 boxes per acre. If you:

(1) Elect to insure such acreage, we will increase the potential to 100 boxes per acre when determining the amount of loss;

(2) Elect to exclude such acreage, we will disregard the acreage for all purposes related to this contract; or

(3) Do not elect to insure or exclude such acreage:

(a) We will disregard the acreage if the production is less than 100 boxes per acre; or

(b) If the production from such acreage is 100 or more boxes per acre, we will determine the percent of damage on all of the insurable acreage for the unit, but will not allow the percent of damage for the unit to be increased by including such acreage.

d. We may exclude from insurance, or limit the amount of insurance on, any acreage which was not insured the previous crop year.

2. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Fire;

(2) Freeze;

(3) Hail;

(4) Hurricane; or

(5) Tornado; unless those causes are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured against in section 1 of the general crop insurance policy, we will not insure against any loss of production due to:

(1) Any damage to the blossoms or trees;

(2) Fire, if weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove;

(3) Inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production unless production has actual physical damage due to a cause specified in subsection 2.a.

3. Report of Acreage, Share, Type, and Practice (Acreage Report)

a. In addition to the information required in section 3 of the general crop insurance policy you must;

(1) Report the crop type; and

(2) Designate separately any acreage that is excluded under section 1 of this endorsement.

b. The date by which you must annually submit the acreage report is April 30 except for the first crop year, the report must be submitted by the later of April 30 or the time you submit the application for insurance.

4. Production Reporting

Production potential for each unit is determined during loss adjustment. Therefore, subsection 4.d. of the general crop insurance policy is not applicable to this endorsement. Production history is not required.

5. Annual Premium

a. The annual premium amount is computed by multiplying the amount of insurance times the premium rate, times the insured acreage, times your share at the time insurance attaches.

b. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1988 crop year under the terms of the experience table contained in the citrus policy for the 1989 crop year, you will continue to receive the benefit of the reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1989 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Insurance Period

a. The calendar date on which insurance attaches is May 1 for each crop year, except that for the first crop year, if the application is accepted by us after April 20, insurance will attach on the tenth day after the application is received in the service office.

b. The end of the insurance period is the date of the calendar year following the year of normal bloom as follows:

(1) January 31 for tangerines and navel oranges;

(2) April 30 for lemons, tangelos, early and mid-season oranges; and

(3) June 30 for late oranges, grapefruit, Temple and Murcott Honey Oranges.

7. Unit Division

a. Citrus acreage that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided by citrus type.

b. Citrus acreage that would otherwise be one unit as defined in section 17 of the general crop insurance policy and subsection 7.a. above may be divided into more than one unit, if you agree to pay additional premium if required by the actuarial table and if, for each proposed unit:

(1) You maintain written, verifiable records of acreage and harvested production for at least the previous crop year; and

(2) Acreage planted to insured citrus is located in separate, legally identifiable sections, provided:

(a) The boundaries of the sections are clearly identified and the insured acreage is easily determined; and

(b) The trees are planted in such a manner that the planting pattern does not continue into the adjacent section; or

(3) The acreage of insured citrus is located on noncontiguous land. If you have a loss on any unit, production records for all harvested units must be provided. Production that is commingled between optional units will cause those units to be combined.

8. Notice of Damage or Loss

In addition to the notices required in the general crop insurance policy and in case of damage or probable loss:

a. You must give us written notice of the date and cause of damage; and

b. If an indemnity is to be claimed on any unit you must give us notice by the calendar date for the end of the insurance period if harvest will not begin by that date.

9. Claim for Indemnity

a. The indemnity will be determined on each unit by:

(1) Computing the average percent of damage to the citrus which (without regard to any percent of damage arrived at through prior inspections) will be the ratio of the number of boxes of citrus considered damaged from an insured cause to the potential

rounded to the nearest tenth (.1) of a percent. Citrus will be considered undamaged potential if it is:

(a) Or could be marketed as fresh fruit;

(b) Harvested prior to an inspection by us; or

(c) Harvested within 7 days after a freeze;

(2) For limited and additional coverages, by multiplying the result in excess of 10 percent (e.g., 45%−10%=35% payable), times the amount of insurance for the unit (the amount of insurance for the unit is determined by multiplying the insured acreage on the unit times the applicable amount of insurance per acre); or

(3) For catastrophic risk protection coverage, the result in excess of 50 percent divided by 50 percent (e.g. if the insured's average percent of damage is 75%; the percentage of the guarantee payable is 50 percent, (75%−50%)÷50%); if the insured's average percent of damage is 60 percent, the percentage of the guarantee payable is 20 percent, (60%−50%)÷50%) times the amount of insurance for the unit. The amount of insurance for the unit is determined by multiplying the insured acreage on the unit times the applicable amount of insurance per acre. For any average percentage of damage less than 50%, the insured is not eligible for an indemnity payment; and

(4) Multiplying the product obtained in (2) above for limited and additional coverage, or the product obtained in (3) above for catastrophic risk protection, by your share.

b. Pink and red grapefruit of citrus Type III and citrus of Types IV, V, and VII which are seriously damaged by freeze (as determined by a fresh-fruit cut of a representative sample of fruit in the unit, in accorance with the applicable provisions of the Florida Citrus Code), and are not or could not be marketed as fresh-fruit will be considered damaged to the following extent:

(1) If 15 percent or less of the fruit in a sample shows serious freeze damage, the fruit will be considered undamaged; or

(2) If 16 percent or more of the fruit in a sample shows serious freeze damage, the fruit will be considered 50 percent damaged, except that:

(a) For tangerines of citrus Type IV, damage in excess of 50 percent will be the actual percent of damaged fruit; and

(b) For other applicable varieties, if we determine that the juice loss in the fruit exceeds 50 percent, the amount so determined will be considered the percent of damage.

c. Notwithstanding the provisions of subsection 9.b., as to any pink and red grapefruit of Type III and citrus of Types IV, V, and VII in any unit which is mechanically separated (using the specific gravity ''floatation'' method) into undamaged and freeze-damaged fruit, the amount of damage will be the actual percent of freeze-damaged fruit not to exceed 50 percent and will not be affected by subsequent fresh-fruit marketing. The 50 percent limitation on freeze-damaged fruit, mechanically separated, will not apply to tangerines of citrus Type IV.

d. Any citrus of Types I, II, and VI and white grapefruit of Type III which is damaged by freeze, but may be processed by canning or processing plants, will be considered as marketable for juice. The percent of damage will be determined by relating the juice content of the damaged fruit as determined by test house analysis to:

(1) The average juice content based on acceptable records, furnished by you, showing the juice content of fruit produced on the unit for the three previous crop years; or

(2) The following juice content, if acceptable records are not furnished:

Type I—44 pounds of juice per 90 pound box

Type II—47 pounds of juice per 90 pound box

Type III—38 pounds of juice per 85 pound box

Type VI—43 pounds of juice per 90 pound box

e. Any citrus on the ground which is not picked up and marketed will be considered totally lost if the damage was due to an insured cause.

f. Any citrus which is unmarketable either as fresh fruit or for juice because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption due to an insured cause will be considered totally lost.

g. Pink and red grapefruit citrus of Type III and citrus Types IV, V, and VII which are unmarketable as fresh fruit due to serious damage from hail as defined in United States Standards for grades of Florida fruit will be considered totally lost.

10. Cancellation and Termination Dates

The cancellation date is April 30 of the calendar year in which the crop normally blooms. The termination date is April 30 of the calendar year following the year of normal bloom.

11. Contract Changes.

The date by which contract changes will be available in your service office is the April 15 immediately preceding the cancellation date.

12. Meaning of Terms

a. *Box* means a standard field box as prescribed in the Florida Citrus Code.

b. *Crop year* means the period beginning May 1 and extending through June 30 of the following year and will be designated by the calendar year in which the insurance period ends.

c. *Harvest* means the severance of citrus fruit from the tree either by pulling, picking, or severing by mechanical or chemical

means or picking up the marketable fruit from the ground.

d. *Noncontiguous land* means any land owned by you and rented by you for cash, a fixed commodity payment or any consideration other than a share in the insured crop, whose boundaries do not touch at any point. Land which is separated by a public or private right-of-way, waterway or irrigation canal will be considered to be touching (contiguous).

e. *Potential* means production:

(1) Which would have been produced had damage not occurred and includes citrus which:

(a) Was picked before damage occurred;

(b) Remained on the tree after damage occurred;

(c) Was lost from an insured cause; and

(d) Was lost from an uninsured cause.

(2) The potential will not include:

(a) Citrus lost before insurance attaches for any crop year;

(b) Citrus lost by normal dropping; or

(c) Any tangerines which normally would not, by the end of the insurance period for tangerines, meet the 210 pack size (2 and 4/16 inch minimum diameter) under United States Standards.

[54 FR 14203, Apr. 10, 1989, as amended at 60 FR 29750, June 6, 1995; 61 FR 69001, Dec. 31, 1996]

EFFECTIVE DATE NOTE: At 61 FR 69001, Dec. 31, 1996, § 401.143 introductory paragraph was revised, effective Jan. 30, 1997. For the convenience of the user, the superseded text is set forth as follows:

§ 401.143 Florida citrus endorsement.

The provisions of the Florida Citrus Endorsement for the 1990 and subsequent crop years are as follows:

* * * * *

§ 401.146 Fresh plum endorsement.

The provisions of the Fresh Plum Crop Insurance Endorsement for the 1990 and subsequent crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION
FRESH PLUM ENDORSEMENT

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Earthquake;

(3) Fire;

(4) Wildlife;

(5) Volcanic eruption;

(6) An insufficient number of chilling hours to effectively break dormancy; or

(7) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless these causes of loss are excepted, excluded, or limited by the actuarial table or section 9 of the general crop insurance policy.

b. In addition to the causes of loss not insured under section 1b of the general crop insurance policy, we will not insure against any loss of production due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the orchard;

(2) Disease or insect infestation unless specifically caused by adverse weather;

(3) Fruit cullage caused by: green; overripe; undersize condition; and mechanical damage which causes rejection of the crop at the packing house; or

(4) Inability to market as a direct result of quarantine, boycott, or refusal of any entity to accept or harvest production unless production has actual physical damage due to a cause specified in subsection 1.a.

2. Insured Crop and Acreage

a. The crop insured will be plums grown for fresh market fruit or processing for which we provide a guarantee and premium rate:

b. In lieu of the provisions of subsection 2e of general crop insurance policy, we do not insure any plum acreage:

(1) Which is not irrigated;

(2) On which the trees have not reached the fifth growing season after being set out;

(3) Which has not produced at least 200 lugs fresh market production in the preceding crop year unless the acreage is inspected by us and approved for coverage;

(4) For which production records acceptable to us for at least the previous crop year are not provided;

(5) Which we consider not acceptable;

(6) Which is interplanted with another crop, unless we inspect such acreage and give our approval in writing;

(7) On which is grown a type or variety not established as adapted to the area; excluded by the actuarial table; or not regulated for plums by the California Tree Fruit agreement, a related crop advisory board, or the State;

(8) From which the fruit is harvested directly by the public; or

(9) If the orchard practices carried out are not in accordance with the orchard practices for which the premium rates have been established.

3. Report of Acreage, Share, Type and Practice (Acreage Report)

The acreage report must be filed on or before January 31. You must report the crop type in addition to the information required by section 3 of the general crop insurance policy for the acreage report.

4. Production Reporting, Coverage Level, Practices for Computing Indemnities, and Production Guarantees

a. In addition to the production report required in section 4 of the general crop insurance policy, you must report:

(1) The number of bearing trees;

(2) The number of trees planted per acre;

(3) Tree damage or use of production practices which has or may reduce the yield from previous levels; and

(4) If the number of bearing trees (fifth growing season and older) is reduced more than 10% from the preceding calendar year (In such event, the production guarantee will be reduced 1 percent, through adjustment to your average yield for each 1 percent reduction in excess of 10 percent).

b. You may select only one coverage level and price election for plums for the crop year.

5. Annual Premium

The annual premium is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches.

6. Insurance Period

In lieu of the provisions in section 7 of the general crop insurance policy, coverage begins for each crop year on February 1, following our inspection and determination of acceptability. Insurance ends on each area at least one acre in size at the earliest of:

a. Total destruction of the insured crop;

b. Harvest;

c. The date harvest would normally start;

d. Final adjustment of a loss; or

e. September 30 of the crop year.

7. Units

Plum acreage grown on non-contiguous land that would otherwise be one unit, as defined in section 17 of the general crop insurance policy, may be divided into more than one unit if, for each proposed unit, you maintain written, verifiable records of acreage and harvested production for at least the previous crop year.

If you have a loss on any unit, production records for all harvested units must be maintained and be made available to us at our request. Production that is commingled between optional units will cause those units to be combined.

8. Notice of Damage or Loss

In lieu of the notices required in section 8.a.(2), (3), and (4) of the general crop insurance policy, in case of damage or probable loss you must give us written notice within 72 hours of the date of damage and indicate the causes of damage and whether a claim for indemnity is probable. Notwithstanding the previous sentence, if damage occurs within 72 hours of or during harvest, immediate notice stating the cause of damage and probability of a claim must be given to us. If notice is given under the first sentence of this paragraph, we must be notified of the time of harvest at least 72 hours before harvest begins.

9. Claim for Indemnity

In addition to section 9 of the general crop insurance policy:

a. The indemnity will be determined separately for each unit of plums by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of plums to be counted;

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by the insured share.

b. The total production (standard lug equivalent) (see section 12.d.) to be counted for a unit will include all production harvested, and all appraised production. Such production must meet U.S. #1 standards as modified (before the date insurance attaches) by the latest California Tree Fruit Agreement Publication for fresh plums.

(1) Mature production of fresh plums damaged by insurable causes within the insurance period that could be marketed for any use other than fresh packed plums, will be determined by multiplying the number of tons that could be marketed by the value per ton of fruit or $50.00 per ton, whichever is greater, and dividing that result by the highest price election available for the type. This result will be the number of standard lug equivalents to be considered as production to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the applicable guarantee for any acreage which is abandoned, destroyed by you without our prior written consent; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of plums becomes general in the county and is reappraised by us;

(b) Further damaged by an insured cause and is reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested plums may be determined on the basis of orchard appraisals conducted after the end of the insurance period or discontinuance of harvest. We may appraise and consider as production to count, any insured fruit remaining on acreage not clean harvested.

(5) We may delay final appraisal until the extent of damage can be determined.

c. In the absence of acceptable records to determine the disposition of harvested plums, we may elect to determine such disposition and the amount of such production to be counted for the unit.

d. You must authorize us in writing to examine and obtain any records pertaining to production and marketing of any plums, whether insured or uninsured, whether this crop year or prior crop years, from the broker, shipper, advisory board, marketing order or any other source we deem necessary.

10. Cancellation and Termination Dates

The cancellation and termination dates are January 31.

11. Contract Changes

The date by which contract changes will be available in your service office is October 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

12. Meaning of Terms

For the purpose of Plum crop insurance:

a. *Appraisal* means an estimate of the potential production determined by our representative using our prescribed procedures.

b. *Crop Year* means the period beginning with the date insurance attaches and extending through the normal harvest time, and will be designated by the calendar year in which the insured plums are normally harvested.

c. *Harvest* means the picking of mature plums from the trees by hand or machine.

d. *Lug* means a packed container of fresh plums weighing 28 pounds. All fresh production to count of varying lug sizes will be converted to standard lug equivalents on the basis of 28 pounds of packed plums.

[55 FR 4395, Feb. 8, 1990]

PART 402—CATASTROPHIC RISK PROTECTION ENDORSEMENT; REGULATIONS FOR THE 1997 AND SUBSEQUENT CROP YEARS

Sec.

402.1 General statement.
402.2 Applicability.
402.3 OMB control numbers.
402.4 Catastrophic Risk Protection Endorsement Provisions.

AUTHORITY: 7 U.S.C. 1506(l) and 1506(p).

SOURCE: 61 FR 42985, Aug. 20, 1996, unless otherwise noted.

§402.1 General statement.

The Federal Crop Insurance Act, as amended by the Federal Crop Insurance Reform Act of 1994, requires the Federal Crop Insurance Corporation to implement a catastrophic risk protection plan of insurance that provides a basic level of insurance coverage to protect producers in the event of a catastrophic crop loss due to loss of yield or prevented planting, if provided by the Corporation, provided the crop loss or prevented planting is due to an insured cause of loss specified in the crop insurance policy. This Catastrophic Risk Protection Endorsement is a continuous endorsement that is effective in conjunction with a crop insurance policy for the insured crop. Catastrophic risk protection coverage will be offered through approved insurance providers if there are a sufficient number available to service the area. If there are an insufficient number available, as determined by the Secretary, local offices of the Farm Service Agency will provide catastrophic risk protection coverage.

§402.2 Applicability.

This Catastrophic Risk Protection Endorsement is applicable to each crop for which catastrophic risk protection coverage is available and for which the producer elects such coverage.

§402.3 OMB control numbers.

The information collection activity associated with this rule has been approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44

U.S.C. chapter 35) under OMB control number 0563–0003.

§ 402.4 Catastrophic Risk Protection Endorsement Provisions.

The Catastrophic Risk Protection Endorsement Provisions for the 1997 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Catastrophic Risk Protection Endorsement

(This is a continuous endorsement)

If a conflict exists between this Endorsement and any of the policies specified in section 2 or the Special Provisions for the insured crop, this endorsement will control.

Terms and Conditions

1. Definitions

Additional coverage. Plans of crop insurance providing a level of coverage equal to or greater than sixty-five percent (65%) of your approved yield indemnified at one hundred percent (100%) of the expected market price, or comparable coverage as established by FCIC.

Administrative fee. The $50 fee the producer must pay on a per crop and county basis with a maximum of $200 per producer per county and $600 per producer for catastrophic and limited coverage on an annual basis.

Approved insurance provider. A private insurance company, including its agents, that has been approved and reinsured by FCIC to provide insurance coverage to producers participating in the Federal Crop Insurance program.

Approved yield. The amount of production per acre computed in accordance with FCIC's Actual Production History Program (7 CFR part 400, subpart G) or for crops not included under 7 CFR part 400, subpart G, the yield used to determine the guarantee in accordance with the crop provisions or the Special Provisions.

Catastrophic risk protection. The minimum level of coverage offered by FCIC which meets the requirements for a person to qualify for certain other USDA program benefits (see sections 4 and 12).

County. The political subdivision of a state listed in the actuarial table and designated on your accepted application, including land in an adjoining county, provided such land is part of a field that extends into the adjoining county and the county boundary is not readily discernable. For peanuts and tobacco, the county will also include any land identified by a FSA farm serial number for the county but physically located in another county.

Crop of economic significance. A crop that has either contributed in the previous crop year, or is expected to contribute in the current crop year, ten percent (10%) or more of the total expected value of your share of all crops grown in the county. However, a crop will not be considered a crop of economic significance if the expected liability under the Catastrophic Risk Protection Endorsement is equal to or less than the administrative fee required for the crop.

Expected market price. (price election) The price per unit of production (or other basis as determined by FCIC) anticipated during the period the insured crop normally is marketed by producers. This price will be set by FCIC before the sales closing date for the crop. The expected market price may be less than the actual price paid by buyers if such price typically includes remuneration for significant amounts of post-production expenses such as conditioning, culling, sorting, packing, etc.

FCIC. The Federal Crop Insurance Corporation, a wholly owned Government Corporation within USDA.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture or any successor agency.

Insurance is available. When crop information is contained in the county actuarial documents for a particular crop.

Limited coverage. Plans of insurance offering coverage that is equal to or greater than fifty percent (50%) of your approved yield indemnified at one hundred percent (100%) of the expected market price, or a comparable coverage, but less than sixty-five percent (65%) of your approved yield indemnified at one hundred percent (100%) of the expected market price, or a comparable coverage.

Limited resource farmer. A producer or operator of a farm, with an annual gross income of $20,000 or less derived from all sources of revenue, including income from spouse's or other members of the household, for each of the prior two years. Notwithstanding the previous sentence, a producer on a farm or farms of less than 25 acres aggregated for all crops, where a majority of the producer's gross income is derived from such farm or farms, but the producer's gross income from farming operations does not exceed $20,000, will be considered a limited resource farmer.

Linkage requirement. The legal requirement that a producer must obtain at least catastrophic risk protection coverage for any crop of economic significance as a condition of receiving benefits for such crop from certain other USDA programs in accordance with section 12(e), unless the producer executes a waiver of any eligibility for emergency crop loss assistance in connection with the crop.

Secretary. The Secretary of the United States Department of Agriculture.

USDA. The United States Department of Agriculture.

Zero acreage report. An acreage report filed by you that certifies you do not have a share in the crop for that crop year.

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

(a) You must have one of the following policies in force to elect this Endorsement:

(1) The General Crop Insurance Policy (7 CFR 401.8) and crop endorsement;

(2) The Common Crop Insurance Policy (7 CFR 457.8) and crop provisions;

(3) The Group Risk Plan Policy, if available for catastrophic risk protection; or

(4) A specific named crop insurance policy.

(b) You must have made application for catastrophic risk protection on or before the sales closing date for the crop in the county.

(c) You must be a ''person'' as defined in the crop policy to be eligible for catastrophic risk protection coverage.

(d) In addition to the provisions specified in the applicable crop policy, this Endorsement will terminate for the crop year for which:

(1) You fail to pay the applicable administrative fee, as specified in section 6;

(2) You elect to purchase limited or additional coverage for the insured crop; or

(3) The applicable crop policy, to which this endorsement attaches, automatically terminates (i.e., the policy must be renewed each year).

3. Unit Division

(a) This section is in lieu of the unit provisions specified in the applicable crop policy.

(b) For catastrophic risk protection coverage, a unit will be all insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have one hundred percent (100%) crop share; or

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

(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 that combines the two cash leases and the land you own.)

(c) Further division of the units described in paragraph (b) above is not allowed under this Endorsement.

4. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

(a) Notwithstanding any provision contained in any other policy document, for the 1995 through 1998 crop years, catastrophic coverage will offer protection equal to fifty percent (50%) of your approved yield indemnified at sixty percent (60%) of the expected market price, or a comparable coverage as established by FCIC.

(b) Notwithstanding any provision contained in any other policy document, for the 1999 and subsequent crop years, catastrophic coverage will offer protection equal to fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the expected market price, or a comparable coverage as established by FCIC.

(c) If the crop policy denominates coverage in dollars per acre or other measure, or any other alternative method of coverage, such coverage will be converted to the amount of coverage that would be payable at fifty percent (50%) of your approved yield indemnified at sixty percent (60%) of the expected market price for the 1995 through 1998 crop years and fifty percent (50%) of your approved yield indemnified at fifty-five percent (55%) of the expected market price for the 1999 and subsequent crop years.

(d) You may elect catastrophic coverage for any crop insured or reinsured by FCIC on either an individual yield and loss basis or an area yield and loss basis, if both options are offered as set out in the Actuarial Table or the Special Provisions.

(e) To be eligible for an indemnity under this endorsement you must have suffered at least a 50 percent loss in yield.

5. Report of Acreage

(a) The report of crop acreage that you file in accordance with the crop policy must be signed on or before the acreage reporting date. For catastrophic risk protection, unless the other person with an insurable interest in the crop objects in writing prior to the acreage reporting date and provides a signed acreage report on their own behalf, the operator may sign the acreage report for all other persons with an insurable interest in the crop without a power of attorney. All persons with an insurable interest in the crop, and for whom the operator purports to sign and represent, are bound by the information contained in that acreage report.

(b) For the purpose of determining the amount of indemnity only, your share will not exceed your insurable interest 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, 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 allowed in this endorsement. Any acreage or interest reported by or for your spouse, child or any member of your household may be considered your share. A lease containing provisions for both a minimum payment (such as a specified amount of cash, bushels, pounds, etc.) *and* a crop share will be considered a crop share lease. A lease

containing provisions for either a minimum payment (such as a specified amount of cash, bushels, pounds, etc.,) *or* a crop share will be considered a cash lease. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the insured crop on such land will be considered as owned by the lessee.

6. Annual Premium and Administrative Fees

(a) Notwithstanding any provision contained in any other policy document, you will not be responsible to pay a premium, nor will the policy be terminated because the premium has not been paid. FCIC will pay a premium subsidy equal to the premium established for the coverage provided under this endorsement.

(b) In return for catastrophic risk protection, you must pay an administrative fee as follows:

(1) To the insurance provider at the time of application (the fee will not be refunded if you file a zero acreage report the initial crop year for which the application is accepted);

(2) Annually, on or before the acreage reporting date for the applicable crop for any subsequent crop years that catastrophic risk protection is in effect (The fee will not be required if you file a bonafide zero acreage report on or before the acreage reporting date, however, filing a false zero acreage report could subject you to criminal and administrative sanction); and

(3) Equal to $50 per crop per county, subject to a maximum of two hundred dollars ($200) per county and six hundred dollars ($600) for all counties in which you insure crops. In calculating the maximum amount of administrative fees, the fees paid for both catastrophic risk protection and limited coverage will be combined.

(c) The administrative fee provisions of paragraph (b) of this section do not apply if you meet the definition of a limited resource farmer (see section 1). If you qualify as a limited resource farmer and desire to be exempted from paying the administrative fee you must sign the waiver at the time of application (on or before the sales closing date.)

(d) When a crop policy has provisions to allow you the option to separately insure individual crop types or varieties, you must pay a separate administrative fee in accordance with paragraph (b) of this section for each type or variety you elect to separately insure.

(e) The administrative fee will be refunded if, after applying for catastrophic risk protection and paying the administrative fee, you elect to purchase additional coverage for such crop in the same county on or before the sales closing date. Administrative fees will not be refunded, however if, after the purchase of the additional coverage, you still have 4 or more crops insured in the county, or 4 or more crops insured in each of three or more counties, at the CAT or limited coverage level.

(f) If the administrative fee is not paid when due, the crop insurance contract will terminate effective at the beginning of the crop year for which the administrative fee was not paid. You may be ineligible for certain other USDA program benefits as set out in section 12, and all such benefits already received for the crop year must be refunded. If you fail to pay the administrative fee when due, the execution of a waiver of any eligibility for emergency crop loss assistance in connection with the crop will not be effective for any crop year in which payment was not made.

7. Insured Crop

The crop insured is specified in the applicable crop policy, however:

(a) Notwithstanding any other policy provision requiring the same insurance coverage on all insurable acreage of the crop in the county, if you purchase limited or additional coverage for a crop, you may separately insure acreage under catastrophic coverage that has been designated as ''high risk'' land by FCIC, provided that you execute a High Risk Land Exclusion Option and obtain a catastrophic risk protection policy with the same approved insurance provider, if available, on or before the applicable sales closing date. If catastrophic coverage is not available from the same insurance provider, you may obtain the catastrophic risk protection policy for the high risk land from another approved insurance provider or FSA, if available. You will be required to pay a separate administrative fee for both the limited or additional coverage policy and the catastrophic coverage policy unless the maximum administrative fee would be exceeded.

(b) A tobacco producer may insure one hundred percent (100%) of the tobacco crop that is identified by a tobacco marketing card issued by FSA for a specific producer and Farm Serial Number under one CAT policy, provided the producer and other persons each have a share in the crop, all the shareholders agree in writing to such arrangement, and none of the persons hold any other interest in another tobacco crop for which they are required to obtain at least catastrophic coverage. If the tobacco crop is insured under one policy:

(1) The linkage requirements will be satisfied for each shareholder of the crop; and

(2) The producer insuring the crop will:

(i) Make application for insurance and provide the name and social security number, or employer identification number, of each person with a share in the tobacco crop;

(ii) File the acreage report showing a one-hundred percent (100%) share in the crop (all insurable acreage covered by such marketing card will be considered as one unit);

(iii) Be responsible to pay the one administrative fee for all the producers within the county;

(iv) Fulfill all requirements under the crop insurance contract; and

(v) Receive any indemnity payment under his or her social security number or employer identification number and distribute the indemnity payments to the other persons sharing in the crop.

(c) A landowner will be allowed to obtain catastrophic coverage to satisfy linkage requirements for all other landowners who hold an undivided interest in the insurable acreage, provided:

(1) All the landowners must agree in writing to such arrangement and have their social security number or employer identification number listed on the application, without regard to the actual amount of their interest in the insured acreage;

(2) All landowners must have an undivided interest in the insurable acreage;

(3) None of the landowners may hold any share in other acreage for which they are required to obtain at least catastrophic coverage;

(4) The total cumulative liability under the Catastrophic Risk Protection Endorsement for all landowners must be $2,500 or less;

(5) The landowner insuring the crop will:

(i) Make application for insurance and provide the name and social security number or employer identification number of each person with an undivided interest in the insurable acreage;

(ii) Be responsible to pay the one administrative fee for all the producers within the county;

(iii) Fulfill all requirements under the insurance contract; and

(iv) Receive any indemnity payment under the landowner's social security number, or when applicable, employer identification number, and distribute the indemnity payments to the other persons sharing in the crop.

8. Replanting Payment

Notwithstanding any provision contained in any other crop insurance document, no replant payment will be paid whether or not replanting of the crop is required under the policy.

9. Claim for Indemnity

(a) If two or more insured crop types, varieties, or classes are insured within the same unit, and multiple price elections are applicable, the dollar amount of insurance and the dollar amount of production to be counted will be determined separately for each type, variety, class, etc., that have separate price elections and then totaled to determine the total liability or dollar amount of production to be counted for the unit.

(b) If you are eligible to receive an indemnity under this endorsement and benefits compensating you for the same loss under any other USDA program, you must elect the program from which you wish to receive benefits. Only one payment or program benefit is allowed. However, if other USDA program benefits are not available until after you filed a claim for indemnity, you may refund the total amount of the indemnity and receive the other program benefit. Farm ownership and operating loans, may be obtained from the USDA in addition to crop insurance indemnities.

10. Concealment or Fraud

Notwithstanding any provision contained in any other crop insurance document, your CAT policy may be voided by us on all crops without waiving any of our rights, including the right to collect any amounts due:

(a) If at any time you conceal or misrepresent any material fact or commit fraud relating to this or any other contract issued under the authority of the Federal Crop Insurance Act with any insurance provider; and

(b) The voidance will be effective as of the beginning of the crop year during which such act or omission occurred. After the policy has been voided, you must make a new application to obtain catastrophic risk protection coverage for any subsequent crop year. If your policy is voided under this section, any waiver of eligibility for emergency crop loss assistance in connection with the crop will not be effective for the crop for the year in which the voidance occurred.

11. Exclusion of Coverage

(a) Options or endorsements that extend the coverage available under any crop policy offered by FCIC will not be available under this endorsement, except the Late Planting Agreement Option. Written agreements are not available for any crop insured under this endorsement.

(b) Notwithstanding any provision contained in any other crop policy, hail and fire coverage and high-risk land may not be excluded under catastrophic risk protection.

12. Eligibility for Other USDA Program Benefits

(a) Even if it was a crop of economic significance for the previous crop year, if you do not intend to plant the crop in the current crop year, you do not have to obtain crop insurance or execute a waiver of your eligibility for any emergency crop loss assistance in connection with the crop to remain eligible for the USDA program benefits specified in subsection (e). However, if, after the sales closing date, you plant that crop,

you will be unable to obtain insurance for that crop and you must execute a waiver of your eligibility for emergency crop loss assistance in connection with the crop to remain eligible for the USDA program benefits specified in section 12(e). Failure to execute such a waiver will require you to refund any benefits already received under a program specified in section 12(e).

(b) You are initially responsible to determine the crops of economic significance in the county. The insurance provider may assist you in making these initial determinations. However, these determinations will not be binding on the insurance provider. To determine the percentage value of each crop:

(1) Multiply the acres planted to the crop, times your share, times the approved yield, and times the price;

(2) Add the values of all crops grown by the producer in the county; and

(3) Divide the value of the specific crop by the result of section 12(b)(2).

(c) You may use the type of price such as the current local market price, futures price, established price, highest amount of insurance, etc., for the price when calculating the value of each crop, provided that you use the same type of price for all crops in the county.

(d) You may be required to justify the calculation and provide adequate records to enable the insurance provider to verify whether a crop is of economic significance.

(e) You must obtain at least catastrophic coverage for each crop of economic significance in the county in which you have an insurable share, if insurance is available in the county for the crop, unless you execute a waiver of any eligibility for emergency crop loss assistance in connection with the crop to be eligible for:

(1) Benefits under the Agricultural Market Transition Act;

(2) Loans or any other USDA provided farm credit, including: guaranteed and direct farm ownership loans, operating loans, and emergency loans under the Consolidated Farm and Rural Development Act provided after October 13, 1994; and

(3) Benefits under the Conservation Reserve Program derived from any new or amended application or contracts executed after October 13, 1994.

(f) Failure to comply with all provisions of the policy constitutes a breach of contract and may result in ineligibility for certain other farm program benefits for that crop year and any benefit already received must be refunded. If you breach the insurance contract, the execution of a waiver of any eligibility for emergency crop loss assistance will not be effective for the crop year in which the breach occurs.

PART 403—PEACH (FRESH) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.
403.1 Availability of peach crop insurance.
403.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
403.3 OMB control numbers.
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403.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 50 FR 43648, Oct. 29, 1985, unless otherwise noted.

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 403.1 Availability of peach crop insurance.

Insurance shall be offered under the provisions of this subpart on peaches in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 403.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for peaches which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 403.3 OMB control numbers.

The OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§403.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§403.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the peach insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the idemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§403.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the peach crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§403.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the peach crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a peach insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Peach (Fresh) Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Peach Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Frost;
(2) Freeze;
(3) Hail;
(4) Tornado;
(5) Cyclone;
(6) Drought;
(7) Wind;
(8) Lightning;
(9) Flood;
(10) Fire;
(11) Earthquake;
(12) Volcanic eruption;
(13) An insufficient number of chilling hours to effectively break the dormant period for the crop year; or
(14) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(5).

b. We will not insure against any loss of production due to:

(1) Disease or insect infestation;
(2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;
(3) The failure to follow recognized good peach farming practices;
(4) The failure or breakdown of irrigation equipment or facilities;
(5) The failure to follow good peach irrigation practices;
(6) The impoundment of water by any governmental, public or private dam or reservoir project;
(7) Split pits regardless of cause; or
(8) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be any of the types or varieties of peaches which are grown for the production of Fresh or Processing Peaches (except processing peaches in California) on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be peaches grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured peaches at the time insurance attaches. However, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(2) From which the peaches are harvested by the public;
(3) On which the trees have not reached the fourth growing season after being set out unless such acreage has produced at least 100 bushels of peaches per acre;
(4) Planted with a vine or tree crop other than peaches;
(5) Which we inspect and consider not acceptable; or
(6) Of a type or variety of peaches not established as adapted to the areas or excluded by the actuarial table.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good peach irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of Acreage, Share, Practice, and Number of Bearing Trees

You must report on our form:

a. All the acreage of peaches in the county in which you have a share;
b. The practice;
c. Your share on the date insurance attaches; and
d. The number of bearing trees.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any peaches grown in the county. This report must be submitted annually on or before January 10. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by January 10, we may elect to determine by unit the insured acreage, share, practice, and number of bearing trees or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (fourth growing season and older) is reduced more than 10 percent from the preceding calendar year, the production guarantee may be reduced 1 percent (through adjustment to your average yield) for each 1 percent reduction in excess of 10 percent.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

e. You must furnish a report of production to use for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the peach policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deduction for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you, or 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.

7. Insurance Period

Insurance attaches for each crop year on December 1 and ends at the earliest of:

a. Total destruction of the peaches;

b. The date harvest of the peaches (by variety) should have ended;

c. Harvest of the peaches;

d. Final adjustment of a loss; or

e. September 30 of the crop year.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice of:

(a) The dates of damage; and

(b) The causes of damage.

(2) You must give us written notice if during the period before harvest, the peaches on any unit are damaged and you decide not to further care for or harvest any part of them.

(3) If you are going to claim an indemnity on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest;

(b) Immediately, if damage occurs within the 15 days prior to harvest or during harvest; or

(c) By September 30, if harvest will not begin by this date.

b. You must obtain written consent from us before you destroy any of the peaches which are not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peaches on the unit;

(2) Harvest of the unit; or

(3) September 30 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of peaches on the unit at the time of harvest and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Multiplying this result by the price election;

(3) Subtracting therefrom the dollar amount obtained by multiplying the total production of peaches to be counted (see section 9f) by the larger of the price election or the actual price per bushel of peaches; and

(4) Multiplying this result by your share.

d. If a unit contains insured acreage of both fresh and processing type peaches, the dollar amounts of insurance and production to count as established in 9.c. above will be determined separately for each type and then added together to determine the total amounts for the unit.

e. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

f. The total production to be counted for a unit will include all appraised production plus any production harvested prior to appraisal.

(1) Mature peach production may be adjusted downward as a result of a loss in quality because of hail, wind and misshapen fruit. Any production which is disposed of without being inspected by us will be considered undamaged. The amount of production will be determined for:

(a) Peaches grown for fresh use by:

(i) Dividing the value per ¾-bushel carton of the damaged peaches by the price per ¾-bushel carton of U.S. Extra No. 1 two-inch peaches; and

(ii) Multiplying this result by the number of bushels of such peaches.

The applicable price per ¾-bushel carton of U.S. Extra No. 1 two-inch peaches (if not available, the next larger size for which a price is available) will be the applicable average F.O.B. shipping point price reported by the Market News Service of the United States Department of Agriculture for 7 consecutive days commencing with the day harvest of the variety begins.

(b) Peaches grown for processing by:

(i) Dividing the value per bushel of the damaged peaches by the price per bushel of undamaged peaches; and

(ii) Multiplying this result by the number of bushels of such peaches.

The applicable price per bushel of undamaged peaches will be the average price for processing peaches determined for 7 consecutive days commencing with the day harvest of the variety begins.

(2) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized peach farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, destroyed by you without our consent or not inspected by us prior to the completion of harvest; and

(c) All unharvested production.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is exceeded by the actual harvested production.

(4) We reserve the right to delay any appraisal of damage until the extent of damage can be determined.

(5) If you elect to exclude hail and fire as insured causes of loss and the peaches are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire''.

g. You must not abandon any acreage to us.

h. You may not sue unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period,

and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all peaches produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records applied, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Therefore, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are November 30.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of peach crop insurance:

a. *Actual price per bushel* for:

(1) ''Fresh peaches'' means the average price per bushel for U.S. Extra No. 1 two-inch peaches (if not available, the next larger size for which a price is available) determined from applicable prices reported by the Market News Service of the United States Department of Agriculture for 7 consecutive days commencing with the day harvest of the variety begins less the allowable cost designated by the actuarial table; and

(2) ''Processing peaches'' means the average price per bushel for processor peaches determined for 7 consecutive days commencing with the day harvest of the variety begins less the allowable cost designated by the actuarial table.

b. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, uninsurable types or varieties, insurable and uninsurable acreage, and related information regarding peach insurance in the county.

c. *Average yield* means the yield established from your actual production records, which is approved by us and shown on our form.

d. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

e. *Crop year* means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the peaches are normally harvested.

f. *Cyclone* means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been named by the United States Weather Service and which has sustained winds in excess of 58 miles per hour at the nearest U.S. Weather Service reporting station to the crop damage at the time of the crop damage.

g. *Freeze* means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees Fahrenheit.

h. *Frost* means the condition that exists when the air temperature around the plant falls to 32 degrees Fahrenheit or below.

i. *Harvest* means the picking of mature peaches from the trees either by hand or machine.

j. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

k. *Insured* means the person who submitted the application accepted by us.

l. *Loss ratio* means the ratio of indemnity to premium.

m. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

n. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

o. *Tenant* means a person who rents land from another person for a share of the peaches or a share of the proceeds therefrom.

p. *Unit* means all insurable acreage of peaches in the county on the date insurance attaches 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peaches on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part,

coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[50 FR 43648, Oct. 29, 1985, as amended at 51 FR 29205—29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 6775, Mar. 5, 1987; 54 FR 24320, June 7, 1989; 55 FR 35888, Sept. 4, 1990]

PART 404 [RESERVED]

PART 405—APPLE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

405.1 Availability of apple crop insurance.
405.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
405.3 OMB control numbers.
405.4 Creditors.
405.5 Good faith reliance on misrepresentation.
405.6 The contract.
405.7 The application and policy.
405.8 Apple fresh fruit option.
405.9 Apple sunburn option.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 50 FR 43655, Oct. 29, 1985, unless otherwise noted.

Subpart—Regulations for the 1986 and Succeeding Crop Years

§405.1 Availability of apple crop insurance.

Insurance shall be offered under the provisions of this subpart on apples in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§405.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for apples which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§405.3 OMB control numbers.

The OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§405.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§405.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the apple insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take their erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 405.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the apple crop as provided in the policy. The contract shall consist of the application, the policy, the Fresh Fruit Option, if applicable, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 405.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the apple crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of an apple contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Apple Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Apple Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Drought;
(2) Freeze;
(3) Frost;
(4) Wind;
(5) Hail;
(6) Fire;
(7) Earthquake;
(8) Volcanic eruption;
(9) Fruit-set failure; or
(10) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are expected, excluded, or limited by the actuarial table or section 9e(4).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(2) The failure to follow recognized good apple management practices;
(3) The failure or breakdown of irrigation equipment or facilities;
(4) The failure to follow good apple irrigation practices;
(5) The impoundment of water by any governmental, public or private dam or reservoir project; or
(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be a variety of apples established as adopted to the area, which is located on insured acreage and for

which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be apples located on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured apples at the time insurance attaches.

d. We do not insure any acreage:

(1) Which in area A has not produced a minimum of 10 bins per acre;

(2) Which in area B has not produced a minimum of 150 bushels per acre;

(3) Which in Colorado, has not produced a minimum of 200 bushels per acre;

(4) Unless we agree, in writing, to insure such acreage;

(5) Which we inspect and consider not acceptable;

(6) The crop year the application is filed until the acreage has been inspected and accepted by us; or

(7) Acquired for the crop year until inspected and accepted by us.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good apple irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

3. Report of acreage, share, and Number of Trees

You must report on our form:

a. All the acreage of apples in the county in which you have a share;

b. Your share at the time insurance attaches; and

c. The number of bearing trees.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any apples located in the county.

This report will be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and number of trees or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable when insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share when insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the Eastern or Western apple policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance attaches for each crop year on November 21 except that for the first crop year, if we accept your application for apple insurance after November 21, insurance will attach on the thirtieth day after you submit a properly completed application. Insurance ends at the earliest of:

a. Total destruction of the apples;

b. Harvest of the unit;

c. Final adjustment of a loss; or

d. The earlier of:

(1) The end of the normal harvest period by variety for the crop year; or

(2) November 5 of the crop year.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us notice of the date and cause of damage within 10 days of such damage.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined or damage occurs during harvest, immediate notice must be given.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(i) Total destruction of the apples on the unit;

(ii) Harvest of the unit; or

(iii) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the apples which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the apples on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of apples on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of apples to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production determined to be marketable.

(1) Appraised production to be counted will include:

(i) Unharvested marketable production, and potential production lost due to uninsured causes and failure to follow recognized good apple management practices; and

(ii) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of apples becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(3) The amount of production of any unharvested apples may be determined on the basis of field appraisals conducted after the end of the insurance period.

(4) If you elect to exclude hail and fire as insured causes of loss and the apples are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire''.

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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 on or about January 1 and July 1 of each year.

The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all apples produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are November 20.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue

in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of apple crop insurance:

a. *Area A* includes Montana, Wyoming, Utah, New Mexico, and all states west thereof.

b. *Area B* includes all other states except Colorado.

c. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding apple insurance in the county.

d. *Bin* means a standard container, accepted by the industry: (1) Containing a minimum of 875 pounds of apples; or (2) as designated by the actuarial table.

e. *Bushel* means a standard container, containing 42 pounds of apples (40 pounds in Colorado).

f. *Contiguous land* means land which is touching at any point, except that land which is separated by only a public or private right-of-way will also be considered contiguous.

g. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

h. *Crop year* means the period beginning with the date insurance attaches and extending through the normal harvest time and shall be designated by the calendar year in which the apples are normally harvested.

i. *Freeze* means the condition that exists when air temperatures over a widespread area remain at or below 32 degrees (Fahrenheit).

j. *Frost* means the condition that exists when the air temperature around the plant falls to 32 degrees (Fahrenheit) or below.

k. *Fruit-set failure* means failure of the apple trees to develop blossoms or set fruit due only to adverse weather conditions, but shall not include poor pollination resulting from inadequate pollenizers in the orchard or failure to set fruit due to spray damage or other manageable causes.

l. *Harvest* means the picking of marketable apples from the trees or from the ground.

m. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

n. *Insured* means the person who submitted the application accepted by us.

o. *Loose field box* means a standard container containing: (1) 35 pounds of apples; or (2) a quantity designated by the actuarial table.

p. *Loss ratio* means the ratio of indemnity to premium.

q. *Marketable* means apples which grade U.S. No. 1, 2, or Cider in accordance with the United States Standards for Apples for Processing.

r. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

s. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

t. *Tenant* means a person who rents land from another person for a share of the apples or a share of the proceeds therefrom.

u. *Unit* means all insurable acreage of apples in the county located on contiguous land, on the date insurance attaches 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the apples on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[50 FR 43655, Oct. 29, 1985, as amended at 51 FR 29206, 29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 55 FR 35555, Aug. 31, 1990; 55 FR 35888, Sept. 4, 1990]

§405.8 Apple fresh fruit option.

(a) Notwithstanding the provisions of §405.7(d), section 9.e. of this part, an insured producer may, upon submission and approval of a Fresh Fruit Option Amendment (Amendment) elect to insure any insurable acreage or any designated portion thereof, under the provisions of the Amendment. Only apple acreage which is managed with the intent of producing fresh-market apples will be insurable under the Amendment. If management practices are carried out for the production of both fresh and processing apples on insurable acreage, and the election is made to: (1) Insure fresh market apples under the Amendment and; (2) insure those insurers intended for processing under the Apple policy; the election to insure on both a fresh and processing basis must be made when the Amendment is submitted. The Amendment is continuous until cancelled and may only be cancelled prior to the cancellation date.

(b) For those insureds who elect to insure apples under the Amendment, all provisions of the Apple crop insurance policy will apply except those provisions in conflict with the Amendment.

(c) The Option reads as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Apple Fresh Fruit Option

This is a continuous amendment (see section 15 of the basic policy).

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____
Identification No. _____
SSN _____
Tax _____

It is hereby agreed to amend the basic Federal Crop Insurance Apple Policy under the following terms and conditons:

1. This Option must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your applies under this Option.

2. You must have an apple policy in force.

3. You must insure all the acreage of applies in the county in which you have a share regardless of the intended use (fresh-market or processing).

4. In addition to section 8 of the apple policy, inspection and grading of the fruit must be done by us prior to harvest or no quality adjustment will be made.

5. Separate line entries according to intended use (fresh-market or processing) must be included on the acreage report required under section 3 of the apple policy.

6. Your apples intended for processing will be insured under the quality provisons of A only (See below).

7. Your apples intended for fresh-market will be insured under the quality provisions of either A or B, whichever you select.

8. If you select A only, A will apply to all of your apples intended for processing and fresh-market.

9. If you select B, those provisions will apply to all of your apples intended for fresh-market and the provisions of A will apply to all of your apples intended for processing.

10.a. You must select either A or B by marking the appropriate space below.

A——

In addition to section 9.e. and in lieu of 17.q. of the Apple Policy, your production to count for any acreage designated for processing or fresh-market will be adjusted when your apples are damaged by hail to the extent that such apples will not grade U.S. No.

1 (processing) (7 CFR 51.430 *et seq.*)). The adjustment factor (not to exceed 1) will be the ratio of the average market price (received by you or determined by us, whichever is larger) for your damaged production to the average market price for U.S. No. 1 (processing) apples. There will be no adjustment for quality if the apples do not grade U.S. No. 1 because of size, color, or russeting.

B——

In lieu of sections 9.e.(1), 9.e.(2), 17.1, and 17.q of the Apple Policy, the total production to be counted for a unit must include all harvested and appraised production. Harvested apple production which, due to hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards (7 CFR 51.300 *et seq.*), will be adjusted as follows:

(1) Production with 21 through 40 percent not grading U.S. Fancy or better due to hail damage will be reduced 2 percent for each percent in excess of 20 percent. The difference between the reduced production and the total production will be considered cull production.

(2) Production with 41 through 50 percent not grading U.S. Fancy or better due to hail damage will be reduced 40 percent plus an additonal 3 percent for each percent in excess of 40 percent. The difference between the reduced production and the total production will be considered cull production.

(3) Production with 51 through 64 percent not grading U.S. Fancy or better due to hail damage will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent. The difference between the reduced production and the total production will be considered cull production.

(4) Production with 65 percent or more not grading U.S. Fancy or better due to hail damage will be considered 100 percent cull production.

b. Apples which are knocked to the ground by wind or frozen to the extent that they can be harvested but not packed or marketed as fresh apples will be considered 100 percent cull production.

c. Fifteen (15) percent of all cull production will be counted as production.

d. No reduction in grade will be applied to any apple grading less than U.S. Fancy due solely to shape, russeting, or color.

e. Appraised production to be counted must include:

(1) Potential production lost due to uninsured causes and failure to follow recognized good apple management practices; and

(2) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed without our consent.

f. Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(1) Harvested;

(2) Further damaged by an insured cause and reappraised by us; or

(3) In whole or part knocked to the ground by wind or hail or frozen on the tree to the extent that harvest is not practical.

11. Your premium rate for Apples under either A or B, as elected by you, will be established by the actuarial table.

12. All provisions of the apple policy not in conflict with this option are applicable.

13. All determinations under this option will be made by us.

14. This Option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the policy, preceding such crop year.

Insured's Signature _____

Date _____

Corporation representative's signature and Code Number _____

Date _____

[50 FR 43655, Oct. 29, 1985, as amended at 53 FR 46846, Nov. 21, 1988]

§ 405.9 Apple sunburn option.

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Apple Sunburn Option

This is not a continuous option. Applications for this option must be made prior to the sale closing date if you want this optional coverage. Upon our approval this option is applicable *only* for the 19____ crop year.

Insured's name _____

Contract No. _____

Address _____

Crop Year _____

Identification No. _____

SSN _____

Tax _____

It is hereby agreed to amend the Federal Crop Insurance Apple Policy in accordance with the following terms and conditions:

1. This option must be submitted to us on or before the final date for accepting applications for each crop year in which you wish to insure apples under this option.

2. You must have an apple policy and the Apple Fresh Fruit Option B in force.

3. You must insure all the acreage of apples in the county to which the Apple Fresh Fruit Option B applies and in which you have a share.

4. In addition to the causes of loss specified in paragraph 1.a. of the Apple Crop Insurance policy, excess sun is an insurable cause of loss.

5. In lieu of sections 9.e.(1), 9.e.(2), 17.l, and 17.q. of the Apple Policy, the total production to be counted for a unit must include all harvested and appraised production. Harvested apple production which, due solely to excessive sun or along with hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards, will be adjusted as follows:

a. Production with 21 thru 40 percent not grading U.S. Fancy or better due solely to excessive sun or along with hail damage will be reduced 2 percent for each percent in excess of 20 percent. The difference between the reduced production and the total production will be considered cull production.

b. Production with 41 thru 50 percent not grading U.S. Fancy or better due solely to excessive sun or along with hail damage will be reduced 40 percent plus an additional 3 percent for each percent in excess of 40 percent. The difference between the reduced production and the total production will be considered cull production.

c. Production with 51 thru 64 percent not grading U.S. Fancy or better due solely to excessive sun or along with hail damage will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent. The difference between the reduced production and the total production will be considered cull production.

d. Production with 65 percent or more not grading U.S. Fancy or better due solely to excessive sun or along with hail damage will be considered 100 percent cull production.

Fifteen (15) percent of all cull production, will be counted as production.

6. The premium for this sunburn option will be established by the actuarial table.

7. All provisions of the apple policy and the Fresh Fruit Option–B not in conflict with this option are applicable.

8. All determinations under this option will be made by us.

9. a. *Excessive sun* is defined as the exposure of the unharvested apples to direct or indirect sun sufficient to cause the apples to grade less than U.S. Fancy due to sunburn.

b. *Sunburn* is defined in accordance with applicable U.S.D.A. Standards.

Insured's Signature _____

Date _____

Corporation representative's Signature and Code Number _____

Date _____

[53 FR 46846, Nov. 21, 1988; 54 FR 11935, Mar. 23, 1989]

PART 406—NURSERY CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1989 and Succeeding Crop Years

Sec.
406.1 Availability of nursery crop insurance.
406.2 Premium rates, amounts of insurance, and coverage levels at which indemnities shall be computed.
406.3 OMB control numbers.
406.4 Creditors.
406.5 Good faith reliance on misrepresentation.
406.6 The contract.
406.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506(l).

SOURCE: 54 FR 3412, Jan. 24, 1989, unless otherwise noted.

Subpart—Regulations for the 1989 and Succeeding Crop Years

§406.1 Availability of nursery crop insurance.

(a) Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act).

The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

(b) The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation (hereinafter ''Reinsured companies'') offer contracts containing substantially the same terms and conditions as the contract set out in this part.

(c) No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a Reinsured company.

(d) If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured.

(e) If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled.

(f) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

(g) An insured whose contract with the Corporation or with a Reinsured company under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a Reinsured company unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility.

(h) All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for a Contract under the Act and the present status of the applications or contracts.

§ 406.2 Premium rates, amounts of insurance, and coverage levels at which indemnities shall be computed.

(a) The Manager shall establish premium rates, amounts of insurance, and coverage levels, for the insured crop which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level from among those contained in the actuarial table for the crop year.

§ 406.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 406.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 406.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the nursery insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation or a Reinsured company:

(1) Is indebted to the Corporation or a Reinsured company for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the

insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation (the Manager in cases involving not more than $100,000) or a Reinsured company finds that:

(1) An agent or employee of the Corporation or a Reinsured company did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Request for relief under this section must be submitted, in writing, to the Corporation or to the Reinsured Company, whichever is applicable.

[54 FR 3412, Jan. 24, 1989, as amended at 54 FR 33494, Aug. 15, 1989]

§406.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation or a Reinsured company of a duly executed application for insurance on a form prescribed by the Corporation or a Reinsured company and payment of the premium due. The contract shall cover the nursery crop as provided in the policy. The contract shall consist of the application, the policy and any amendments thereto, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. No indemnity will 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 applicable service offices.

§406.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the nursery crop as owner if the person wishes to participate in the program. The application shall be submitted to the Corporation or a Reinsured company at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation or a Reinsured company may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) A contract in the form provided for in this subpart will come into effect as a continuation of the contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1989 through 1995 crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Nursery Crop Insurance Policy for the 1989 through 1995 crop years are as follows:

FEDERAL CROP INSURANCE CORPORATION

Nursery Crop Insurance

(This is a continuous contract. Refer to Section 15.)

NOTE: This is a contract with the Federal Crop Insurance Corporation, a United States Government Agency. The terms of the contract are published in the FEDERAL REGISTER under the provisions of the FEDERAL REGISTER Act (44 U.S.C. 1501), and may not be waived or varied in any way by the crop insurance agent or any other agent or employee of FCIC.

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with *ALL* provisions of the crop insurance contract.

Throughout this policy, ''you'' and ''your'' refer to the 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.

1. Insured Crops

a. The crops insured will be all nursery crops grown in the county in standard nursery containers which are listed on the eligible plant listing located in the actuarial table.

b. We do not insure any nursery crops which:

(1) Are not grown in standard nursery containers;

(2) Are not classified as woody, herbaceous, or foliage landscape plants;

(3) Produce citrus fruit or other edible fruits or berries;

(4) Are grown in the field;

(5) Are not listed on the eligible plant listing located in the actuarial table;

(6) Have not been inspected prior to submission of your application;

(7) Are inspected by us and determined unacceptable;

(8) Are not grown in a hardiness zone listed on the eligible plant listing for those crops; or

(9) Are not grown in accordance with the production practices for which premium rates have been established.

2. Causes of Loss

a. The insurance provided is against unavoidable damage resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table.

b. We do not insure against any loss caused by:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(2) The failure to follow recognized good production practices for nursery crops;

(3) Water contained by any governmental, public, or private dam or reservoir project;

(4) Flooding on any unit subject to a flood or water flowage easement;

(5) Failure or breakdown of irrigation equipment or facilities;

(6) Failure to carry out a good irrigation practice for the nursery crops;

(7) The inability to market the nursery crop as a direct result of quarantine, boycott or refusal of any entity to accept production;

(8) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled; or

(9) Any cause not specified in this policy as an insured cause of loss.

c. You must not obtain any other crop insurance under the Federal Crop Insurance Act (Multiple Peril Crop Insurance Policy or Federal Crop Insurance Policy) on the insured crops. More than one policy will result in our voiding the policies and collecting the premium from you unless the violation of this provision is found by us to have been inadvertent. If we determine that the violation was inadvertent, the policy with the earliest date of application will be the one in force and all other policies will be void. Nothing in this paragraph prevents the insured from obtaining other hail and fire insurance not issued under the Act and which is subject to the provisions of section 9 hereof.

d. Although your violation of a number of federal statutes including the Federal Crop Insurance Act may cause cancellation, termination, or voidance of your insurance contract, you are specifically directed to the provisions of Title XII of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated thereunder, generally referred to as the sodbuster, swampbuster, and controlled substance provisions. Your insurance policy will be cancelled if you are determined 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.

3. Nursery Crop Report

a. You must submit an annual crop report to us of all of your eligible nursery crops in the county by unit, type, container size, number of plants and wholesale price of plants for each month of the crop year. This report must be submitted on or before September 30 preceding the crop year.

b. Your crop report may be revised only with our consent.

c. We may determine all losses on the basis of information on your crop report or the inventory as determined by us.

d. You must designate separately any inventory which is not insurable. Your annual crop report will be used as the basis to determine your premium and the amount of insurance for each unit. If you do not submit the report by the reporting date, we may elect to determine the inventory for each unit or we may deny liability on any unit. Errors in reporting units may be corrected by us at the time of adjusting a loss.

4. Amount of Insurance and Coverage Level

a. The amount of insurance and coverage levels are contained in the actuarial table and must be elected on or before September 30 prior to the crop year.

b. You may change the amount of insurance and the coverage level on or before the sales closing date for that crop year.

5. Annual Premium.

a. The annual premium is earned and payable on or before September 30 preceding each crop year and will be earned in full when the policy becomes effective. Interest will begin to accrue on March 31 of the crop year. Premium will be delinquent on the termination date.

b. Except for the 1993 and 1994 crop years, coverage will not begin if the premium due under this policy is not paid when due and payable. For the 1993 and 1994 crop year only insurance will attach on October 1, preceding the crop year.

c. The annual premium amount for each unit is computed in accordance with these subsections:

(1) Develop an inventory of all eligible containerized crops, by type of crop and container size, for each month of the proposed policy period.

(2) Apply market values to these inventory numbers using your wholesale price list. If you discount prices published in your wholesale price list, the discounted prices must be used in calculating market values. Record these monthly values by type of crop on your insurance application.

(3) Add the total monthly market values separately for each type of crop and divide that monthly total for each crop by the number of months in the crop year to get the ''Average Monthly Market Value''.

(4) Add the Average Monthly Market Value for each of the eligible crops in the unit to get the ''Yearly Average''.

(5) Multiply the Yearly Average by 90% to obtain the ''Field Market Value''.

(6) Multiply Field Market Value by the coverage level.

(7) Multiply this result by the applicable premium rate contained in the actuarial table.

6. Amounts Due Us

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 balance due us. Interest will start on the date that notice is issued to you for the collection of any amount determined to be due. Interest, penalties and costs will be charged in accordance with 31 U.S.C. 3717 and 4 CFR 102.13. The penalty for accounts more than 90 days past due (31 U.S.C. 3717(e)(2)) is six percent (6%) per annum. Interest on any amount due us found to have been received by you because of fraud or misrepresentation will start on the date you received the amount with the penalty beginning 90 days after the notice of amount due is issued to you.

b. All amounts paid will be applied first to costs and penalties, second to accrued interest, and then to reduction of the principal balance.

c. 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, penalties or principal.

d. Any amount due us may be deducted from any indemnity payment due you, or 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 and from any amounts due you from any other United States Government Agency.

7. Insurance Period

Insurance attaches on October 1 and ends for each unit at the earliest of:

a. Sale or disposal of all or a portion of the crop;

b. Final adjustment of the loss on the part of the insured crop damaged; or

c. September 30 of the crop year.

8. Notice of Damage or Loss

In case of damage or probable loss you must:

a. Provide sufficient care to protect the crop from further damage;

b. Provide us with written notice within 72 hours of your discovery of the loss and obtain our written consent prior to:

(1) Destroying, selling or otherwise disposing of any crop that is damaged; or

(2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured crop; and

c. Upon our request, provide complete copies of your nursery crop wholesale price list for the 12-month period immediately preceding the loss and your marketing records for the same period.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Your loss; or

(2) September 30 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the value of the insured crop on the unit and that any loss of value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The production to count (containers) will be all plants eligible for insurance in a unit.

d. The indemnity will not exceed the lesser of:

(1) The amount of insurance applicable to the unit less 90% of the value of the crop remaining on the unit after the loss; or

(2) The amount, calculated for each unit as follows:

(a) Subtract field market value B from field market value A (see section 17) to determine the total amount of loss; and

(b) Subtract therefrom the annual loss deductible.

e. Annual Loss Deductible amounts will be applied on an annual aggregate loss deductible basis for each individual unit insured for the crop year. Individual insured losses occurring on the same unit during the crop year may be accumulated (but each loss must be reported and valued by us). The total amount of insured losses on a unit during the crop year, less the annual aggregate loss deductible applicable to that unit, is the amount payable under this policy for that unit during the crop year, as limited by the amount of insurance for that unit.

f. The value of production of any insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

g. 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.''

h. You must not abandon any part of the insured crop to us.

i. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

j. An indemnity will not be paid unless you comply with all policy provisions.

k. 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. (State and local laws to the contrary are not applicable to this insurance contract). We will pay simple interest computed on the net indemnity ultimately found to be due by us or by the 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 FCIC claim 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 will vary with each publication.

l. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

m. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. (For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire).

10. Concealment or Fraud

We may void the insurance contract on all crops without affecting your liability for premiums or waiving any right, including the right to collect any amount due us, if at any time, you have concealed or misrepresented any material fact or committed any fraud relating to this or any other contract with us. The voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to the applicable indemnity. 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 the contract consistent with the transferee's interest.

12. 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 may submit all notices and forms required to protect the insurance contract and to claim an indemnity.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Access to Nursery

Any person designated by us will have access to the nursery for purposes related to the contract.

15. Contract Term, Cancellation and Termination Dates

a. This contract will be in effect for the crop year specified on the application and may not be cancelled by you for such crop year after insurance attaches. Thereafter, the contract will continue in force for each succeeding crop year unless cancelled or terminated as provided in this section or unless the premium is not paid.

b. This contract may be cancelled by either you or us for any succeeding crop year by giving written notice on or before September 30, preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before September 30 preceding such crop year for the contract on which the amount is due.

d. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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. The contract will terminate if no premium is earned for three consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. The date by which contract changes will be available in your service office is August 15 preceding the crop year.

17. Meaning of Terms

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, and related information regarding crop insurance in the county.

b. *Amount of insurance* means the value computed by:

(1) multiplying the Yearly Average by .9 to equal field market value; and

(2) multiplying the result by the coverage level.

c. *Annual loss deductible* means the value computed by subtracting the amount of insurance from the Field Market Value for that unit.

d. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

e. *Crop* means all plants eligible for insurance on the unit as reported on the nursery crop report.

f. *Crop year* means the period beginning October 1 and extending through September 30 of the next calendar year and is designated by the year in which the crop year ends. (The 1988 crop year would be from October 1, 1987 through September 30, 1988).

g. *Field Market Value ''A''* means the total market value of the insured crop for the unit involved (prior to the loss occurrence) had the crop been sold in your markets for the values which would have been reasonably expected in the month which the loss occurred, less 10% of such market value to eliminate costs for packing, shipping and sales commissions or other expenses not insured.

h. *Field Market ''B''* means the total market value of the insured crop for the unit involved in the loss (following the loss occurrence) less 10% of such market value to eliminate costs for packing, shipping and sales commissions or other expenses not insured.

i. *Insured* means the person who submitted the application accepted by us and does not extend to any other person unless specifically indicated on the application and accepted by us.

j. *Insured crops* means the crops insured under the provisions of this policy.

k. *Loss ratio* means the ratio of indemnity to premium.

l. *Person* means a partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

m. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. *Unit* means all growing locations within a five mile radius of the name insured location designated on your crop report. Growing locations outside of the five mile radius of the name insured location but within the county may be designated in the unit or as a separate unit. If they are not designated in the unit or as a separate unit, they will be included in the closest unit listed.

18. Descriptive Headings

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

19. Determinations

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).

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Dates, Reports, and Notices

To preserve your rights under this insurance contract you are required to file a number of reports and notices with us by certain dates. The actual content requirements and time limits of those reports and notices are set out elsewhere in this contract and you must refer to those sections for those requirements.

As a convenience to you and without limitation on our rights under this contract, a short description of most of the dates, reports and notices have been compiled in this section. Omission of any date, report or notice, or any of the requirements thereof, from this section does not relieve you of the requirement to comply with the terms of this contract.

a. *Application*—A form required by subpart D of part 400 of 7 CFR and each individual program regulation. The application for insurance form must be completed and filed in the service office prior to the sales closing date (contained in the actuarial table) for the first crop year for which an insurance policy is requested by the insured.

b. *Assignment of indemnity*— A transfer of contract 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.

c. *Claim for indemnity* (See: section 9)—A claim made by the insured for damage or loss to the insured crop.

d. *Contract change date* The date by which FCIC makes any contract changes available for inspection in the service office (See: Section 16).

e. *Crop report*— A report required by section 3 of this contract. This report contains, in addition to other information, the report of the insured's share of all inventory of nursery crops in the county whether insurable or uninsurable and must be filed on or before September 30 prior to the crop year.

f. *Damage, notice of*— (See: Probable loss, Notice of).

g. *End of insurance period, Date of*— The date upon which the insured's crop insurance coverage ceases (See: section 7).

h. *Insurance attaches, Date*— October 1 of the crop year.

i. *Intent to abandon, Notice of*— The written notice to the Corporation by the insured indicating that because of damage from an insured cause, the insured has decided to no longer care for the crop.

j. *Probable loss, notice of*—A written notice required to be filed in the service office whenever an insured believes that the nursery crops have been damaged to the extent that a loss is probable (See: section 8).

k. *Reporting date*—The crop reporting date (contained in the Actuarial Table) by which you are required to report all your insurable and uninsurable inventory in the county in which you have a share at the time insurance attaches.

l. *Sales closing date*—The date contained in the actuarial table on file in the respective service office which sets out the final date when an application for insurance may be filed. The sales closing date of this policy is September 30.

22. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[54 FR 3412, Jan. 24, 1989; 54 FR 14206, Apr. 10, 1989, as amended at 55 FR 35888, Sept. 4, 1990; 57 FR 54683, Nov. 20, 1992; 58 FR 33508, June 18, 1993; 58 FR 46074, Sept. 1, 1993; 59 FR 35614, July 13, 1994; 59 FR 39414, Aug. 3, 1994; 60 FR 56935, Nov. 13, 1995]

PARTS 407–408 [RESERVED]

PART 409—ARIZONA-CALIFORNIA CITRUS INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

409.1 Availability of Arizona-California Citrus crop insurance.
409.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
409.3 OMB control numbers.
409.4 Creditors.
409.5 Good faith reliance on misrepresentation.
409.6 The contract.
409.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 50 FR 43662, Oct. 29, 1985, unless otherwise noted.

Subpart—Regulations for the 1987 and Succeeding Crop Years

§409.1 Availability of Arizona-California Citrus crop insurance.

Insurance shall be offered under the provisions of this subpart on citrus in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§409.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for Arizona-California citrus which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance per acre from among those amounts shown on the actuarial table for the crop year.

§409.3 OMB control numbers.

The OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§409.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§409.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Arizona-California Citrus insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§409.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the citrus crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§409.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the citrus crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the

insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a citrus insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at Subpart D of Part 400-General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Arizona-California Citrus Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Arizona—California Citrus Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; or

(7) Direct Mediterranean Fruit Fly damage;

unless those causes are expected, excluded, or limited by the actuarial table or section 9f(7).

b. We will not insure against any loss of production due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good citrus grove practices;

(4) The failure or breakdown of irrigation equipment or facilities;

(5) The failure to follow good citrus irrigation practices;

(6) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(7) Any cause not specified in section 1a as an insured loss;

2. Crop, Acreage, and Share Insured

a. The crop insured will be any of the following citrus types, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table, which you elect:

Type I—Navel oranges;

Type II—Sweet oranges;

Type III—Valencia oranges;

Type IV—Grapefruit;

Type V—Lemons;

Type VI—Kinnow mandarins;

Type VII—Minneola tangelos; or

Type VIII—Orlando tangelos;

b. The acreage insured for each crop year will be that acreage of citrus located on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured citrus on the date insurance attaches.

d. We do not insure any acreage:

(1) Which is not irrigated;

(2) On which the trees have not reached the sixth growing season after being set out; and

(3) Which does not have acceptable records of production, unless inspected by us and considered acceptable and we agree, in writing, to insure such acreage.

e. Insurance will not attach or be considered to have attached to any acreage of the crop, for the crop year the application is filed until the acreage has been inspected and accepted by us.

f. Insurance may attach only by written agreement with us on any acreage with less than 90 percent of a stand, based on the original planting pattern.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of Acreage, Share, Number of Trees, and Practice

You must report on our form:

a. All the acreage of citrus in the county in which you have a share;

b. The practice;

c. Your share on the date insurance attaches; and

d. The number of bearing trees.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any citrus grown in the county. This report must be submitted annually on or before January 10. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by January 10, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insurance acreage, times your share at the time insurance attaches.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1985 crop year under the terms of the experience table contained in the citrus policy in effect for the 1986 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1986 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you, or 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.

7. Insurance Period

a. Insurance attaches on December 1 prior to the calendar year of normal bloom, and ends at the earliest of:

(1) Total destruction of the citrus;

(2) Harvest of the citrus;

(3) Final adjustment of a loss; or

(4) The date following the year in which the bloom is normally set as follows:

(a) August 31 for Navel oranges and Southern California lemons;

(b) November 30 for Valencia oranges; or

(c) July 31 for all other types of citrus.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us prompt written notice.

(a) After insured damage to the citrus becomes apparent, giving the dates and causes of such damage; or

(b) If you decide not to further care for or harvest any part of it.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. If harvest will

begin after the end of the insurance period, notice must be given on or before the calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the citrus which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the citrus on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of citrus on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of citrus to be counted (see section 9f);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. If a determination is made that frost protection equipment was not properly utilized or not properly reported, the indemnity for the unit will be reduced by the percentage of premium reduction allowed for frost protection equipment. You must, at our request, provide us records showing the start-stop times by date for each period the equipment was used.

f. The total production (cartons) to be counted for each unit will include all harvested production marketed as fresh packed fruit and all appraised production determined to be marketable as fresh packed fruit.

(1) Any production will be considered marketed or marketable as fresh packed fruit unless, due to insurable causes, such production was not marketed or marketable as fresh packed fruit.

(2) In the absence of acceptable records to determine the disposition of harvested citrus, we may determine such disposition and the amount of such production to be counted for the unit.

(3) Appraised production to be counted will include:

(a) Unharvested production, and potential production lost due to uninsured causes and failure to follow recognized good citrus grove practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent.

(4) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before harvest of the insured citrus type becomes general in the county and reappraised by us;

(b) Harvested; or

(c) Further damaged by an insured cause and reappraised by us.

(5) Citrus which cannot be marketed due to insurable causes will not be considered production.

(6) The amount of production of any unharvested citrus may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the citrus is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

g. You must not abandon any acreage to us.

h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Grove

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all citrus produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the grove for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are November 30.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of Arizona-California citrus crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding citrus insurance in the county.

b. *Carton* as to each insured citrus type means the standard container for marketing fresh packed fruit as shown below by citrus type. In the absence of marketing records on such a carton basis, production will be converted to cartons on the basis of the following average net pounds of packed fruit in a standard packed carton.

Container size	Types of fruit	Pounds
Container #58	Navel oranges, Valencia oranges & Sweet oranges.	38
Container #58	Lemons	40
Container #59	Grapefruit	32
Container #63	Tangerines (including Tangelos) and Mandarin oranges.	25

c. *Contiguous land* means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

d. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

e. *Crop year* means the period beginning with the date insurance attaches to the citrus crop and extending through normal harvest time, and will be designated by the calendar year following the year in which the bloom is normally set.

f. *Direct Mediterranean Fruit Fly damage* means the actual physical damage to the citrus on the unit which causes such citrus to be unmarketable and will not include unmarketability of such citrus as a direct result of a quarantine, boycott, or refusal to accept the citrus by any entity without regard to actual physical damage to such citrus.

g. *Harvest* means the severance of mature citrus from the tree either by pulling, picking, or severing by mechanical or chemical means, or picking up the marketable fruit from the ground.

h. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

i. *Insured* means the person who submitted the application accepted by us.

j. *Loss ratio* means the ratio of indemnity to premium.

k. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

l. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. *Tenant* means a person who rents land from another person for a share of the citrus or a share of the proceeds therefrom.

n. *Unit* means all insurable acreage in the county of any one of the citrus types referred to in section 2 of this policy, located on contiguous land on the date insurance attaches 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the citrus on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[50 FR 43662, Oct. 29, 1985, as amended at 51 FR 29205—29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 54 FR 38962, Sept. 22, 1989; 55 FR 35888, Sept. 4, 1990]

PARTS 410–411 [RESERVED]

PART 412—PUBLIC INFORMATION

FREEDOM OF INFORMATION

Sec.
412.1 General statement.
412.2 Public inspection and copying.
412.3 Index.
412.4 Requests for records.
412.5 Appeals.
412.6 OMB control numbers.

AUTHORITY: 5 U S.C. 301, 552; 7 CFR 1.1–1.16; 7 U.S.C 1516(b).

SOURCE: 51 FR 35204, Oct. 2, 1986, unless otherwise noted.

FREEDOM OF INFORMATION

§412.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR 1.1–1.16, and Appendix A, implementing the Freedom of Information Act (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern availability of records of the Federal Crop Insurance Corporation (FCIC) to the public.

§412.2 Public inspection and copying.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying. Members of the public may request access to such materials maintained by the FCIC at the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Agriculture Building, U.S Department of Agriculture, Washington, DC, 20250, from 8:15 a.m. to 4:45 p.m., Monday through Friday, or at the office of any FCIC Field Operations Office Director during the regular operating hours of that office. To obtain the addresses of Field Operations Offices, either call or write the Deputy Manager, FCIC, Room 4096, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447–6795. When the information desired is not available at a given FCIC location, the FCIC office where the request is received will assist the requester by directing the request to another FCIC office where the information may be obtained. The requester will be informed that the request has been forwarded to the appropriate FCIC office. Except for such information as is generally available to the public, requests should be made in writing and submitted in accordance with 7 CFR 1.3 and 412.4 of this part.

§412.3 Index.

5 U.S.C. 552(a)(2) requires that each agency publish, or otherwise make available, a current index of all materials available for public inspection and copying. The FCIC will maintain a current index providing identifying information for the public as to any material issued, adopted, or promulgated by the Corporation since July 4, 1967, and required by section 552(a)(2). Pursuant to the Freedom of Information Act provisions, FCIC has determined that in view of the small number of public requests for such index, publication of such an index would be unnecessary and impracticable. Copies of the index will be available upon request in person or by mail to the Records Management Officer, Federal Crop Insurance Corporation, Room 4606, South Agriculture Building, U.S. Department of Agriculture, Washington, DC 20250.

§412.4 Requests for records.

The Deputy Manager, FCIC, located in Washington, DC, and all Directors of Field Operations Offices are authorized to receive requests for records submitted in accordance with 7 CFR 1.3(a), and to make determinations whether to grant or deny these requests, and

other determinations in accordance with 7 CFR 1.4(c).

§ 412.5 Appeals.

Any person whose request under § 412.4 above is denied shall have the right to appeal such denial. This appeal shall be submitted in accordance with 7 CFR 1.3(e) and addressed to the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250.

§ 412.6 OMB control numbers.

OMB control numbers are contained in subpart H to part 400, title 7 CFR.

PART 413 [RESERVED]

PART 414—FORAGE SEEDING CROP INSURANCE

Subpart—Regulations for the 1981 and Succeeding Crop Years

Sec.

414.1 Availability of forage seeding crop insurance.
414.2 Premium rates and amounts of insurance.
414.3 OMB control numbers.
414.4 Creditors.
414.5 Good faith reliance on misrepresentation.
414.6 The contract.
414.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 45 FR 49511, July 25, 1980, unless otherwise noted.

Subpart—Regulations for the 1981 and Succeeding Crop Years

§ 414.1 Availability of forage seeding crop insurance.

Insurance shall be offered under the provisions of this subpart on Forage Seeding in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

[50 FR 27928, July 9, 1985]

§ 414.2 Premium rates and amounts of insurance.

(a) The Manager shall establish premium rates and amounts of insurance for forage seeding which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect an amount of insurance from among those amounts shown on the actuarial table for the crop year.

§ 414.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR part 414) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0563–0003 and 0563–0007.

[Amdt. No. 2, 49 FR 6335, Feb. 21, 1984]

§ 414.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 414.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the forage seeding insurance contract, whenever

(a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds

(1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

[45 FR 49511, July 25, 1980, as amended at 48 FR 48451, Oct. 19, 1983]

§414.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the Forage Seeding crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service office.

[50 FR 27928, July 9, 1985]

§414.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the forage seeding crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the office for the county and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1978 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a forage seeding contract issued under such prior regulations, without the filing of a new application.

(d) The application for 1984 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37 and 400.38), first published at 48 FR 1023, January 10, 1983, and may be amended from time to time for subsequent crop years. The provisions of the Forage Seeding Insurance Policy for the 1984 and succeeding crop years, are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Forage Seeding—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We shall provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of or failure to establish a stand of forage resulting from any of the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake; or

(7) Volcanic eruption unless those causes are excepted, excluded, or limited by the actuarial table or section 9h.

b. We shall not insure against any loss of production due to:

(1) The neglect or malfeasance of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good forage seeding practices;

(3) Damage resulting from the impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured shall be forage seeded or reseeded (hereafter called the crop) to establish a stand of forage intended for harvest as livestock feed; which is seeded on insured acreage; and for which an amount of insurance and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year shall be acreage of the crop seeded on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we shall elect.

c. The insured share shall be your share as landlord, owner-operator, or tenant in the insured crop at the time of seeding.

d. We do not insure any acreage:

(1) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for in the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to reseed to the crop, and such acreage was not reseeded;

(4) Initially seeded after the final seeding date contained in the actuarial table;

(5) Of volunteer forage;

(6) Seeded to a type, variety or mixture not established as adapted to the area or excluded in the actuarial table;

(7) Seeded with another crop (excluding nurse crops); or

(8) Seeded for the development or production of hybrid seed or for experimental purposes.

e. Where insurance is provided for an irrigated practice:

(1) You shall report as irrigated only the acreage for which you have adequate facilities and water to carry out a good forage seeding irrigation practice at the time of seeding; and

(2) Any loss of production caused by failure to carry out a good forage seeding irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of seeding, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to seeding.

3. Report of Acreage and Share

You shall report on our form:

a. All the acreage of forage seeding and reseeding in the county in which you have a share; and

b. Your share at the time of seeding or reseeding.

You shall designate separately any acreage that is not insurable. You shall report if you do not have a share in any forage seeding or reseeding in the county. This report shall be submitted annually on or before the reporting date established by the actuarial table. We may determine all indemnities on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage and share or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of Insurance

a. The amounts of insurance will be contained in the actuarial table.

b. You may change the amount of insurance on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual Premium

a. The annual premium is earned and payable at the time of seeding. The amount is computed by multiplying the amount of insurance times the premium rate, times the insured acreage, times you share at the time of seeding, times the applicable premium adjustment percentage contained in the following table.

PREMIUM ADJUSTMENT TABLE [1]

[Percent adjustments for favorable continuous insurance experience]

	Numbers of years continuous experience through previous year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
.00 to .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 to .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 to .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 to .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 to 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

[Percent adjustments for unfavorable insurance experience]

	Numbers of loss years through previous year [3]															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
	Percentage adjustment factor for current crop year															
Loss ratio [2] through previous crop year																
1.10 to 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 to 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 to 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 to 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 to 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 to 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 to 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 to 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 to 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 and up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

[1] For premium adjustment purposes, only the years during which premiums were earned shall be considered.
[2] Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.
[3] Only the most recent 15 crop years shall be used to determine the number of ''Loss Years''. (A crop year is determined to be a ''Loss Year'' when the amount of indemnity for the year exceeds the premium for the year.)

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. Any premium adjustment applicable to the contract shall be transferred to:

(1) The contract of your estate or surviving spouse if you die;

(2) The contract of the person who succeeds you if such person had previously participated in the farming operation; or

(3) Your contract if you stop farming in one county and start farming in another county.

d. If participation is not continuous, any premium shall be computed on the basis of previous unfavorable insurance experience but no premium reduction under section 5a shall be applicable.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance attaches at the time of seeding and ends at the earliest of:

a. Total destruction of the crop;

b. Harvest of the forage crop if not reseeded;

c. Final adjustment of a loss;

d. May 21 following the calendar year of seeding for spring-seeded forage; or

e. October 15 following the calendar year of seeding for fall-seeded forage.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the crop on any unit is damaged and you decide:

(i) Not to further care for the crop; or

(ii) To reseed the acreage in the spring by the final seeding date for spring-seeded acreage;

(b) You want our consent to put the acreage to another use. Insured acreage may not be put to another use until we have appraised the crop and given written consent. We shall not consent to another use until it is too late to reseed. You must notify us when such acreage is put to another use.

(2) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earlier of:

(a) Total destruction of the crop on the unit; or

(b) The calendar date for the end of the insurance period.

b. You must obtain our written consent before you destroy any of the crop which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

a. Any claim for indemnity on a unit shall be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the crop on the unit; or

(2) The calendar date for the end of the insurance period.

b. We shall not pay any indemnity unless you:

(1) Establish the acreage seeded on the unit and that any loss has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity shall be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance;

(2) Subtracting therefrom the total amount obtained by multiplying the sum of the acres with an established stand plus 10 percent of the seeded acres for the unit times the amount of insurance; and

(3) Multiplying this result by your share.

d. If the information reported by you results in a lower premium than the actual premium determined to be due, the indemnity shall be reduced proportionately.

e. The acres with an established stand shall include:

(1) Acreage which has at least 75 percent of a normal stand;

(2) Acreage abandoned or put to another use without our prior written consent;

(3) Acreage damaged solely by an uninsured cause; or

(4) Acreage which is harvested and not reseeded.

f. The amount of indemnity on any spring-seeded acreage determined in accordance with section 9c shall be reduced 50 percent if the stand is less than 75 percent but more than 55 percent of a normal stand.

g. A reseeding payment shall be made on any insured fall-seeded acreage with less than a 75 percent stand on which we have given written consent to reseed and which is reseeded in the next succeeding spring by the final spring seeding date. The amount of the reseeding payment shall be equal to 50 percent of the amount of indemnity determined in accordance with section 9c.

h. When you have elected to exclude hail and fire as insured causes of loss and the crop is damaged by hail or fire, appraisals for uninsured causes shall be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire''.

i. You shall not abandon any acreage to us.

j. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

k. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim form indemnity form, 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 semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury. Interest will be paid in accordance with this section beginning with all claims for payment of indemnity initially filed on or after March 1, 1985.

l. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the seeding for any crop year, any indemnity shall be paid to the person(s) we determine to be beneficially entitled thereto.

m. If you have other fire insurance and fire damage occurs during the insurance period,

and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

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

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee shall have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may only assign to another party your right to an indemnity for the crop year on our form and with our approval. The assignee shall have the right to submit the loss notices and forms required by the contract.

13. 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 any such rights. If we pay you for your loss then your right of recovery shall at our option belong to us. If we recover more than we paid you plus our expenses, the excess shall be paid to you.

14. Records and Access to Farm

You shall keep, for two years after the time of loss, records of the seeding on each unit including separate records showing the same information for seeding on any uninsured acreage. Any person designated by us shall have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, the contract shall continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract shall terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim shall be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture shall be the date such payment was approved.

d. The cancellation and termination dates are:

State	Cancellation termination date
New Hampshire, New York, Pennsylvania, Vermont.	July 31.
All other states	April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution. *However,* if such event occurs after insurance attaches for any crop year, the contract shall continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership shall 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 shall dissolve the joint entity.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your amount of insurance is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by December 31 for counties with an April 15 cancellation date (January 20, 1986, for the 1985, 1986 transition) and by April 30 for all other counties.

Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of forage seeding crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amounts of insurance, premium rates, insurable and uninsurable acreage, and related information regarding forage seeding insurance in the county.

b. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. *Crop year* means the period within which the seeding is or normally would become established and shall be designated by the calendar year in which the seeding is made for spring-seeded acreage and the next succeeding calendar year for fall-seeded acreage.

d. *Harvest* means the severance of the forage plant from the land for the intended use as livestock feed.

e. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

f. *Insured* means the person who submitted the application accepted by us.

g. *Person* means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. *Reseed* means the mechanical incorporation of seed into the soil at not less than 50 percent of the original seeding rate.

i. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. *Tenant* means a person who rents land from another person for a share of the crop or a share of the proceeds therefrom.

k. *Unit* means all insurable acreage of either fall-seeded or spring-seeded forage in the county on the date of seeding 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to guidelines on file in your service office or by written agreement with. Units as herein defined will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

All determinations required by the policy shall be made by us. If you disagree with our determinations you may obtain reconsideration of or appeal those determinations in accordance with FCIC Appeal Regulations.

20. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirements. Notices required to be given immediately may be by telephone or in person and confirmed in writing. The time of the notice will be determined at the time of our receipt of the written notice.

[45 FR 49511, July 25, 1980, as amended by Amdt. 2, 49 FR 6335, Feb. 21, 1984; 50 FR 49027, Nov. 29, 1985; 50 FR 52758, Dec. 26, 1985; 51 FR 7546, Mar. 5, 1986; 51 FR 29205, Aug. 15, 1986; 52 FR 3214, Feb. 3, 1987; 55 FR 50814, Dec. 11, 1990]

PART 415—FORAGE PRODUCTION CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

415.1 Availability of forage production crop insurance.
415.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
415.3 OMB control numbers.
415.4 Creditors.
415.5 Good faith reliance on misrepresentation.
415.6 The contract.
415.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 50 FR 26341, June 26, 1985, unless otherwise noted.

Subpart—Regulations for the 1986 and Succeeding Crop Years

§415.1 Availability of forage production crop insurance.

Insurance shall be offered under the provisions of this subpart on forage production in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

[50 FR 27928, July 9, 1985]

§415.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for forage production which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§415.3 OMB control numbers.

OMB control numbers are contained in subpart H to part 400 in title 7 CFR.

§415.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§415.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the forage production insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Application for relief under this section must be submitted to the Corporation in writing.

§415.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the forage production crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table.

Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service office.

[50 FR 27928, July 9, 1985]

§ 415.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the forage production crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a forage production contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Forage Production Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Forage Production Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following losses occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption ; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good forage production farming practices;

(3) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be forage which is planted for harvest as livestock feed, which is grown on insured acreage, and for which we provide a guarantee and premium rate in the actuarial table.

b. The acreage insured for each crop year will be forage planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured forage at the time insurance attaches.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) If forage ground cover is less than 75 percent at the beginning of the insurance period;

(4) If the current age of the forage stand exceeds the limitations established by the actuarial table unless otherwise approved in writing by us;

(5) Planted to a type or variety or mixture not estabished as adapted to the area or excluded by the actuarial table;

(6) Grown with another crop; or

(7) Grown for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good forage irrigation practice at the time insurance attaches; and

(2) Any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after insurance attaches, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the time insurance attaches.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of insurable types of forage grown in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any forage grown in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established in the actuarial table.

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable at the time insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1948 crop year under the terms of the experience table contained in the forage production policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year.

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

a. Insurance attaches on acreage with an adequate stand:

(1) For the calendar year following the year of seeding on:

(a) February 1 for spring-seeded forage in California;

(b) April 15 for spring-seeded forage in Colorado, Idaho, Nebraska, Nevada, Oregon, Utah, and Washington;

(c) May 22 for spring-seeded forage in Iowa, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Wyoming and all other states;

(d) October 16 for fall-seeded forage in all states except California; and

(e) December 16 for fall-seeded forage in California.

(2) For subsequent years on:

(a) October 16 in all states except California; and

(b) January 1 in California.

b. Insurance ends at the earliest of:

(1) Total destruction of the forage crop;

(2) Removal from the windrow or the field;

(3) Final adjustment of a loss; or

(4) The following dates of the calendar year in which the majority of the forage is normally harvested:

(a) All states except California .....October 15.
(b) California.....December 31.

8. Notice of Damage or Loss

a. In case of damage or probable loss, you must give us written notice if:

(1) During the period before harvest, the forage on any unit is damaged and you decide not to further care for or harvest any part of it;

(2) You want our consent to put the acreage to another use; or

(3) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the forage and given written consent. You must notify us when such acreage is put to another use.

b. If you are going to claim an indemnity on any unit, you must give us notice:

(1) Of probable loss at least 15 days before the beginning of any cutting or immediately, if probable loss is later determined; and

(2) At least 5 days before any feeding of the insured forage begins. The notice before feeding must include the number of acres harvested and tons produced from each unit.

c. You must obtain written consent from us before you destroy any of the forage which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the forage on the unit;

(2) Final harvest of the units; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of forage on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of forage to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production.

(1) Any production from volunteer plants growing in the forage will be counted as forage on a weight basis.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good forage farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(3) When forage is harvested as other than air-dry hay, the production to count will be adjusted to the equivalent of air-dry hay.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of forage becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) We may determine the amount of production of any unharvested forage on the basis of field appraisals conducted after the normal time for each cutting for the area.

(6) If you elect to exclude hail and fire as insured causes of loss and the forage is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, 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 semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance 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 contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of recovery will at out option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipments, sale, or other disposition of all forage produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign such claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

d. The cancellation and termination date is:

State	Cancellation and termination date
All States	Nov. 30.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 15 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of forage production crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding forage production insurance in the county.

b. *Alfalfa* means a pure stand of alfalfa or a stand of alfalfa and grass in which 60 percent or more of the ground cover is alfalfa.

c. *Alfalfa-grass mixture* means a mixed stand of alfalfa and grass in which alfalfa comprises more than 25 percent but less than 60 percent of the ground cover.

d. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

e. *Crop year* means the period from the date insurance attaches until harvest is normally completed and will be designated by the calendar year in which the majority of the forage is normally harvested.

f. *Cutting* means the severance of the forage plant from the land for the purpose of livestock feed.

g. *Forage* means Alfalfa, Alfalfa Grass-mixture or Grass-mixture.

h. *Grass-mixture* means a mixed stand of locally recognized forage grasses and alfalfa in which alfalfa comprises less than 25 percent of the ground cover.

i. *Harvest* means the removal from the windrow or field.

j. *Insurable acreage* means the land classified as insurable by us and shown as such in the actuarial table.

k. *Insured* means the person who submitted the application accepted by us.

l. *Loss ratio* means the ratio of indemnity(ies) to premium(s).

m. *Person* means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

n. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

o. *Tenant* means a person who rents land from another person for a share of the forage production or a share of the proceeds therefrom.

p. *Unit* means all insurable acreage of forage in the county on the date insurance attaches:

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

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

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the forage on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

[50 FR 26341, June 26, 1985; 50 FR 32160, Aug. 9, 1985; 50 FR 49027, Nov. 27, 1985; 51 FR 29205—29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 55 FR 40789, Oct. 5, 1990; 58 FR 33509, June 18, 1993]

PART 416—PEA CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

416.1 Availability of pea crop insurance.
416.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
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AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 50 FR 7729, Feb. 26, 1985, unless otherwise noted.

Subpart—Regulations for the 1986 and Succeeding Crop Years

§416.1 Availability of pea crop insurance.

Insurance shall be offered under the provisions of this subpart on pea crop in counties within limits prescribed by, and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

[50 FR 27928, July 9, 1985]

§416.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for peas which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§416.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR part 416) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§416.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 416.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the pea insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, find that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 416.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the pea crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

[50 FR 27928, July 9, 1985]

§ 416.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the pea crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a pea contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Pea Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Pea—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown in the accepted Application and ''we,'' ''us'' and ''our'' refer to the Federal Crop Insurance Corporation.

TERMS AND CONDITIONS

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease on acreage not planted to peas the previous crop year;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are expected, excluded, or limited by the actuarial table or section 9e(8).

b. We will not insure against loss of production due to:

(1) Green peas not being timely harvested unless such delay in harvesting is solely and directly due to adverse weather conditions, (specifically, no indemnity will be paid if the delay in harvesting is in any way caused by the non-availability of labor or equipment, by the volume of peas ready for harvest at approximately the same time, or by any other reason except adverse weather conditions);

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(3) The failure to follow recognized good pea farming practices;

(4) The impoundment of water by any governmental, public or private dam or reservoir project; or

(5) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be either green peas or day peas which are planted for harvest as peas, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be peas planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured peas at the time of planting.

d. We do not insure any acreage:

(1) Of green peas not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (the contract must be executed and be effective before you report your acreage);

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed; it is practical to replant to the same type of green peas or the same varietal group of dry peas; and such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table;

(6) Of volunteer peas;

(7) Planted to a type or variety of peas not established as adapted to the area or excluded by the actuarial table;

(8) Planted with a crop other than peas; or

(9) Planted for the development or production of hybrid seed or for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good irrigation practice for peas at the time of planting; and

(2) Any loss of production caused by failure to carry out a good pea irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

g. An instrument in the form of a ''lease'' under which you retain control of the acreage on which the insured peas are grown and which provides for delivery of the peas under certain conditions and at a stipulated price will, for the purpose of this contract, be treated as a contract under which you have the share in the peas.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of peas in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any peas planted in the county. This report must be submitted

annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee, times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience throughout the 1984 crop year under the terms of the Experience Table contained in the pea policy for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1985 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will be applicable, and

(5) Participation must be continuous.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance attaches when the peas are planted and ends at the earliest of:

a. Total destruction of the peas;

b. Combining, vining, or removal from the field;

c. Final adjustment of a loss;

d. For green peas, the date the green peas should have been harvested unless we give consent to harvest the green peas as dry peas; or

e. September 15 of the calendar year in which peas are normally harvested.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us notice if:

(a) During the period before harvest, the peas on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) During the period before harvest, the green peas on any unit are damaged and you want our consent to harvest the green peas as dry peas;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the peas and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) If you anticipate a loss on any dry pea unit, you must give us notice:

(a) At least 15 days before the beginning of harvest; or

(b) Immediately, if probable loss is later determined on dry peas. A representative sample of the unharvested dry peas (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(3) If you anticipate a loss on any green pea unit, you must give us notice:

(a) Not later than 15 days before the beginning of harvest; or

(b) Not later than 48 hours after:

(i) Total destruction of the green peas on the unit; or

(ii) Discontinuance of harvest on the unit prior to completion.

If such notice is not given or if the unharvested acreage is not left unharvested, the appraisal on such acreage will be the production guarantee.

(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earlier of:

(a) Harvest of the unit; or

(b) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the peas which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peas on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of peas on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of peas to be counted (see section 9e);

(3) Multiplying the remainder by:

(a) Dry peas—the price election; or

(b) Green peas—the lower of

(i) The applicable contract price per pound for the tenderometer or serve size contained in the actuarial table; or

(ii) Your price election for such peas; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable will count against the production guarantee.

e. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) If, due to insurable causes, mature dry pea production does not grade No. 3 or better, or lentils do not grade No. 2 or better, in accordance with the Official United States Standards for dry peas and lentils, the production will be adjusted by:

(a) Dividing the value per pound of such peas by the price per pound for the same variety of dry peas grading No. 3 (No. 2 for lentils); and

(b) Multiplying the result by the number of pounds of such peas. The applicable price for No. 3 dry peas (No. 2 lentils) will be the local market price on the earlier of the day the loss is adjusted or the day the peas were sold.

(2) The pounds of production for harvested green peas will be determined by dividing the dollar amount received from the processor by the contract price for the tenderometer reading or sieve size designated by the actuarial table.

(3) If any acreage of green peas is not timely harvested, the production to count will be the greater of:

(a) The appraised production with no adjustment for quality; or

(b) The dollar amount received from the processor divided by the processor's contract price per pound for the tenderometer reading or sieve size designated by the actuarial table.

(4) If any acreage reported as green peas is harvested as dry peas or we have given consent for the acreage to be harvested as dry peas, the guarantee for such acreage will be reduced 40 percent.

(5) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good pea farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(6) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of peas becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(7) The amount of production of any unharvested peas may be determined on the basis of field appraisals conducted after the end of the insurance period.

(8) If you have elected to exclude hail and fire as insured causes of loss and the peas are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire''.

(9) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim form indemnity form, 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 semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury. Interest will be paid in accordance with this section beginning with all claims for payment of indemnity initially filed on or after March 1, 1985.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the peas are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount;

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all peas produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and set-off are approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date (January 20, 1986, for the 1985, 1986 transition). Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of pea crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding pea insurance in the county.

b. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. *Crop year* means the period within which the peas are normally grown and is designated by the calendar year in which the peas are normally harvested.

d. *Combining* (See ''Vining'')

e. *Harvest* as to any green pea acreage means the vining or combining and acceptance by the processor of the peas from such acreage. ''Harvest'' as to any dry pea acreage means combining peas which are or could be marketed as dry peas.

f. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

g. *Insured* means the person who submitted the application accepted by us.

h. *Loss ratio* means the ratio of indemnity(ies) to premium(s).

i. *Person* means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. *Peas* mean either:

(1) Canning and freezing peas (''green peas'') grown under contract with a processor executed before you report your acreage; or

(2) All spring-planted smooth green and yellow, and wrinkled varieties of dry peas and lentils (''dry peas'').

k. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. *Tenant* means a person who rents land from another person for a share of the peas or a share of the proceeds therefrom.

m. *Unit* means all insurable acreage of any one type of green peas or varietal group of dry peas (see the actuarial table) in the county on the date of planting 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peas on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share of the bona fide share of any other person having an interest therein.

n. *Vining* or *combining* means separating the peas from the pods.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[50 FR 7729, Feb. 26, 1985, as amended at 50 FR 49027, Nov. 29, 1985; Amdt. 1, 50 FR 49921, Dec. 6, 1985; 50 FR 52758, Dec. 26, 1985; Amdt. 1, 51 FR 7546, 7547, Mar. 5, 1986; 51 FR 29205—29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 54 FR 20507, May 12, 1989; 55 FR 35888, Sept. 4, 1990]

PARTS 417–421 [RESERVED]

PART 422—POTATO CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in Certain California Counties and Florida)

Sec.

422.1 Availability of potato crop insurance.
422.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
422.3 OMB control numbers.
422.4 Creditors.
422.5 Good faith reliance on misrepresentation.
422.6 The contract.
422.7 The application and policy.
422.8 Certified seed potato option amendment.
422.9 Quality potato option.
422.10 Frost/freeze option.
422.11 Processing potato quality option.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 51 FR 5690, Feb. 18, 1986, unless otherwise noted.

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in Certain California Counties and Florida)

§ 422.1 Availability of potato crop insurance.

Insurance shall be offered under the provisions of this subpart on potatoes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 422.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for potatoes which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 422.3 OMB control numbers.

The OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 422.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§422.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the potato insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§422.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the potato crop as provided in the policy. The contract shall consist of the application, the policy, the Certified Seed Potato Option Amendment, if applicable, the Quality Potato Option Amendment, if applicable, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§422.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the potato crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period.

However, if adverse conditions should develop during the such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a potato insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Potato Crop Insurance Policy for the 1986 and succeeding crop years (1987 and succeeding crop years in certain California counties and Florida) are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Potato—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are expected, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the potatoes have been placed in storage;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good potato irrigation practices;

(4) The failure or breakdown of irrigation equipment or facilities;

(5) The failure to follow recognized good potato farming practices;

(6) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(7) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be potatoes planted for harvest as certified seed stock or for human consumption, grown on insured acreage, and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be potatoes planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured potatoes at the time of each planting period. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) Planted with noncertified seed unless allowed by the actuarial table;

(2) Which does not meet the rotation procedures required by the actuarial table;

(3) Where the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(5) Which is destroyed, it is practical to replant to potatoes, and such acreage is not replanted;

(6) Initially planted after the final planting date set by the actuarial table unless you agree, in writing, on our form to coverage reduction;

(7) Of volunteer potatoes;

(8) Planted to a type or variety of potatoes not established as adapted to the area or excluded by the actuarial table;

(9) Planted with a crop other than potatoes; or

(10) Planted for the development or production of hybrid seed or for experimental purposes.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good potato irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter, spring, and summer-planted potatoes in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any potatoes planted in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting

date, we may elect to determine, by unit, for each planting period, the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the experience table contained in the potato policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year.

(2) The premium reduction will not increase because of favorable experience.

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year.

(4) Once the loss ratio exceeds .80, no further premium reduction will apply.

(5) Participation must be continuous.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

a. Insurance attaches when the potatoes are planted (in Alabama, California and Florida insurance attaches when the potatoes are planted in each planting period).

b. Insurance ends at the earliest of:

(1) Total destruction of the potatoes on the unit;

(2) Harvesting or removal from the field;

(3) Final adjustment of a loss;

(4) The following dates of the calendar year in which the potatoes are normally harvested:

(a) Missouri and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Knox, Lamb, and Parmer—July 15;

(b) North Carolina—July 25;

(c) Virginia, and Knox County, Texas—August 15;

(d) Alaska—October 1;

(e) Nebraska and Wyoming—October 10;

(f) Connecticut, Massachusetts, Nevada, New York and Pennsylvania—October 31;

(g) Idaho, Maine, Oregon, and Washington (Russett type only)—October 31;

(h) Idaho, Maine, Oregon, and Washington (all other types)—October 15;

(i) Alabama, California, and Florida, the dates established by the actuarial table for each planting period; and

(j) Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, and Parmer Counties, Texas, and all other states—October 15.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the potatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the potatoes and given written consent. We will not consent to another use until it is too late to replant for that planting period. You must notify us when such acreage has been put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested potatoes (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the potatoes on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. We must be given the opportunity to inspect any harvested production on any unit for which you have given notice of probable loss if such production will not be delivered directly to a processing plant.

c. You must obtain written consent from us before you destroy any of the potatoes which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the potatoes on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of potatoes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Substracting therefrom the total production of potatoes to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in hundredweight) to be counted for a unit will include all harvested and appraised production.

(1) The extent of any loss may be determined at the time the potatoes are placed in storage or delivered to a processor.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production loss due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than the guarantee for any acreage from which the harvested production is disposed of without our prior written consent and such disposition prevents accurate determination of production; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent for another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of potatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested potatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the potatoes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless all policy provisions are complied with.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared imcompetent, or if you are an entity other than an individual and such entity is dissolved after the potatoes are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment of Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our prescribed form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expensse, the excess will be paid to you.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all potatoes produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Manatee, Hardee, Highlands, Okeechobee, and St. Lucie Counties, Florida, and all Florida counties lying south thereof.	Sept. 30.
Contra Costa, San Joaquin, Calaveras, and Alpine Counties, California, and all California counties lying south thereof, and all Texas counties except Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Knox, Lamb, and Parmer.	Nov. 30.
Alabama, Delaware, Maryland, Missouri, New Jersey, North Carolina, Virginia, and all other Florida counties.	Dec. 31.
Knox County, Texas (effective beginning with the 1988 crop year).	Feb. 28.
Bailey, Castro, Dallam, Deaf Smith, Floyd, Gaines, Hale, Hartley, Lamb, and Parmer counties, Texas, all other California counties and all other states.	Apr. 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

a. August 15 prior to the cancellation date for counties with a September 30 cancellation date;

b. September 30 preceding the cancellation date for counties with a November 30 or December 31 cancellation date; or

c. December 31 preceding the cancellation date for counties with an April 15 cancellation date.

Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of potato crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding potato insurance in the county.

b. *ASCS* means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. *County* means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by the same ASCS farm serial number for the county but physically located in another county within the State.

d. *Crop year* means the period within which the potatoes are normally grown and is designated by the calendar year in which the spring-planted potatoes are normally harvested.

e. *Harvest* means the digging of potatoes on the unit.

f. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

g. *Insured* means the person who submitted the application accepted by us.

h. *Loss ratio* means the ratio of indemnity to premium.

i. *Person* means 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.

j. *Planting period* means potatoes planted within the dates set by the actuarial table, as fall-planted, winter-planted, spring-planted, or summer-planted

k. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. *Tenant* means a person who rents land from another person for a share of the potatoes or a share of the proceeds therefrom.

m. *Unit* means all insurable acreage of potatoes in the county on the date of planting for the crop year:

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

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

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the potatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your

spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[51 FR 5690, Feb. 18, 1986, as amended at 51 FR 29205—29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 23425, June 22, 1987; 53 FR 6115, Mar. 1, 1988; 54 FR 20508, May 12, 1989; 54 FR 43277, Oct. 24, 1989; 55 FR 35888, Sept. 4, 1990; 58 FR 33508, June 18, 1993]

§422.8 Certified seed potato option amendment.

(a) Notwithstanding the provisons of §422.7(d)(9)(e) of this part, an insured producer may, upon submission and approval of a Certified Seed Potato Option Amendment elect to insure all of the insurable acreage of potatoes grown for certified seed in which the insured has a share, under the provisions of the Certified Seed Potato Option Amendment. To be eligible for this amendment:

(1) Insurance must be in effect under the provisions of the potato policy,

(2) All potatoes grown for seed must be insured;

(3) The insured must be a certified seed producer having acceptable production records; and

(4) The management practices required for the production of certified seed potatoes as stated in the amendment must be met.

The Certified Seed Potato Option Amendment shall be applicable only for one crop year. A new amendment must be submitted for each subsequent crop year.

(b) For those insureds who elect to insure potatoes under this Amendment, all provisions of the Potato crop insurance policy shall apply except those in conflict with the amendment. The terms of the amendment are:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Potato Crop Insurance Policy

Certified Seed Potato Option Amendment

Insured's Name _____
Address _____
_____

Contract No. _____
Crop Year _____
Identification No. _____
SSN ___ Tax ___ _____

When you submit this Amendment each crop year on or before the final date for accepting applications and we approve such amendment, your insurable acreage of potatoes grown for certified seed will be insured, if:

1. You are currently insured under the potato insurance program;

2. All potatoes which are grown for certified seed on insurable acreage are insured;

3. You are a person whose potatoes have qualified for entry into the Certified Seed porgram for the previous 3 years, (After initial approval, you will be exempt from this requirement provided you have discontinued participation in the program for not more than one crop year out of any three consecutive crop years);

4. You provide acceptable records of your certified seed potato acreage and production for at least the previous 3 years;

5. Potatoes for seed are not grown on the same land on which potatoes of the same variety as the seed potatoes have been grown more than 2 years out of the preceding 4 years;

6. Elite or high-grade foundation seed potatoes or seed potatoes having a winter test reading of not more than 3 percent common virus are used in planting; and

7. Your acreage insured for certified seed production is managed in accordance with standard practices and procedures required

for certification as prescribed by the certifying agency and applicable state regulations regarding seed potato certification.

Your production guarantee and premium rate will be provided by the actuarial table for certified seed potatoes. If, due to insurable causes occurring within the insurance period, potato production will not qualify as certified seed on any insured certified seed potato acreage within a unit, we will pay you one dollar ($1.00) per cwt., times your production guarantee for such acreage, times your share. Any production which will not qualify as certified seed because of your failure to carry out the standard practices and procedures required for certification will be considered lost due to uninsured causes.

Insurable acreage grown under the provisions of this amendment may be designated as a separate unit.

Any claim for indemnity on a unit must be submitted to us on our form no later than 10 working days after you receive your records from the certification agency.

All provisions of the potato policy not in conflict with this amendment are applicable.

This amendment is not continuous. A new amendment must be submitted each crop year to take advantage of the certified seed potato option.

The insured estimates that the Certified Seed Potato Acreage for the___ crop year will be ___

Insured's Signature _____
Date _____

Corporation Representative's
Signature and Code Number _____
Date _____

Field Actuarial Office
Approval _____
Date _____

Following is the Privacy Act Statement found on the reverse side of the Certified Seed Potato Option Amendment:

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)):

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring potatoes under the Potato Crop Insurance Regulations (7 CFR part 422). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the amendment to insure certified seed potatoes, determine the correct premium and indemnity, and to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, other State and Federal law enforcement agencies if litigation becomes necessary, a court in response to its orders, an administrative tribunal, or opposing counsel as evidence in the course of litigation.

Furnishing the Social Security Number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security Number, is also voluntary; however, failure to furnish the correct, complete information requested, except the Social Security Number, may result in rejection of the amendment for insuring certified seed potatoes, and/or subsequent denial of any claim for indemnity which may be filed under such amendment or may substantially delay acceptance of the Certified Seed Potato Option Amendment, and any subsequent claim for indemnity.

§ 422.9 Quality potato option.

(a) Notwithstanding the provisions of subsection § 422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Quality Potato Option (Option), elect to insure all insurable acreage of potatoes under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Potato Crop Insurance Policy, Quality Potato Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____
Identification No. _____
SSN _____
TAX _____

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Quality Potato Option (Option) provides guaranteed production on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. If you elect this Option, all acreage of potatoes insured under the basic policy must be insured under this Option except for any acreage:

a. Specifically excluded by the Actuarial Table;

b. Grown for seed if you elect to exclude the acreage from coverage; or;

c. Insured under the Processing Potato Quality Option.

4. Production to count determined under subsection 9.e. of the basic policy will be further modified as follows:

a. Production to count, unharvested appraised production, production stored after an acceptable inspection, and marketed production containing potatoes that grade less than U.S. No. 2[1] will be determined by dividing the actual percentage of potatoes grading U.S. No. 2[1] or better by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of weight (cwt.) of such potatoes; or

b. Production to count of potatoes stored without an acceptable inspection will be 100 percent of the gross cwt. of such potatoes.

5. If you have a Frost/Freeze Potato Option and this Option in effect on the same production, the production to count will be based on the Option which results in the least production to count.

6. All sampling and grade determinations must be made by a potato grader licensed or certified by the applicable State or United States Department of Agriculture. However, if such a grader is not available to sample or grade the potatoes, the sampling or grading for the purposes of this Option will be performed by us.

7. Your premium rate for this Option will be contained in the Actuarial Table.

8. *''Acceptable Inspection''* means that prior to storage the potatoes are evaluated by us and grade determinations are made in accordance with section 6 of this Option.

9. *''Percentage factor''* means the historical average percentage of potatoes grading U.S. No. 2[1] or better, by type, determined from your records as established by us. If at least four continous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the actuarial table. The Actuarial Table may provide different percentage factors by type.

Insured's Signature _____

Date _____

Corporation Representative's Signature and Code Number _____

_____

Date _____

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Corp Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR part 400 *et seq*.

The information requested is necessry for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so.

Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance, Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

[54 FR 3417, Jan. 24, 1989]

§422.10 Frost/freeze option.

(a) Notwithstanding the provisions of §422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Frost-

[1] The actuarial table may provide for U.S. No. 1 in place of U.S. No. 2.

Freeze Potato Option (Option), elect to insure all insurable acreage of potatoes under this Option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Potato Crop Insurance Policy, Frost/Freeze Potato Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____
Identification No. _____
SSN _____
TAX _____

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Frost-Freeze Potato Option (Option) provides guaranteed protection on a hundredweight (cwt.) basis only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. If you elect this Option, all acreage of potatoes insured under the basic policy must be insured under this Option.

4. If the actuarial table provides a date after which loss of production due to frost or freeze damage is not insurable, this Option will provide coverage only with such date.

5. Production to count for a unit damaged by frost or freeze will be determined by applying the percentage obtained from the following table to the production to count determined under the basic policy:

Percent damage due to frost or freeze	Percent of production to count
0–5	100
6	90
7	80
8	70
9	60
10	50
11	45
12	40
13	35
14	30
15	25
16	20
17	15
18	10
19	5
20	0

The adjusted production to count will then be counted against your production guarantee to determine the amount of loss. We must inspect the production prior to harvest to determine the amount of frost or freeze damage.

If the frost or freeze damage is determined to be 20 percent or more at the time of harvest, you may with our written permission, destroy the crop, (it will be considered a total loss) and you will be indemnified accordingly. You may also elect to market or store the crop and apply the total harvested production minus the frost or freeze damaged potatoes against the guarantee. This decision must be made by you on the day the potatoes are determined to be 20 percent or more frost or freeze damaged.

6. If you have the Potato Quality Option or the Processing Potato Quality Option and this Option in effect, the production to count will be based on the Option which results in the least production to count.

7. Your premium rate for this Option will be established by the actuarial table.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number _____
_____
Date _____

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR part 400 *et seq.*

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may

result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance. Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

[54 FR 3418, Jan. 24, 1989]

§422.11 Processing potato quality option.

(a) Notwithstanding the provisions of §422.7(d)9.e. of this part, an insured producer may, upon submission to the Corporation or a reinsured company and subsequent approval of a Processed Potato Quality Option (Option), elect to insure all insurable acreage of potatoes contracted with a processor under this option. The Option is continuous and will remain in effect until the underlying potato insurance policy (basic policy) is cancelled or terminated in accordance with the basic policy's terms, or until the Option is cancelled or terminated by the insured or the Corporation in the same manner as the basic policy may be cancelled or terminated.

(b) For those who elect to insure potatoes under this Option, all provisions of the basic policy will apply except those in conflict with this Option. The terms of the Option are:

UNITED STATES DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Potato Crop Insurance Policy, Processing Potato Quality Option

(This is a continuous Option. Refer to section 15 of the Potato Crop Insurance Policy)

1. You must have a Federal Crop Insurance Potato Policy (basic policy) in force. This Processing Potato Quality Option (Option) provides guaranteed production on a hundredweight (cwt.) basic only.

2. This Option must be submitted to us on or before the sales closing date for the initial crop year in which you wish to insure your potatoes under this Option.

3. A written contract must be executed with a processor for the potato types insured under this Option and a copy submitted to us on or before the acreage reporting date for potatoes. If you elect this Option, all insurable acreage of the types of potatoes under contract with a processor must be insured under this Option.

4. This Option does not apply to potatoes damaged by frost or freeze.

5. Production to count, determined in accordance with subsection 9.e. of the policy, will be further modified as follows:

a. Production to count of unharvested appraised potatoes, potatoes stored after an acceptable inspection, and potatoes marketed (unless the potatoes were marketed to a processor for human consumption) which grade less than U.S. No. 2[2]:

(1) For factors other than those listed in subsection (2) below, will be determined by dividing the percentage of potatoes grading U.S. No. 2[2] or better by the percentage factor, and multiplying the result, not to exceed 1.000, by the number of cwt. of such potatoes, or:

(2) Due to internal defects, because of a specific gravity of less than 1.070, or have a fry color of No. 3 or darker due to either sugar exceeding 10% or sugar ends exceeding 19%, production will be:

(i) Zero for unharvested appraised potatoes;

(ii) Twenty five percent (25%) of the gross weight for potatoes stored after an acceptable inspection; or

6. All grade determinations for the purposes of this Option will be made using the United States Standards for Grades of Potatoes for Processing.

7. If you have the Frost/Freeze Potato Option and this Option in effect, the production to count will be based on the Option which results in the least production to count.

8. All sampling and grade determinations must be made by a potato grader licensed or certified by the applicable State or United States Department of Agriculture. However, if such a grader is not available, sampling or grading for the purposes of this Option will be performed by us.

9. Your premium rate for this Option will be established by the actuarial table.

10. *''Acceptable Inspection''* means that prior to storage the potatoes are evaluated by us and grades determined in accordance with section 8 of this Option.

[2] The actuarial table may provide for U.S. No. 1 grade in place of U.S. No. 2.

11. *''Percentage Factor''* means the historical average percentage of potatoes grading U.S. No. 2[2] or better, by type, determined from your records or established by us. If at least four continuous years of records are available, the percentage factor will be the simple average of the available records not to exceed 10 years. If less than four years of records are available, the percentage factor will be the one contained in the actuarial table. The Actuarial Table may provide different percentage factors by type.

Insured's Signature _____

DATE _____

Corporation Representative's Signature and Code Number _____

_____

DATE _____

COLLECTION OF INFORMATION AND DATA (PRIVACY ACT)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)). The authority for requesting information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), or any of the crop insurance regulations contained in 7 CFR part 400 *et seq*.

The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process this form to provide insurance, determine eligibility, determine the correct parties to the agreement or contract, collect premiums, pay indemnities, or other purposes. Furnishing the Social Security number is voluntary and no adverse action will result from failure to do so. Furnishing the information required by this form, other than the Social Security number, is also voluntary; however, failure to furnish the correct, complete information requested may result in rejection of this form, rejection of any claim for indemnity, or the ineligibility of any applicant for insurance. Failure to provide certain requested information may result in appropriate action being taken, including suit against the policyholder/debtor to recover an indebtedness. The information contained in this form will be used by Federal Agency Officers and FCIC employees who have a need for such information in the performance of their duties.

The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies if litigation becomes necessary, credit reporting agencies and U.S. Government contract collection agencies, and in response to orders of a court, magistrate, administrative tribunal or opposing counsel as evidence in the course of discovery in litigation.

[54 FR 3419, Jan. 24, 1989]

PARTS 423–424 [RESERVED]

PART 425—PEANUT CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1993 and Succeeding Crop Years

Sec.

425.1 Availability of peanut crop insurance.
425.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities will be computed.
425.3 OMB control numbers.
425.4 Creditors
425.5 Good faith reliance on misrepresentation.
425.6 The contract.
425.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

Source: 57 FR 52585, Nov. 4, 1992, unless otherwise noted.

§ 425.1 Availability of peanut crop insurance.

Insurance shall be offered under the provisions of this subpart on peanuts in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 425.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities will be computed.

(a) The Manager will establish premium rates, production guarantees, coverage levels, and prices at which indemnities will be computed for peanuts which will be shown on the actuarial table on file in applicable service offices and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 425.3 OMB control numbers.

Office of Management and Budget (OMB) control numbers are contained in subpart H to part 400 in title 7 CFR.

§425.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§425.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the peanut insurance contract, whenever:

(a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums, or

(2) Has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured person relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§425.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract will cover the peanut crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§425.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the peanut crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the application service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1991 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a peanut contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1993 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Peanut Insurance Policy for the 1993 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE, FEDERAL CROP INSURANCE CORPORATION, PEANUT CROP INSURANCE POLICY

(This is a continuous contract. Refer to Section 15.)

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us'' and ''our'' refer to the Federal Corp Insurance Corporation.

TERMS AND CONDITIONS

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from any of the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or §9.f(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good peanut farming practices;

(3) Failure to market the peanuts unless such failure is due to actual physical damage from a cause specified in subsection 1.a;

(4) The impoundment of water by any governmental, public or private dam or reservoir project; or

(5) Any cause not specified in section 1.a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be peanuts planted for the purpose of digging, maturing, and marketing as farmers' stock peanuts, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be peanuts planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured peanuts at the time of planting.

d. We do not insure any acreage:

(1) Not planted to a type of peanuts designated as insurable by the actuarial table;

(2) On which the peanuts were destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as non-irrigated by reporting it as insurable under section 3;

(5) Which is destroyed, it is practical to replant to peanuts, and such acreage is not replanted;

(6) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction; or

(7) Planted for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good peanut irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good peanut irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, Poundage Quota, and Practice

You must report on our form:

a. All the acreage of peanuts in the county in which you have a share;

b. The practice;

c. Your share at the time of planting; and

d. The effective poundage marketing quota, if any, applicable to the unit for the current crop year as provided under ASCS Peanut Marketing Quota Regulations.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any peanuts planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any

report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount of premium is computed by multiplying the production guarantee for the unit (insured acreage times the applicable production guarantee), which may consist of quota and non-quota (additional) peanuts, times the applicable price election, times the premium rate, times your share at the time of planting, times any applicable premium adjustment percentage for which the insured may qualify as shown on the actuarial table.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the peanut policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1993 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80 no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or 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.

7. Insurance Period

Insurance attaches when the peanuts are planted and ends at the earliest of:

a. Total destruction of the peanuts;

b. Threshing or removal from the field;

c. Final adjustment of a loss; or

d. The following dates immediately after planting:

(1) Duval and La Salle Counties, Texas—November 30;

(2) New Mexico, Oklahoma and all other Texas counties—December 31;

(3) All other states—November 30.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(i) You want our consent to replant peanuts damaged due to any insured cause. (To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.);

(ii) During the period before threshing, the peanuts on any unit are damaged and you decide not to further care for or thresh any part of them;

(iii) You want our consent to put the acreage to another use; or

(iv) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the peanuts and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested peanuts (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(i) Total destruction of the peanuts on the unit;

(ii) The completion of harvest or otherwise disposing of the peanuts on the unit; or

(iii) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the peanuts on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the peanuts which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peanuts on the unit;

(2) Completion of harvest or otherwise disposing of the peanuts on the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of peanuts on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of peanuts to be counted (see section 9f);

(3) Multiplying this remainder applicable to quota and/or non-quota (additional) production by the applicable price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to count will be identified as quota and/or non-quota (additional) production by:

(1) Counting all threshed and appraised production less than or equal to the unit's effective poundage quota as quota production unless the peanuts grade Segregation II or III and their inclusion as quota peanuts is waived by the producer; and

(2) Counting any threshed and appraised production in excess of the unit's effective poundage quota as non-quota (additional) production.

f. The total production to be counted for a unit will include all threshed and appraised production.

(1) Threshed production will be the net weight in pounds shown on the United States Department of Agriculture ''Inspection Certificate and Sales Memorandum''.

(2) Mature peanut production which is damaged due to insurable causes will be adjusted by:

(i) Dividing the value per pound for the insured type of peanuts by the applicable average price per pound; FCIC will count production against the highest valued peanuts first (based on price election) and the lowest valued peanuts last. FCIC will use the maximum non-quota price election to quality adjust seg. II and seg. III non-quota peanuts; and

(ii) Multiplying the result by the number of pounds of such production.

(3) To enable us to determine the net weight and quality of production of any peanuts for which a United States Department of Agriculture ''Inspection Certificate and Sales Memorandum'' has not been issued, we must be given the opportunity to have such peanuts inspected and graded before you dispose of them. If you dispose of any production without giving us the opportunity to have the peanuts inspected and graded, the gross weight of such production will be used in determining total production to count unless you submit a marketing record satisfactory to us which clearly shows the net weight and quality of such peanuts.

(4) Appraised production to be counted will include:

(i) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good peanut farming practices;

(ii) Not less than the guarantee for any acreage which is abandoned or put to another use (other than harvest) without our prior written consent or damaged solely by an uninsured cause; and

(iii) Appraised production on all other unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(i) Not put to another use before harvest of peanuts becomes general in the county;

(ii) Harvested; or

(iii) Further damaged by an insured cause before the acreage is put to another use.

(6) The amount of production of any unharvested peanuts may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you have elected to exclude hail and fire as insured causes of loss and the peanuts are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire''.

(8) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

g. A replanting payment may be made on any insured peanuts replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

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

(i) On which our appraisal exceeds 90 percent of the guarantee;

(ii) Initially planted prior to the date we determine reasonable; or

(iii) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed $80.00 per acre, multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

j. We will pay the loss within 30 days after we reach agreement with you on entry of a final judgment. In no instance will we be liable for interest or damages in connection with any claim for indemnity, whether we approve or disapprove such claim.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the peanuts are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance 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 contract without regard to any other insurance; or

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

For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such rights. If we pay you for your loss then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all peanuts produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial Office may assign a yield for

that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set off are approved.

e. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Dual and La Salle Counties, Texas	February 15.
New Mexico; Oklahoma; Brown, Baylor, Callahan, Collingsworth, Commanche, Dallam, Eastland, Erath, Gaines, Garza, Hood, Jones, Montague, Motley, Palo Pinto, Parker, Somervell and Stonewall Counties, Texas and Virginia.	April 15.
All other Texas counties and all other states.	March 31.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

g. The contract will terminate if no premium is earned for three consecutive years.

16. Contract Changes

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with a April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of peanut crop insurance:

a. *Actuarial table*—The forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding peanut insurance in the county.

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

c. *Average price per pound*—

(1) The average Commodity Credit Corporation (CCC) price support per pound, by type, for Segregation I, Segregation II and III peanuts eligible to be valued as quota peanuts; or

(2) The highest non-quota price election provided by us for all CCC non-quota (additional) Segregation II and III peanuts.

d. *Average price support per pound*—The average price support level per pound by type for quota peanuts as announced by the United States Department of Agriculture under the peanut price support program.

e. *County*—The county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS farm serial number for the county but physically located in another county.

f. *Crop year*—The period within which the peanuts are normally grown and will be designated by the calendar year in which the peanuts are normally harvested.

g. *Effective poundage marketing quota*—The farm marketing quota as established and recorded by ASCS.

h. *Harvest*—The completion of combining or threshing of peanuts.

i. *Insurable acreage*—The land classified as insurable by us and shown as such by the actuarial table.

j. *Insured*—The person who submitted the application accepted by us.

k. *Loss ratio*—The ratio of indemnity to premium.

l. *Person*—An individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

m. *Replanting*—Performing the cultural practices necessary to replant insured acreage to the same crop.

n. *Replant payment*—That payment made to the insured in accordance with the provisions of section 9 of this policy which is subject to offset for premium owed.

o. *Service office*—The office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

p. *Tenant*—A person who rents land from another person for a share of the peanuts or a share of the proceeds therefrom.

q. *Unit*—All insurable acreage of peanuts in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS farm serial number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

r. *Value per pound*—The ''value per pound including loose shell kernels'', as shown on the United States Department of Agriculture ''Inspection Certificate and Sales Memorandum,'' except for Segregation II, III and nonquota (additional) peanuts for which the value per pound will be determined by us.

s. *Written agreement*—An agreement in writing between you and us which is in accordance with FCIC policy.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Written Agreements

If provided for under the terms and conditions of the policy, written agreements between FCIC and the policyholder will be in accordance with the provisions of official procedures issued by FCIC.

[57 FR 52585, Nov. 4, 1992; 57 FR 56963, Dec. 2, 1992]

PARTS 426–429 [RESERVED]

PART 430—SUGAR BEET CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in California and Arizona)

Sec.

430.1 Availability of sugar beet crop insurance.
430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
430.3 OMB control numbers.
430.4 Creditors.
430.5 Good faith reliance on misrepresentation.
430.6 The contract.
430.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 51 FR 5150, Feb. 12, 1986, unless otherwise noted.

Subpart—Regulations for the 1986 and Succeeding Crop Years (1987 and Succeeding Crop Years in California and Arizona

§430.1 Availability of sugar beet crop insurance.

Insurance shall be offered under the provisions of this subpart on sugar beets in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sugar beets which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 430.3 OMB control numbers.

The OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 430.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 430.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sugar beet insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 430.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sugar beet crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 430.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the sugar beet crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sugar beet

contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sugar Beet Crop Insurance Policy for the 1986 and succeeding crop years (1987 and succeeding crop years in California and Arizona) are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Sugar Beet Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure or breakdown of irrigation equipment or facilities;

(3) The failure to follow recognized good sugar beet irrigation practices;

(4) The failure to follow recognized good sugar beet farming practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be sugar beets grown under a contract with a processor for processing as sugar, which are grown on insured acreage and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be sugar beets planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured sugar beets at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for in the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to sugar beets and such acreage is not replanted;

(4) Initially planted after the final planting date set by the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(5) Of sugar beets not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage);

(6) Planted to a type or variety of sugar beets not established as adapted to the area or excluded by the actuarial table;

(7) Planted to sugar beets:

(a) The preceding crop year in Michigan, Minnesota, North Dakota, and Ohio unless the acreage is designated as insurable by the actuarial table; or

(b) The two preceding crop years in all other states unless the acreage is designated as insurable by the actuarial table;

(8) In California, except Imperial county, planted before filing of the application until a normal stand is obtained;

(9) Of volunteer sugar beets; or

(10) Planted with another crop.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to

carry out a good sugar beet irrigation practice.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured, unless we agree, in writing, to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of sugar beets in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sugar beets planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The second stage production guarantees are in the actuarial table. The first stage guarantee is 60 percent of the second stage guarantee. The stages are:

(1) First stage is from planting until July 1 except in California and Arizona where the first stage is from planting until the earlier of thinning or 90 days after planting. The first stage also applies to any acreage damaged in the first stage to the extent that growers in the area generally would not further care for the sugar beets;

(2) Second stage applies to all insured sugar beets after the first stage.

The production guarantee applicable to any acreage within a unit will be that established for the stage reached by the sugar beets on that acreage.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

e. You must furnish a report of production to use for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year (1985 crop year in California and Arizona) under the terms of the experience table contained in the sugar beet policy in effect for the 1985 crop year (1986 crop year in California and Arizona), you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year (1986 crop year in California and Arizona);

(4) Once your loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deduction for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you, or from any replant payment, or 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.

7. Insurance Period

Insurance attaches when the sugar beets are planted and ends at the earliest of:

(a) Total destruction of the sugar beets;

(b) Harvest of the sugar beets on the unit;

(c) Final adjustment of a loss; or

(d) The following calendar dates:

(1) July 15 for Arizona and Imperial County, California;

(2) The dates established by practice as contained in the actuarial table for all other California counties;

(3) November 25 in Ohio;

(4) December 31 in Texas; and

(5) November 15 in all other states.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sugar beets damaged due to any insured cause (see subsection 9f);

(b) During the period before harvest, the sugar beets on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sugar beets and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative sample of the unharvested sugar beets (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the sugar beets on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the sugar beets on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the sugar beets which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sugar beets on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sugar beets on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar beets to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in tons) to be counted for a unit will include all harvested and appraised production.

(1) Any harvested production of undamaged sugar beets will be determined by:

(a) Dividing the average percentage of sugar in such sugar beets, by the percentage of sugar shown in the actuarial table; and

(b) Multiplying the results (rounded to three places) by the tons of such sugar beets.

The average percentage of sugar will be determined by the processor from individual tests taken at the time of delivery. If individual tests of sugar content are not made at the time of delivery, the factor will be 1.000.

(2) (a) The production to count from acreage damaged due to insurable causes occurring within the insurance period, will be determined by:

(i) Dividing the gross amount received for the damaged sugar beets (including cooperative stock, patronage refunds, dollar values, etc.) by the applicable price per pound of sugar;

(ii) Dividing that result by 2,000; and

(iii) Dividing that result by the factor contained in the actuarial table for that purpose.

(b) The applicable price per pound for sugar will be the local market price on the earlier of:

(i) The day the loss is adjusted; or

(ii) The day the damaged sugar beets are sold.

(c) If the price per pound received for the damaged sugar beets is less than the highest average amount paid by the processor to any producer for sugar beets which were damaged by the cause of loss as claimed by you, you will be considered to have received that average amount per pound in determining the gross amount received.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the difference between the first and second stage production guarantee for acreage not covered by (a) and (b) of this subsection (3) and which does not qualify for the second stage guarantee will be counted except as provided in (d) of this subsection (3); and

(d) The total appraisal for uninsured causes.

(4) There will be no adjustment for quality on any appraisal.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sugar beets becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any harvested or unharvested sugar beets may be determined on the basis of field appraisals or inspections conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the sugar beets are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

f. A replanting payment may be made on any insured sugar beets 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).

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

(a) On which our appraisal exceeds 90 percent of the second stage guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed one ton multiplied by the price election times your share.

(3) The Corporation will transfer the original liability to the replanted crop without reduction by the amount of the replant payment and without increase in the original premium charged for insurance coverage when the crop is replanted in accordance with the requirements of the original planting.

(4) If seasonal conditions dictate replanting by broadcast method, and such method differs from the requirements of the original planting, the Corporation will transfer the original liability to the replanted crop reduced by the amount of the replant payment and without increase in the original premuim charged for insurance coverage.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sugar beets are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for

loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be made on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all sugar beets produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are:

State and county	Cancellation and termination dates
Arizona and Imperial County, California	August 31.
All other California Counties	March 31,
All other states	April 15.

e. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

(a) April 30 preceding the cancellation date for Arizona and Imperial County, California;

(b) November 30 preceding the cancellation date for all other California counties;

(c) December 31 preceding the cancellation date for all other states.

Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of sugar beet crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sugar beet insurance in the county.

b. *ASCS* means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. *County* means:

(1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by the same ASCS farm serial number for the county but physically located in another county within the State.

d. *Crop year* means the period within which the sugar beets are normally grown and designated by the calendar year in which the sugar beets are normally harvested; however, in California and Arizona, it will be the period from planting until the applicable date for the end of the insurance period and is designated by:

(1) The calendar year in which planted if planted on or before July 15; or

(2) The next calendar year if planted after July 15.

e. *Harvest* means the completion of topping and lifting of sugar beets on any acreage for delivery to a processor.

f. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

g. *Insured* means the person who submitted the application accepted by us.

h. *Loss ratio* means your ratio of indemnity to premium.

i. *Normal stand* means the number of live plants after thinning required to produce an average yield per acre for the area.

j. *Person* means 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.

k. *Replanting* means performing the cultural practices necessary to replant insured acreage to sugar beets.

l. *Replant payment* means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

m. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. *Tenant* means a person who rents land from another person for a share of the sugar beets or a share of the proceeds therefrom.

o. *Unit* means all insurable acreage of sugar beets in the county on the date of planting 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugar beets on such land will be considered as owned by the lessee. Land which would otherwise be on unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any person having an interest therein.

18. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part,

coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[51 FR 5150, Feb. 12, 1986, as amended at 51 FR 29205—29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 6775, Mar. 5, 1987; 52 FR 17547, 17548, May 11, 1987; 54 FR 20509, May 12, 1989; 55 FR 35888, Sept. 4, 1990; 55 FR 50815, Dec. 11, 1990; 58 FR 66250, Dec. 20, 1993]

PARTS 431–432 [RESERVED]

PART 433—DRY BEAN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

433.1 Availability of dry bean crop insurance.
433.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
433.3 OMB control numbers.
433.4 Creditors.
433.5 Good faith reliance on misrepresentation.
433.6 The contract.
433.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 50 FR 10202, Mar. 14, 1985, unless otherwise noted.

Subpart—Regulations for the 1986 and Succeeding Crop Years

§433.1 Availability of dry bean crop insurance.

Insurance shall be offered under the provisions of this subpart on dry beans in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§433.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for dry beans which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§433.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR part 433) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB numbers 0563–0003 and 0563–0007.

§433.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§433.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the dry bean insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation; (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such

insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 433.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the dry bean crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the service offices.

§ 433.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the dry bean crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a dry bean contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D or part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Dry Bean Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Dry Bean Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9f(5).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good bean farming practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow good bean irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop Acreage, and Share Insured

a. The crop insured will be dry beans (''beans'') and will consist of:

(1) Dry edible beans, planted for harvest as dry beans, of a class designated in the actuarial table; and

(2) Bush varieties of garden seed beans (contract seed beans), planted for harvest as seed and grown under a contract (with a seed company executed before the acreage reporting date), which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

In addition to the classes of dry beans listed on the actuarial table for your county, we will insure other classes of beans provided:

(i) The class you intend to plant has been demonstrated to be adapted to the area. (Evidence of adaptability includes results of test plots and recommendations by universities and seed companies. Two years of personal experience producing the class in your production area may be submitted for this requirement.);

(ii) You submit your production report and prices received by the sales closing date, or the test plot results and price information on or before the sales closing date; and

(iii) We provide you, in writing, an approved insurance offer which you accept in writing.

b. An instrument in the form of a ''lease'' under which you retain control of the acreage on which the insured beans are grown and which provides for delivery of the beans under certain conditions and at a stipulated price will, for the purpose of this contract, be treated as a contract under which you have the share in the beans.

c. The acreage insured for each crop year will be beans planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

d. The insured share is your share as landlord, owner-operator, or tenant in the insured beans at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

e. We do not insure any acreage:

(1) Of bush varieties of garden seed beans not grown under contract or excluded from the contract for, or during, the crop year;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to the same varietal group of garden seed beans or the same varietal group of dry edible beans, and such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table unless you agree, in writing, on our form to coverage reduction;

(6) Of volunteer beans;

(7) Planted to a class of dry edible beans or a bush variety of garden seed beans not established as adapted to the area or excluded by the actuarial table;

(8) Which does not meet the rotation requirements designated by the actuarial table; or

(9) Planted with a crop other than beans.

f. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water at the time of planting to carry out a good bean irrigation practice.

g. Unless otherwise provided by the actuarial table, insurance will attach only on acreage initially planted in rows far enough apart to permit cultivation, however, if insured acreage is destroyed and replanted by broadcasting, drilling, or in rows too close to permit cultivation, it will be regarded as insured acreage.

h. Any acreage of beans which is destroyed and replanted to an insurable class of dry edible beans or bush varieties of garden seed beans will be regarded as insured acreage.

i. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree, in writing, to insure such acreage.

j. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of beans in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any beans planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the dry bean policy for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1985 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deduction for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you, or from any replant payment, or 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.

7. Insurance Period

Insurance attaches when the beans are planted and ends at the earliest of:

a. Total destruction of the beans;

b. Combining, threshing, or removal from the field;

c. Final adjustment of a loss; or

d. November 15 of the calendar year in which the beans are normally harvested.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant beans damaged due to any insured cause (See section 9.g.);

(b) During the period before harvest, the beans on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the beans and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given and a representative sample of the unharvested beans (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the beans on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You may not destroy or replant any of the beans on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the beans which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the beans on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of beans on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit of dry edible beans by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of dry edible beans to be counted (see section 9f);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. The amount of indemnity on each unit of bush varieties of garden seed beans will be determined by subtracting the value of production from the dollar amount of insurance and multiplying the remainder by the insured share.

(1) The value of production is obtained by multiplying, by variety, the total production to be counted by the applicable price per pound at which indemnities will be computed and totaling such amounts. The applicable price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

(2) The dollar amount of insurance is obtained by multiplying, by variety, the production guarantee per acre by the insured acreage, and the result by the price per pound at which indemnities will be computed and totaling such amounts. The price per pound at which indemnities will be computed will be the lesser of the amount designated by:

(a) The actuarial table; or

(b) The contract with the seed company.

e. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

f. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature dry edible bean production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 18.0 percent;

(b) Of the classes of pea and medium white with a pick in excess of 4 percent due to insurable causes and of any other classes which, due to insurable causes, does not grade No. 2 or better, in accordance with the Official United States Grain Standards, will be adjusted by multiplying the number of pounds of such beans by the conversion factor designated by the actuarial table for the applicable grade or pick; or

(c) Which, due to insurable causes, does not meet any U.S. Grade or pick shown in the actuarial table, or would not meet these requirements if properly handled, or if a conversion factor is not designated by the actuarial table, any mature beans which do not grade No. 2 or better in accordance with the Office United States Grain Standards, will be adjusted by:

(i) Dividing the value per hundredweight of such beans by the price per hundredweight of U.S. No. 2 beans (except that for the classes of pea and medium while, the price will be the local market price per hundredweight for these classes with a 4 percent pick); and

(ii) Multiplying the result by the number of pounds of such beans.

The applicable price for No. 2 beans will be the local market price on the earlier of the day the loss is adjusted or the day such beans were sold.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good bean farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of beans becomes general in the county and reappraised by us;

(b) Further damage by an insured cause and reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested beans may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the beans are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

g. A replanting payment may be made on any insured beans 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.

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

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed the product obtained by multiplying 100 pounds times the price election, times your share.

(3) The Corporation will transfer the original liability to the replanted crop without reduction by the amount of the replant payment and without increase in the original premium charged for insurance coverage when the crop is replanted in accordance with the requirements of the original planting.

(4) If seasonal conditions dictate replanting by broadcast method, and such method differs from the requirements of the original planting, the Corporation will transfer the original liability to the replanted crop reduced by the amount of the replant payment and without increase in the original premium charged for insurance coverage.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

h. You must not abandon any acreage to us.

i. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim form, 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 Dispute Act of 1978 (41 U.S.C. 611), and published in the FEDERAL REGISTER semiannually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the beans are planted for any crop year, any indemnity will be paid to the persons determined to beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all beans produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are:

State	Cancellation and termination dates
California	March 31.
All other states.	April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date (February 15, 1997, for the 1997 crop year only). Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of dry bean crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding dry bean insurance in the county.

b. *ASCS* means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. *County* means: (1) The county shown on the application;

(2) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(3) Any land identified by an ASCS farm serial number for the county but physically located in another county.

d. *Crop year* means the period within which the beans are normally grown and will be designated by the calendar year in which the beans are normally harvested.

e. *Harvest* means the completion of combining or threshing of beans on the unit.

f. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

g. *Insured* means the person who submitted the application accepted by us.

h. *Loss ratio* means the ratio of indemnity to premium.

i. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable,

a State, a political subdivision of a State, or any agency thereof.

j. *Pick* means the percentage, on a weight basis, of the defects such as splits, damaged (including discolored) beans, contrasting classes, and foreign material remaining in the beans after dockage has been removed by the proper use of screens or sieves.

k. *Replanting* means performing the cultural practices necessary to replant insured acreage to dry beans.

l. *Replant payment* means that payment made to the insured in accordance with the provisions of subsection 9.g. of this policy which payment is subject to offset for premium owed.

m. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. *Tenant* means a person who rents land from another person for a share of the beans or a share of the proceeds therefrom.

o. *Unit* means all insurable acreage of either dry edible beans or bush varieties of garden seed beans in the county on the date of planting 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the beans on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

[50 FR 10202, Mar. 14, 1985, as amended by Amdt. 1, 50 FR 49520, Dec. 3, 1985; 50 FR 52758, Dec. 26, 1985; 51 FR 7546, Mar. 5, 1986; 51 FR 29205—29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 17547, 17548, May 11, 1987; 54 FR 20510, May 12, 1989; 55 FR 50816, Dec. 11, 1990; 61 FR 68543, Dec. 30, 1996]

PART 434 [RESERVED]

PART 435—TOBACCO (QUOTA PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.
435.1 Availability of quota plan tobacco crop insurance.
435.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
435.3 OMB control numbers.
435.4 Creditors.
435.5 Good faith reliance on misrepresentation.
435.6 The contract.
435.7 The application and policy.

AUTHORITY: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

SOURCE: 50 FR 2951, Jan. 23, 1985, unless otherwise noted.

Subpart—Regulations for the 1985 and Succeeding Crop Years

§ 435.1 Availability of quota plan tobacco crop insurance.

Insurance shall be offered under the provisions of this subpart on tobacco in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§435.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for tobacco which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§435.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR part 435) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB numbers 0563–0003 and 0563–0007.

§435.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§435.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the tobacco insurance contract, whenever—

(a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the term of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give, erroneous advice; (2) said insured person relied thereon in good faith; and (3) to required the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

Application for relief under this section must be submitted to the Corporation in writing.

§435.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the tobacco crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§435.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the tobacco crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in

the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a tobacco contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Tobacco (Quota Plan) Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Quota Plan of Tobacco—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we, ''us'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9d(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good tobacco farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, Insured Poundage Quota, and Share Insured

a. The crop insured will be tobacco of the type shown as insurable in the actuarial table, which is grown on insured acreage, and for which a premium rate is provided by the actuarial table.

b. The acreage insured for each crop year will be an insurable type of tobacco planted on insurable acreage and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured tobacco at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) On which the tobacco was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture;

(3) Which is destroyed, it is practical to replant to tobacco, and such acreage was not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree to coverage reduction on our form;

(5) Planted to tobacco of a discount variety under provisions of the tobacco price support program;

(6) Planted to a type or variety of tobacco not established as adapted to the area or excluded by the actuarial table;

(7) Designated as uninsurable by the actuarial table; or

(8) Planted for experimental purposes.

e. The insured poundage quota for each crop year will be the effective poundage marketing quota applicable to the unit as provided under ASCS Tobacco Marketing Quota Regulations for the crop year plus any additional poundage you intend to produce on the unit that crop year, as reported by you or as determined by us, whichever we elect.

However:

(1) The insured poundage quota may not include any amount which would be subject to a marketing quota penalty under ASCS Tobacco Marketing Quota Regulations;

(2) The poundage marketing quota may be reduced for any carryover tobacco to be marketed under the poundage quota applicable to the unit when such poundage reduction is clearly specified by you in filing the acreage and quota report;

(3) The insured poundage quota will never exceed the pounds obtained by multiplying the insured acres by the applicable farm yield per acre; and

(4) Unless otherwise provided by the actuarial table, for any crop year in which tobacco poundage marketing quota regulations are not in effect, the insured poundage quota will be the pounds obtained by multiplying the applicable farm yield per acre times the lower of the reported or insured acreage on the unit.

f. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good tobacco irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good tobacco irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

(3) Insurance will not attach on an irrigated basis to acreage otherwise insurable on such basis unless it is designated as irrigated at the time the acreage is reported.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Poundage Quota

You must report on our form:

a. All the acreage of insurable types of tobacco in the county in which you have a share;

b. Your share at the time of planting; and

c. The effective poundage marketing quota applicable to the unit as provided under ASCS Tobacco Marketing Quota Regulations plus any additional poundage you intend to produce on the unit in that crop year. Such poundage marketing quota may be reduced for any carryover tobacco to be marketed under the poundage quota applicable to the unit provided such poundage reduction is clearly specified in filing the acreage and quota report. The quota so reported will not be subject to change by you.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tobacco planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of Insurance and Coverage Levels

a. The coverage levels are contained in the actuarial table.

b. The amount of insurance for a unit will be the dollar amount determined by multiplying the insured poundage quota for the unit by the percentage guarantee for the applicable coverage level established by the actuarial table and multiplying this product by the current year's support price for type 31 tobacco (rounded to the nearest cent) less six cents per pound for warehouse charges.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level on or before the closing date for submitting applications for the crop year as established by the actuarial table.

e. You must furnish a report of production to use for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance for the unit times the premium rate, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the tobacco policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80 no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance attaches when the tobacco is planted and ends at the earliest of:

a. Total destruction of the tobacco;

b. Weighing-in at the tobacco warehouse;

c. Removal of the tobacco from the unit (except for curing, grading, packing or immediate delivery to the tobacco warehouse);

d. Final adjustment of a loss; or

e. February 28, immediately following the normal harvest period.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tobacco on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tobacco and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested tobacco (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) Notice must be given immediately if any tobacco is destroyed or damaged by fire during the insurance period.

(5) If tobacco is not to be sold through auction warehouses and an indemnity is to be claimed, notice must be given in sufficient time to allow us to inspect the cured tobacco prior to its sale or other disposition.

(6) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the tobacco on the unit;

(b) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the tobacco which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tobacco on the unit;

(2) The date marketing or other disposal of the insured tobacco on the unit is completed; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tobacco on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Subtracting from the amount of insurance for the unit, the value of the total production of tobacco to be counted (see section 9d); and

(2) Multiplying the remainder by your share.

d. The value of the total production to be counted for a unit will include the value of all harvested and appraised production.

(1) Production to count will include:

(a) The gross returns (less six cents per pound for warehouse charges) from tobacco sold on the warehouse floor;

(b) The fair market value of the tobacco sold other than on the warehouse floor;

(c) The fair market value of the tobacco harvested and not sold;

(d) The fair market value of any unharvested tobacco as if such tobacco were harvested and cured; and

(e) The current year's support price per pound (less six cents per pound for warehouse charges) for appraisals made by us for poor farming practices or uninsured causes of loss. (If a price support program is not in effect, such appraised production will be valued at the market price for the current crop year.)

(2) To enable us to determine the fair market value of tobacco not sold through auction warehouses, we must be given the opportunity to inspect such tobacco before it is sold, contracted to be sold, or otherwise disposed of and, if the best offer you receive for any such tobacco is considered by us to be inadequate, to obtain additional offers on your behalf.

(3) The value of appraised production to be counted will include:

(a) The value of unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tobacco farming practices;

(b) Not less than the average amount of insurance per insured acre for the unit for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Not less than 35 percent of the average amount of insurance per insured acre for the unit for all other unharvested acreage.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tobacco becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) The amount of production of any unharvested tobacco may be determined on the basis of field appraisals conducted after the end of the normal harvest period.

(6) If you have elected to exclude hail and fire as insured causes of loss and the tobacco is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire''.

(7) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

e. You must not abandon any acreage to us.

f. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

g. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim form indemnity form, 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 semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury. Interest will be paid in accordance with this section beginning with all claims for payment of indemnity initially filed on or after March 1, 1985.

h. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tobacco is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

i. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance 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 contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such rights. If we pay you for your loss then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all tobacco produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set off are approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. All contract changes will be available at your service office by December 31 preceding the cancellation date except that, for the 1985, 1986 transition only, all contract changes will be available at your service office by January 20, 1986. Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of quota tobacco crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding tobacco insurance in the county.

b. *ASCS* means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

c. *Carryover tobacco* means any tobacco on hand from the previous year's production.

d. *County* means the county shown on the application and:

(1) Any additional land located in a local producing area bordering on the county, as shown by the actuarial table; and

(2) Any land identified by an ASCS Farm Serial Number for the county but physically located in another county.

e. *Crop year* means the period within which the tobacco is normally grown and will be designated by the calendar year in which the tobacco is normally harvested.

f. *Effective poundage marketing quota* means the farm marketing quota as established and recorded by ASCS.

g. *Farm yield* means the yield per acre used by ASCS in establishing the basic farm marketing poundage quota for the tobacco farm, unless we have established a yield for the farm in the actuarial table.

h. *Harvest* means the completion of cutting of tobacco on any acreage from which acreage at least 20 percent of the amount of tobacco in pounds per acre (obtained by multiplying the applicable insured poundage quota for the unit by the applicable percentage of guarantee shown in the actuarial table for such acreage and dividing this result by the insured acreage in the unit) is cut.

i. *Insurable acreage* means that acreage planted to an insurable type of tobacco excluding any acreage designated as noninsurable by the actuarial table.

j. *Insured* means the person who submitted the application accepted by us.

k. *Loss ratio* means the ratio of indemnity(ies) to premium(s).

l. *Market Price* for a crop year means the average auction price for the applicable type (less six cents per pound for warehouse charges) in the belt or area. The market price will be designated by the actuarial table.

m. *Person* means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

n. *Planting* means transplanting the tobacco plant from the bed to the field.

o. *Rounded* means rounding up for ½ and above and rounding down for less than ½.

p. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

q. *Support price per pound* means the average price support level per pound for the insured type of tobacco as announced by the United States Department of Agriculture under the tobacco price support program. For any crop year in which a price support for the insured type is not in effect, the market price for that crop year will be used.

r. *Tenant* means a person who rents land from another person for a share of the tobacco or a share of the proceeds therefrom.

s. *Unit* means all insurable acreage of an insurable type of tobacco in the county in which you have an insured share on the date of planting for the crop year and which is identified by a single ASCS Farm Serial Number at the time insurance first attaches under this policy for the crop year. Units will be determined when the acreage is reported. We may reject or modify any ASCS reconstitution for the purpose of unit definition if the reconstitution was in whole or part to defeat the purpose of the Federal Crop Insurance Program or to gain disproportionate advantage under this policy. Errors in reporting units may be corrected by us when adjusting a loss.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[50 FR 2951, Jan. 23, 1985, as amended at 50 FR 49027, Nov. 29, 1985; 50 FR 52758, Dec. 26, 1985; 51 FR 7546, Mar. 5, 1986; 51 FR 29205—29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 6775, Mar. 5, 1987; 54 FR 20372, May 11, 1989; 55 FR 35888, Sept. 4, 1990]

PART 436 [RESERVED]

PART 437—SWEET CORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1985 and Succeeding Crop Years

Sec.

437.1 Availability of sweet corn crop insurance.
437.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
437.3 OMB control numbers.
437.4 Creditors.
437.5 Good faith reliance on misrepresentation.
437.6 The contract.
437.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 50 FR 1825, Jan. 14, 1985, unless otherwise noted.

Subpart—Regulations for the 1985 and Succeeding Crops Years

§ 437.1 Availability of sweet corn crop insurance.

Insurance shall be offered under the provisions of this subpart on sweet corn in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 437.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sweet corn which will be included in the actuarial table on file in service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 437.3 OMB Control numbers.

The information collection requirements contained in these regulations (7 CFR part 437) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 437.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 437.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the sweet corn insurance contract, whenever

(a) An insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agency or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured person relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 437.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sweet corn crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 437.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation

may be made by any person to cover such person's share in the sweet corn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service office and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1985 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sweet corn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1985 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sweet Corn Insurance Policy for the 1985 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Sweet Corn—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) Sweet corn not being timely harvested, unless it is determined that, due to unusual weather conditions, a substantial number of acres of sweet corn in the area were ready for harvest at the same time;
(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;
(3) The failure to follow recognized good sweet corn farming practices;
(4) The impoundment of water by any governmental, public or private dam or reservoir project; or
(5) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be canning and freezing sweet corn grown on insured acreage, for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be sweet corn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured sweet corn at the time of planting.

d. We do not insure any acreage:

(1) Of sweet corn not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage.);
(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to sweet corn, and such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table;

(6) Of volunteer sweet corn;

(7) Planted to a type or variety of sweet corn not established as adapted to the area or excluded by the actuarial table;

(8) Planted for the development or production of hybrid seed or for experimental purposes; or

(9) Planted with a crop other than sweet corn.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good sweet corn irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good sweet corn irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

g. An instrument in the form of a ''lease'' under which you retain control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price(s) will, for the purpose of this contract, be treated as a contract under which you have the share in the crop.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of sweet corn in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sweet corn planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices at Which Indemnities Shall be Computed

a. The production guarantees, coverage levels, and prices for computing indemnities are in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

d. You must furnish a report of production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the sweet corn policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceed .80 no further premium reduction will be applicable; and

(5) Participation must be continuous.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance attaches when the sweet corn is planted and ends at the earliest of:

a. Total destruction of the sweet corn;

b. Harvest;

c. Final adjustment of a loss;

d. The date by which sweet corn acreage should have been harvested; or

e. The following dates of the calendar year in which the sweet corn is normally harvested:

(1) Benton, Clackamas, Columbia, Lane, Linn, Marion, Multnomah, Polk, Washington, and Yamhill Counties, Oregon; and Clark and Cowlitz Counties Washington...October 20;

(2) All other Washington Counties .....October 10;

(3) All other Oregon counties and all other states.....September 20.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the sweet corn on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sweet corn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) If you anticipate a loss on any unit, you must give us notice:

(a) At least 15 days before the beginning of harvest; or

(b) Immediately, if probable loss is later determined. A representatve sample of the unharvested sweet corn (at least 10 feet wide and the entire length of the field) must be left intact for a period of 15 days from the date of notice unless we give you written consent to harvest the sample.

(3) If you are going to claim an indemnity on any unit which is not to be harvested or on which harvest has been discontinued, notice must be given not later than 48 hours:

(a) Before the time harvest would normally start; or

(b) After discontinuance of harvest.

If such notice is not given or if unharvested acreage is not left intact, the appraisal on such acreage will be the production guarantee.

(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the sweet corn on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the sweet corn which is not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliers of:

(1) Total destruction of the sweet corn on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sweet corn on the unit and that any loss of production has been directly caused by one or more

of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sweet corn to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy:

(1) In the 1985 crop year results in a lower premium than the actual premium determined to be due, the indemnity will be reduced proportionately.

(2) In the 1986 and succeeding crop years results in a lower premium than the premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the information actually determined. All production from insurable acreage, whether or not reported as insurable will count against the production guarantee.

e. The total production (Tons) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good sweet corn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(2) If any acreage of sweet corn is not timely harvested the production to count will be the greater of the:

(a) Appraised production; or

(b) Dollar amount received from the processor divided by the processor's base contract price per ton.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sweet corn becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested sweet corn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you have elected to exclude hail and fire as insured causes of loss and the sweet corn is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire''.

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim form indemnity form, 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 semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury. Interest will be paid in accordance with this section beginning with all claims for payment of indemnity initially filed on or after March 1, 1985.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sweet corn is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such rights. If we pay you for your loss then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all sweet corn produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment of set-off are approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date (January 20, 1986, for the 1985, 1986 transition). Acceptance of any change will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of sweet corn crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sweet corn insurance in the county.

b. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. *Crop year* means the period within which the sweet corn is normally grown and is designated by the calendar year in which the sweet corn is normally harvested.

d. *Harvest* means the removal of the ears and husks from the stalks for the purpose of delivery to the processor.

e. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

f. *Insured* means the person who submitted the application accepted by us.

g. *Loss ratio* means the ratio of indemnity(ies) to premium(s).

h. *Person* means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. *Service office* means the office servicing your contract as shown on the application for insurance or such approved office as may be selected by you or designated by us.

j. *Tenant* means a person who rents land from another person for a share of the sweet corn or a share of the proceeds therefrom.

k. *Unit* means all insurable acreage of sweet corn in the county on the date of planting for the crop year:

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

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

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sweet corn on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[50 FR 1825, Jan. 14, 1985, as amended at 50 FR 49027, Nov. 29, 1985; 50 FR 52758, Dec. 26, 1985; 51 FR 7546, Mar. 5, 1986; 51 FR 29205—29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 54 FR 20512, May 12, 1989; 55 FR 35888, Sept. 4, 1990]

PARTS 438–440 [RESERVED]

PART 441—TABLE GRAPE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.
441.1 Availability of table grape crop insurance.
441.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
441.3 OMB control numbers.
441.4 Creditors.
441.5 Good faith reliance on misrepresentation.
441.6 The contract.
441.7 The application and policy.

AUTHORITY: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

SOURCE: 51 FR 37893, Oct. 27, 1986, unless otherwise noted.

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 441.1 Availability of table grape crop insurance.

Insurance shall be offered under the provisions of this subpart on table grapes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved

by the Board of Directors of the Corporation.

§441.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for table grapes which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§441.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§441.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§441.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the table grape crop insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Requests for relief under this section must be submitted to the Corporation in writing.

§441.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the table grape crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§441.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the table grape crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. 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 service offices

and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a table grape contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Table Grape Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Table Grape—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Direct Mediterranean Fruit Fly damage; or;

(7) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(6).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good table grape management practices;

(3) The failure or breakdown of irrigation equipment or facilities;

(4) The failure to follow recognized good table grape irrigation practices;

(5) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(6) Any cause not specified in subsection 1.a. as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be any insurable variety of grapes grown for harvest as table grapes, grown on insured acreage on which the cultural practices to produce table grapes are carried out, and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be grapes grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured grapes at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) On which the vines, after being set out, have not reached the number of growing seasons designated by the actuarial table;

(2) Which has not produced an average of 150 lugs of table grapes per acre;

(3) Which does not have acceptable records of acreage and production unless we agree, in writing, to insure acreage; or

(4) With less than a 90 percent stand of bearing vines based on the original planting pattern, unless we agree, in writing, to insure such acreage.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good grape irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act

of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of grapes in the county on which cultural practices to produce table grapes are carried out and in which you have a share;

b. The practice;

c. Your share on the date insurance attaches; and

d. The number of bearing vines (if less than 90 percent of a stand based on the original planting pattern).

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any grapes grown in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

d. You must report production to us for the prior crop year before the sales closing date as established by the actuarial table. If you do not provide the required production report, we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the insured crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the prior crop year as adjusted for crop and vineyard conditions. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-fourth percent (1-¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance attaches on February 1 and ends on the earliest of:

a. Total destruction of the grapes on the unit;

b. Discontinuance of cultural practices to produce table grapes;

c. The date harvest would normally start on the unit on any acreage which will not be harvested as table grapes;

d. Harvest;

e. Discontinuance of harvesting of table grapes on the unit;

f. Final adjustment of a loss; or

g. The following applicable date of the calendar year in which the grapes are normally harvested:

State and county(ies)	Variety	Date
Arizona:		
All counties	Perlette	June 15.
	Flame Seedless	July 15.
	All others	July 31.
California:		
Fresno, Kern, Kings, Madera, and Tulare.	Perlette	August 15.
	Cardinal	August 15.
	Exotic	August 31.
	Flame Seedless	August 31.
	Superior Seedless	August 31.
	Red Malaga	September 15.
	Queen	September 15.
	Thompson Seedless.	September 15.
	Black Rose	September 30.
	Italia	September 30.
	White Malaga	October 15.
	Ribier	October 15.
	Ruby Seedless	October 15.
	All others	October 31.
Merced, Stanislaus, and San Joaquin.	Flame Seedless	September 15.
	Thompson Seedless.	September 30.
	Ribier	October 15.
	Flame Tokay	October 15.
	All others	October 31.
Riverside, and San Bernadino.	Beauty Seedless	July 15
	Perlette	July 15
	All others	July 31.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if, during the period before harvest, the grapes on any unit are damaged and you decide not to further care for or harvest any part of them.

(2) You must give us notice:

(a) At least 15 days before the beginning of harvest if you anticipate a loss on any unit; or

(b) Immediately, if damage occurs within 15 days prior to harvest or during harvest.

(3) If you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(a) Total destruction of the grapes on the unit;

(b) Discontinuance of cultural practices to produce table grapes;

(c) Discontinuance of harvest of any acreage on the unit; or

(d) The date harvest would normally start if any acreage on the unit is not to be harvested as table grapes.

(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by this subsection, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earlier of:

(a) Harvest of the unit; or

(b) The calendar date for the end of the insurance period (Subsection 7.g.).

b. You must obtain written consent from us before you destroy any of the grapes which are not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the end of the insurance period (see section 7).

b. We will not pay any indemnity unless you:

(1) Establish the total production of grapes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of grapes to be counted (see subsection 9.3.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in lugs) to be counted for a unit will include all production harvested as table grapes and all appraised production, that meets the California Department of Food and Agriculture minimum standards.

(1) Table grape production damaged by insurable causes within the insurance period that could be marketed for any use as other than table grapes will be determined by multiplying the greater of the total value of the grapes per ton or $50 times the number of tons and dividing that result by the highest price election available for the insured unit. This result will be the number of lugs to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and any change in management practices (cluster thinning and removal);

(b) Not less than the applicable guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our prior written consent;

(c) Any unharvested production where table grape cultural practices were discontinued following an appraisal; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such acreage is:

(a) Not harvested before the harvest of grapes becomes general in the country and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) If any grapes are harvested before normal maturity, the production of such grapes will be increased by the factor obtained by dividing the price per lug received for such grapes by the price per lug for fully matured grapes.

(5) We may determine the amount of production of any unharvested grapes on the basis of field appraisals conducted after discontinuance of harvest or the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the grapes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring

suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. We have a policy of paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount.

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another person your right to an indemnity for the crop year, only in writing on our form, and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all grapes produced on each unit including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the

amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are January 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of table grape crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us. The table is available for public inspection in your service office, and shows the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding table grape insurance in the county.

b. *Cluster thinning and removal* means removing parts of a cluster or the entire cluster of grapes.

c. *Contiguous land* means land which is touching at any point, except that land which is separated by only a public or private right-of-way will also be consider contiguous.

d. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

e. *Crop year* means the period beginning with the date insurance attaches and extending through normal harvest time and is designated by the calendar year in which the grapes are normally harvested.

f. *Direct Mediterranean fruit fly damage* means the actual physical damage to the grapes on the unit which causes such grapes to be unmarketable and will not include unmarketability of such grapes as a direct result of a quarantine, boycott, or refusal to accept the grapes by any entity without regard to actual physical damage to such grapes.

g. *Harvest* means picking the grapes from the vines.

h. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

i. *Insured* means the person who submitted the application accepted by us.

j. *Loss ratio* means the ratio of indemnity to premium.

k. *Lug* means 22 pounds of table grapes in the Coachella Valley, California district, and 23 pounds in all other California districts.

l. *Person* means 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.

m. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. *Table grapes* means the grapes which are grown for commercial sales as fresh grapes, on acreage which the cultural practices to produce fresh marketable grapes were carried out.

o. *Tenant* means a person who rents land from another person for a share of the grapes or a share of the proceeds therefrom.

p. *Unit* means all insurable acreage of grapes in the county located on contiguous land on the date insurance attaches 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the grapes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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 the Appeal Regulations, (7 CFR part 400, subpart J).

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[51 FR 37893, Oct. 27, 1986; 51 FR 41757, Nov. 19, 1986; 52 FR 3214, Feb. 3, 1987; 53 FR 46848, Nov. 21, 1988; 55 FR 35888, Sept. 4, 1990]

PART 442 [RESERVED]

PART 443—HYBRID SEED CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

443.1 Availability of hybrid seed crop insurance.
443.2 Premium rates, coverage levels, and amounts of insurance.
443.3 OMB control numbers.
443.4 Creditors.
443.5 Good faith reliance on misrepresentation.
443.6 The contract.
443.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 51 FR 5697, Feb. 18, 1986, unless otherwise noted.

Subpart—Regulations for the 1986 and Succeeding Crop Years

§443.1 Availability of hybrid seed crop insurance.

Insurance shall be offered under the provisions of this subpart on hybrid seed in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§443.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverage levels, and amounts of insurance for hybrid seed which will be included in the actuarial table in file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance per acre and a coverage level from among those levels and amounts shown on the actuarial table for the crop year.

§443.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§443.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefits under the contract.

§443.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Hybrid Seed insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation of other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Requests for relief under this section must be submitted to the Corporation in writing.

§ 443.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the hybrid seed crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 443.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the hybrid seed crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in polices issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a hybrid seed insurance contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Hybrid Seed Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Hybrid Seed Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Insects;
(4) Plant disease;
(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

(1) The use of unadapted, incompatible or genetically deficient male or female seed;
(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;
(3) The failure to follow recognized good farming practices or the grower provisions of the seed contract;
(4) The impoundment of water by any governmental, public, or private dam or reservoir project;
(5) Frost or freeze after the date set by the actuarial table;
(6) Inadequate germination even though a result of an insured cause of loss unless inspected and accepted by us before harvest is completed;
(7) The failure to plant the male seed at a time sufficient to assure adequate pollination of the female plant;
(8) The failure or breakdown of irrigation equipment or facilities;
(9) The failure to follow recognized good hybrid seed irrigation practices; or
(10) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be any type of female seed (''crop'') you elect:

(1) Which is planted for harvest and the production is intended for the purpose of commercial seed to produce a type of the crop for grain or silage;
(2) Which is grown under a contract executed with a seed company before the acreage reporting date;
(3) Which is grown on insured acreage; and
(4) For which an amount of insurance per acre and premium rate are set by the actuarial table.

b. An instrument in the form of a ''lease'' under which you retain control of the acreage on which the insured crop is grown and which provides for delivery of the crop under certain conditions and at a stipulated price will be treated as a contract under which you have the share in the crop.

c. The acreage insured for each crop year will be the crop planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

d. The insured share is your share as landlord, owner-operator, or tenant in the insured crop at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or
(2) The beginning of harvest.

e. We do not insure any acreage:

(1) Which is destroyed, it is practical to replant the crop, and such acerage is not replanted;
(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
(3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
(4) Of a volunteer crop;
(5) Planted to a type or variety of the crop not established as adapted to the area or indicated as noninsurable by the actuarial table;
(6) Planted with another type of crop;
(7) Occupied by rows planted with a mixture of female and male seed;
(8) Planted and occupied by the male plants;
(9) Planted for experimental purposes;
(10) Planted for any purpose other than for commercial seed; or
(11) Grown under a contract with any seed company and that seed company refuses to provide us with the records we require to determine the dollar value per bushel of production for each type and variety.

f. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good crop irrigation practice.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, Type, and Practice

You must report on our form:

a. All the acreage of the crop planted in the county in which you have a share;
b. The practice;
c. The type; and
d. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any acreage of the insured crop in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this

report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, practice, and type or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Coverage Levels and Amounts of Insurance

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and the amount of insurance per acre on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on insuring experience through the 1983 crop year under the terms of the experience table contained in the hybrid seed policy in effect for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1991 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1984 crop year;

(4) Once the loss ratio exceeds .80, no further premium reduction will apply; and

(5) Participation must be continuous.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance attaches for each type and variety when both the male plant seed and the female plant seed of that type and variety are planted in accordance with the production management practices of the seed company. Insurance terminates at the earliest of:

a. Total destruction of the crop;

b. Combining, threshing, or picking;

c. Final adjustment of a loss; or

d. The calendar date established by the actuarial table.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us prompt written notice if:

(a) During the period before harvest, the crop on any unit is damaged and you decide not to further care for or harvest any part of it;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs. Insured acreage may not be put to another use until we have appraised the crop and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage has been put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate either a germination rate of less than 80 percent or a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest, immediate notice must be given and a representative area of the field of the unharvested crop (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the area.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the crop on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the crop which is not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

(a) Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the crop on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production for the type and variety of the crop on the unit at the time of harvest and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre;

(2) Subtracting from this product the sum of:

(a) The dollar amount obtained by multiplying seed production to count for each type and variety (see section 9e) by the respective dollar value per bushel of production plus;

(b) The dollar amount obtained by multiplying non-seed production to count (see section 9e) by the local market price of such production on the earlier of the date the loss is adjusted or the date such production is sold; and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

e. The total production to be counted for a unit will include all harvested and appraised seed and non-seed production.

(1) For crop type field corn:

(a) Total seed production to count will include:

(i) All corn delivered to and accepted by the seed company;

(ii) All corn which would pass over 16/64 screen unless the germination rate is less than 80 percent warm test as determined by a certified seed test conducted from a clean sample taken at the time of delivery or if the mature corn is appraised, at the time of appraisal; and

(iii) All harvested and appraised production which does not qualify under paragraphs (i) and (ii) above because the damage was caused by uninsured causes.

(b) For the purpose of determining the quantity of mature production:

(i) Shelled corn will be adjusted .12 percent for each .1 percentage point of moisture to 15.5; and

(ii) Ear corn will be measured at 70 pounds of ear corn equaling 56 pounds (one bushel) of shelled corn. The weight of ear corn required to equal one bushel of shelled corn will be increased 2.0 pounds for each percentage point of moisture in excess of 14 percent.

(c) When records of seed production, provided by the seed company, have been adjusted to a shelled corn basis of 15.5 percent moisture, and 56-pound test weight (b) above will not apply for harvested production and the records of the seed company will be used to determine the amount of indemnity; provided, that such production records were based on the same criteria as the criteria used to determine the dollar value per bushel.

(2) Appraised production to count as seed production will include:

(a) Unharvested production on harvested acreage and the percent of the approved yield lost due to uninsured causes;

(b) Not less than the dollar amount of insurance for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraisal on non-mature production; and

(d) Any appraised production on unharvested acreage.

(3) Any appraisal we have made on insured acreage and given written consent to be put to another use will be considered as seed production unless such acreage is:

(a) Not put to another use before harvest of the crop becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

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

(5) If you elect to exclude hail and fire as insured causes of loss and the crop is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the crop is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other insurance against the perils insured under this contract and damage as a result of those perils occurs during the insurance period, we will be liable for loss due to those perils only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from those perils exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from those perils will be the difference between the fair market value of the production on the unit before the loss and after the loss. The fair market value of production on the unit before the loss is limited to 1½ times the highest price election available.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you or the seed company have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation (Recovery of Loss From a Third Party)

Becuse 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 any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will paid to you.

14. Records and Access to Farm

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all of the crop produced on each unit, including separate records showing the same information for production for any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice to the other on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) A payment under another program administered by United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches

for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your amount of insurance is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Late Planting and Prevented Planting

(a) Insurance will be provided for acreage planted to the insured crop during the late planting period (see subparagraph (c)), and acreage you were prevented from planting (see subparagraph (d)). These coverages provide reduced amounts of insurance for such acreage. The reduced amounts of insurance will be combined with the amount of insurance for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. For example assume you insure one unit in which you have a 100 percent share. The unit consists of 200 acres of the same type and variety, of 100 percent share. The unit consists of 200 acres of the same type and variety, of which 150 acres are occupied by the female plant. Fifty acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the amount of insurance will be computed as follows:

(1) For timely planted acreage, multiply the per acre amount of insurance for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre amount of insurance for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre amount of insurance for timely planted acreage by:

(i) Forty percent (0.40) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty percent (0.20) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 17(d)(1)(iii))).

The total of the three calculations will be the amount of insurance for the unit. Your premium will be based on the result of multiplying the per acre amount of insurance for timely planted acreage by the 150 insured crop acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(c) Late Planting

(1) For acreage planted after the final planting date, but on or before 25 days after the final planting date, the amount of insurance for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 3 (Report of Acreage, Share, Type and Practice), you must report the dates on which the acreage is planted within the late planting period.

(3) If planting of the insured crop continues after the final planting date, or you are prevented from planting the insured crop during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Actuarial Table; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 18(w)), you may elect:

(i) To plant the insured crop during the late planting period. The amount of insurance for such acreage will be determined in accordance with paragraph 17(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the amount of insurance for such acreage will be

forty percent (40%) of the amount of insurance for timely planted acres. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 80 dollars per acre (200 dollars multiplied by 0.40). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsection 9e.; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting amount of insurance will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) An amount of insurance equal to twenty percent (20%) of the amount of insurance for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your amount of insurance for timely planted acreage is 200 dollars per acre, your prevented planting amount of insurance would be 40 dollars per acre (200 dollars multiplied by 0.20). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the yield upon which your amount of insurance is based.

(3) In addition to the provisions of section 7 (Insurance Period), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a hybrid seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the hybrid seed coverage remains in effect for the 1997 crop year (is not terminated or canceled during or after the 1996 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) Eligible acreage will not exceed the number of acres required to be grown in the current crop year under a contract executed with a seed company prior to the acreage reporting date.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iii) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you

provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 3 (Report of Acreage, Share, Type and Practice), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting amount of insurance the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(6) If the amount of premium you are required to pay (gross premium less our subsidy) for the prevented planting acreage exceeds the prevented planting liability on a unit, prevented planting coverage will not be provided for that unit (no premium will be due and no indemnity will be paid for such acreage).

18. Meaning of Terms

(a) *Actuarial table*—the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the coverage levels, premium rates, amounts of insurance, practices, insurable and uninsurable acreage, and related information regarding insurance for the crop in the county.

(b) *Amount of insurance*—the number of dollars per acre that results from subtracting the minimum payment (in bushels) provided by the seed company from the selected coverage level's county yield contained in the Actuarial Table and multiplying the result by the selected price election. If the minimum payment provided by the seed company is stated as a dollar amount, it will be converted to a bushel equivalent by dividing the dollar amount by the selected price election.

(c) *Approved yield*—an expected yield level for a specific variety, in bushels per acre, determined by us and used to establish the value of seed production for the purpose of determining the amount of indemnity.

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

(e) *Commercial seed*—the offspring of two individual seeds of different genetic character which is produced as a result of crossing. A portion of this resultant offspring is the product intended for the purpose or use on a commercial basis by an agricultural producer to produce a field crop type for grain or silage.

(f) *County*—(1) The County shown on the application; and

(2) Any additional land located in a local producing area bordering on the county, as shown by the Actuarial Table.

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

(h) *Days*—calendar days.

(i) *Dollar value per bushel*—the value determined by dividing the amount of insurance per acre for timely planted acreage by the result of multiplying the approved yield by the coverage level percentage you elect.

(j) *Female plant*—the plants grown for the purpose of producing commercial seed.

(k) *Final planting date*—the date contained in the Actuarial Table by which the insured crop must initially be planted in order to be insured for the full amount of insurance.

(l) *Harvest*—the completion of combining, threshing, or picking of the crop on any acreage.

(m) *Inadequate germination*—less than 80 percent (80%) of the seed produced from female plants germinated as determined by a warm test using clean seed.

(n) *Insurable acreage*—the land classified as insurable by us and shown as such by the Actuarial Table.

(o) *Insured*—the person who submitted the application accepted by us.

(p) *Irrigated practice*—a method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated amount of insurance on the irrigated crop acreage.

(q) *Late planted*—acreage planted during the late planting period.

(r) *Late planting period*—the period which begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(s) *Loss ratio*—the ratio of indemnity to premium.

(t) *Male plant*—the plants grown for the purpose of pollinating female plants.

(u) *Non-seed production*—all seed with inadequate germination. (Designation as non-seed production under this definition may be production to count under section 9 through appraisal if the inadequate germination was due to an uninsurable cause. (See subparagraph 9.e.(2)(a)).

(v) *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.

(w) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

(x) *Sample*—at least 3 pounds of shelled corn representative (field run) for each variety of seed corn grown on the unit.

(y) *Seed company*—a company which contracts with a grower to produce or grow for the production of hybrid corn seed.

(z) *Seed production*—all seed with a germination rate of at least 80 percent (80%) on a warm test using clean seed.

(aa) *Service office*—the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

(bb) *Shelled-corn*—the grain (corn) after its removal from the cob.

(cc) *Tenant*—a person who rents land from another person for a share of the crop or a share of the proceeds therefrom.

(dd) *Timely planted*—the insured crop planted by the final planting date, as established by the Actuarial Table, for the insured crop in the county to be planted for harvest in the crop year.

(ee) *Type*—the crop grown: i.e., corn.

(ff) *Unit*—all insurable acreage of the insured crop in the county on the date of planting for the crop year:

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

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the crop on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported.

Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

(gg) *Variety*—the seed produced from a pair of genetically identifiable parents.

19. Descriptive Headings

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

20. Determinations

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.

21. Notices

All notices required to be given by you must be in writing and received by your service office 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.

22. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[51 FR 5697, Feb. 18, 1986; 51 FR 8183, Mar. 10, 1986, as amended at 51 FR 29205, Aug. 15, 1986; 52 FR 3214, Feb. 3, 1987; 54 FR 20373, May 11, 1989; 55 FR 35888, Sept. 4, 1990; 58 FR 67645, Dec. 22, 1993; 60 FR 62722, 62723, Dec. 7, 1995]

PART 444 [RESERVED]

PART 445—PEPPER CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.
445.1 Availability of pepper crop insurance.
445.2 Premium rates, coverage levels, and amounts of insurance.
445.3 OMB control numbers.
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445.5 Good faith reliance on misrepresentation.
445.6 The contract.
445.7 The application and policy.

AUTHORITY: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

SOURCE: 51 FR 11293, Apr. 2, 1986, unless otherwise noted.

Subpart—Regulations for the 1987 and Succeeding Crop Years

§445.1 Availability of pepper crop insurance.

Insurance shall be offered under the provisions of this subpart on peppers in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§445.2 Premium rates, coverage levels, and amounts of insurance.

(a) The Manager shall establish premium rates, coverage levels, and amounts of insurance for peppers which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance per acre and a coverage level from among those levels and amounts set by the actuarial table for the crop year.

§445.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§445.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§445.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the pepper crop insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§445.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the pepper crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms

referred to in the contract are available at the applicable service offices.

§ 445.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the pepper crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a pepper insurance contract issued under such regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Pepper Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Pepper—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Excessive rain;

(2) Frost;

(3) Freeze;

(4) Hail;

(5) Fire;

(6) Tornado;

(7) Tropical depression; or

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9.e.(6).

b. We will not insure against any loss of production due to:

(1) Disease or insect infestation;

(2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good pepper farming practices;

(4) The impoundment of water by any governmental, public, or private dam or reservoir project;

(5) The failure or breakdown of irrigation equipment or facilities;

(6) The failure to follow recognized good pepper irrigation practice; or

(7) Any cause not specified in section 1.a. as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be peppers planted for harvest as fresh market peppers, grown on insured acreage, and for which an amount of insurance and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be peppers planted on irrigated acreage as designated insurable by the actuarial

table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured peppers at the time of each planting period. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage of peppers grown by any person if the person had not previously:

(1) Grown peppers for commercial sales; or

(2) Participated in the management of the pepper farming operation.

e. We do not insure any acreage:

(1) Of peppers grown for direct consumer marketing;

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is not irrigated;

(4) On which peppers are not grown on plastic mulch unless provided for by the actuarial table;

(5) On which tomatoes, peppers, eggplants or tobacco have been grown and the soil was not fumigated or otherwise properly treated before planting peppers;

(6) Which was planted to peppers the preceding planting period, unless the pepper plants of the preceding planting period were destroyed less than:

(a) 30 days after the date of planting; or

(b) 60 days after the date of direct seeding;

(7) Which is destroyed, it is practical to replant to peppers, and such acreage is not replanted (the unavailability of plants is not a valid reason for failing to replant);

(8) Initially planted after the final planting date set by the actuarial table;

(9) Of volunteer peppers;

(10) Planted to a type or variety of peppers not established as adapted to the area or excluded by the actuarial table;

(11) Planted for experimental purpose; or

(12) Planted with another crop.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice

You must report at the time of each planting period on our form:

a. All the acreage of fall, winter and spring-planted peppers in the county in which you have a share;

b. The practice, including the bed size; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any pepper plantings in the county. This report must be submitted for each planting period on or before the reporting date established by the actuarial table for each planting period. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, for each planting period, the insured acreage, share, and practice or we may deny liability on any unit for any planting. Any report submitted by you may be revised only upon our approval.

4. Coverage Levels and Amounts of Insurance

a. The coverage levels and amounts of insurance are contained in the actuarial table.

b. Coverage level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and amount of insurance on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the amount of insurance, times the premium rate, times the insured acreage, times your share at the time of each planting.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deduction for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you, or from any replant payment, or 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.

7. Insurance Period

Insurance attaches when the peppers are planted in each planting period and ends at the earliest of:

a. Total destruction of the peppers on the unit;

b. Discontinuance of harvest of peppers on the unit;

c. The date harvest should have started on the unit on any acreage which will not be harvested;

d. 150 days after the date of direct seeding, transplanting or replanting;

e. Final harvest; or

f. Final adjustment of loss.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant peppers damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest, the peppers on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use in given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the peppers and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(a) Total destruction of the peppers on the unit;

(b) Discontinuance of harvest of any acreage on the unit;

(c) The date harvest would normally start if any acreage on the unit is not to be harvested; or

(d) 150 days after the direct seeding, transplanting or replanting of the peppers (see section 7).

b. You may not destroy or replant any of the peppers on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the peppers which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peppers on the unit;

(2) Discontinuance of harvesting on the unit; or

(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production and the value received for all peppers on the unit and that any loss of production or value has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance times the percentage for the state of production defined by the actuarial table;

(2) Subtracting therefrom the total value of production to be counted (see subsection 9.e.); and

(3) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information reported, but the value of all production from insurable acreage, whether or not reported as insurable, will count against the amount of insurance.

e. The total value of production to be counted for a unit will include all harvested and appraised production.

(1) The total value of harvested production will be the greater of:

(a) The dollar amount obtained by multiplying the number of 1⅓ bushels of peppers harvested on the unit by $4.00; or

(b) The dollar amount obtained by multiplying the number of 1⅓ bushels of peppers sold by the price received for each 1⅓ bushel of peppers minus allowable cost set by the actuarial table. However, such price must not be less than zero for any 1⅓ bushel.

(2) The value of appraised production to be counted will include:

(a) The value of the potential production on any peppers that have not been harvested the third time and the value of unharvested mature green and red peppers;

(b) The value of the potential production lost due to uninsured causes; and

(c) Not less than the dollar amount of insurance per acre for any acreage abandoned or put to another use without our prior written consent or which is damaged solely by an uninsured cause.

The value of any appraised production will not be less than the dollar amount obtained by multiplying the number of 1⅓ bushels of peppers appraised by $4.00.

(3) Unharvested peppers damaged or defective due to insurable causes and which cannot be marketed will not be counted as production.

(4) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of peppers becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(5) The amount and value of production of any unharvested peppers may be determined

on the basis of field appraisals conducted after the end of the insurance period.

(6) If you elect to exclude hail and fire as insured causes of loss and the peppers are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78–A, ''Request to Exclude Hail and Fire.''

f. A replanting payment may be made on any insured peppers 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 as determined on the final planting date for the planting period. The acreage to be replanted must have sustained a loss in excess of 50 percent of the plant stand for the unit.

(1) No replanting payment will be made on acreage on which a replanting payment has been made during the current planting period for the crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the product obtained by multiplying $300.00 per acre by your share.

(3) The Corporation will transfer the original liability to the replanted crop without reduction by the amount of the replant payment and without increase in the original premium charged for insurance coverage when the crop is replanted in accordance with the requirements of the original planting.

(4) If seasonal conditions dictate replanting by broadcast method, and such method differs from the requirements of the original planting, the Corporation will transfer the original liability to the replanted crop reduced by the amount of the replant payment and without increase in the original premuim charged for insurance coverage.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the peppers are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all peppers produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such payment and setoff are approved.

d. The cancellation and termination dates are July 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your amount of insurance at which indemnities are computed is no longer offered, the actuarial table will provide the amount of insurance which you are deemed to have elected. All contract changes will be available at your service office by April 30 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of pepper crop insurance:

a. *Acre* means 43,560 square feet of plastic mulch or equivalent row area of not more than 6 foot widths (6-foot bed) on which at least 7,260 linear feet (rows) are planted.

b. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the amount of insurance, coverage levels, premium rates, practices, insurable and uninsurable acreage, and related information regarding pepper insurance in the county.

c. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. *Crop year* means the period within which the peppers are normally grown beginning August 1 and continuing through the harvesting of the spring-planted peppers and is designated by the calendar year in which the spring-planted peppers are normally harvested.

e. *Excessive rain* means more than 10 inches of rain on the pepper field within a 24-hour period, after the peppers have been seeded or transplanted.

f. *Freeze* means the condition of air temperatures over a widespread area remaining sufficiently at or below 32 degrees Fahrenheit to cause crop damage.

f. *Frost* means the condition of air temperature around the plant falling to 32 degrees Fahrenheit or below.

h. *Harvest* means the final picking of marketable peppers on the unit.

i. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

j. *Insured* means the person who submitted the application accepted by us.

k. *Loss ratio* means the ratio of indemnity to premium.

l. *Mature green pepper* means a pepper which has reached the stage of development that will withstand normal handling and shipping.

m. *Peppers grown for direct consumer marketing* means peppers grown for the purpose of selling directly to the consumer and which are grown on acreage not subject to an agreement between producer and packer to pack the production (the producer-packer agreement must be executed before you report your acreage).

n. *Person* means 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.

o. *Planting* means transplanting the pepper plant in the field or direct seeding in the field.

p. *Planting period* means the peppers planted within the dates set by the actuarial table, as fall-planted, winter-planted or spring-planted.

q. *Plant stand* means the number of live plants per acre before the plants were damaged due to insurable causes.

r. *Potential production* means the number of 1⅓ bushels of mature green peppers which the pepper plants would produce or would have produced, per acre, by the end of the insurance period.

s. *Replanting* means performing the cultural practices necessary to replant insured acreage to peppers.

t. *Replant payment* means that payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

u. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

v. *Tenant* means a person who rents land from another person for a share of the peppers or a share of the proceeds therefrom.

w. *Tropical depression* means only a large-scale, atmospheric wind-and-pressure system characterized by low pressure at its center and counterclockwise circular wind motion which has been identified by the United States Weather Service in which the minimum sustained surface wind (1-minute mean) is 33 knots per hour (38 miles per hour) or more at the U.S. Weather Service reporting station nearest to the crop damage at the time of loss.

x. *Unit* means all insurable acreage of peppers for each planting period in the county on the date of planting 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peppers on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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 the Appeal Regulations (7 CFR part 400—subpart J).

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[51 FR 11293, Apr. 2, 1986, as amended at 51 FR 29205, Aug. 15, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 17547–17549, May 11, 1987; 55 FR 35888, Sept. 4, 1990]

PART 446—WALNUT CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

446.1 Availability of walnut crop insurance.

446.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
446.3 OMB control numbers.
446.4 Creditors.
446.5 Good faith reliance on misrepresentation.
446.6 The contract.
446.7 The application and policy.

AUTHORITY: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

SOURCE: 50 FR 43687, Oct. 29, 1985, unless otherwise noted.

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 446.1 Availability of walnut crop insurance.

Insurance shall be offered under the provisions of this subpart on walnuts in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 446.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for walnuts which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 446.3 OMB control numbers.

The OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 446.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 446.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the walnut insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 446.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the walnut crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§446.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the walnut crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a walnut contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Walnut Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Walnut Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Direct Mediterranean Fruit Fly damage; or

(7) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(3).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good walnut farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project;

(4) The failure to carry out a good walnut irrigation practice;

(5) The failure or breakdown of irrigation equipment or facilities; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be English walnuts (excluding black walnuts) hereafter called ''walnuts'' which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be walnuts grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured walnuts at the time insurance attaches. However, for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) On which the trees have not reached the ninth growing season after being set out, unless we agree, in writing, to insure such acreage; or

(2) Planted with a crop other than walnuts.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good walnut irrigation practice.

f. Insurance may attach only by written agreement with us on any unit which consists of less than 5 acres of insurable walnut trees.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of walnuts in the county in which you have a share;

b. The practice; and

c. Your share on the date insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any walnuts grown in the county. This report must be submitted annually on or before March 1. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by March 1, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (ninth growing season and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent for each percent reduction in excess of 10 percent.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

e. You must furnish a report of production to use for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance attaches for each crop year on March 1 and ends at the earliest of:

a. Total destruction of the walnuts;

b. Harvest of the walnuts;

c. Final adjustment of a loss; or

d. November 15.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if, during the period before harvest, the walnuts on any unit are damaged and you decide not to further care for them.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined or if damage occurs during harvest, immediate notice must be given.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(a) Total destruction of the walnuts on the unit;

(b) Harvest of the unit; or

(c) November 15 of the crop year.

b. You must obtain written consent from us before you destroy any of the walnuts which are not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the walnuts on the unit;

(2) Harvest of the unit; or

(3) November 15 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of walnuts on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of walnuts to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good walnut farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our prior written consent; and

(c) Any appraised production on unharvested acreage.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Marketed; or

(b) Further damaged by an insured cause and reappraised by us.

(3) If you elect to exclude hail and fire as insured causes of loss and the walnuts are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire''.

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance form this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all walnuts produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are January 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of walnut crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding walnut insurance in the county.

b. *Contiguous land* means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. *Crop year* means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the walnuts are normally harvested.

e. *Direct Mediterranean Fruit Fly damage* means the actual physical damage to the walnuts which causes such walnuts to be considered unmarketable and will not include unmarketability of such walnuts as a direct result of a quarantine, boycott or refusal to accept the walnuts by any entity without regard to actual physical damage to such walnuts.

f. *Harvest* means removal of the walnuts from the orchard.

g. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

h. *Insured* means the person who submitted the application accepted by us.

i. *Loss ratio* means the ratio of indemnity to premium.

j. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

k. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. *Tenant* means a person who rents land from another person for a share of the walnuts or a share of the proceeds therefrom.

m. *Unit* means all insurable acreage of walnuts in the county located on contiguous land on the date insurance attaches 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the walnuts on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[50 FR 43687, Oct. 29, 1985, as amended at 51 FR 29205–29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 6775, Mar. 5, 1987; 55 FR 35888, Sept. 4, 1990]

PART 447—POPCORN CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.
447.1 Availability of popcorn crop insurance.
447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
447.3 OMB control numbers.
447.4 Creditors.
447.5 Good faith reliance on misrepresentation.
447.6 The contract.
447.7 The application and policy.

AUTHORITY: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

SOURCE: 51 FR 37897, Oct. 27, 1986, unless otherwise noted.

Subpart—Regulations for the 1987 and Suceeding Crop Years

§447.1 Availability of popcorn crop insurance.

Insurance shall be offered under the provisions of this subpart on popcorn in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for popcorn which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§ 447.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 447.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 447.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the popcorn insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 447.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the popcorn crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 447.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the popcorn crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in previous policies and regulations issued by FCIC, a contract in the form provided for in this subpart will come into effect as a continuation of a popcorn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Popcorn Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Popcorn—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(7).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good popcorn farming practices or the grower provisions of the popcorn contract;

(3) The impoundment of water by any governmental, public, or private dam or reservoir project;

(4) Damage resulting from frost or freeze after the date designated by the actuarial table;

(5) The failure or breakdown of irrigation equipment or facilities;

(6) The failure to follow recognized good popcorn irrigation practices; or

(7) Any cause not specified in subsection 1.a. as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be popcorn which is planted for harvest, grown on insured acreage, and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be popcorn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured popcorn at the time of planting. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage: (1) Of popcorn not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year. (The contract must be executed and effective before you report your acreage.);

(2) Which is destroyed, it is practical to replant to popcorn, and such acreage is not replanted;

(3) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(5) Initially planted after the final planting date set by the actuarial table unless you agree, in writing, on our form to coverage reduction;

(6) Of volunteer popcorn;

(7) Planted to a type or variety of popcorn not established as adapted to the area or excluded by the actuarial table;

(8) Planted with a crop other than popcorn; or

(9) Planted for the development or production of hybrid seed or planted for experimental purposes.

e. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water at the time of planting to carry out a good popcorn irrigation practice.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

g. An instrument in the form of a ''lease'' under which you retain possession of the land on which the popcorn is grown and which provides for delivery of the popcorn under certain conditions and at a stipulated price will, for the purpose of this contract, be treated as a contract under which you have the share in the popcorn.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of popcorn planted in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any popcorn planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage Level 2 will apply if you do not elect a coverage level.

c. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

d. You must report production to us for the previous crop year prior to the sales closing date for the subsequent crop year as established by the actuarial table. If you do not provide the required production report we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the subsequent crop year. The yield assigned by us will be 75% of the yield assigned for the purpose of determining your guarantee for the present crop year. If you have filed a claim for the previous crop year, the yield determined in adjusting your indemnity claim will be used as your production report.

5. Annual Premium

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

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 premium balance starting on the first day of the month following the first premium billing date.

6. Deduction for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you, or from any replant payment, or 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.

7. Insurance Period

Insurance attaches when the popcorn is planted and ends at the earliest of:

a. Total destruction of the popcorn;

b. Harvest;

c. Final adjustment of a loss; or

d. December 10 of the calendar year in which the popcorn is normally harvested.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if: (a) You want our consent to replant popcorn damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest, the popcorn on any unit is damaged and you decide not to further care for it or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

(2) Insured acreage may not be put to another use until we have appraised the popcorn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(3) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(4) If probable loss is determined within 15 days prior to or during harvest, immediate notice must be given. A representative sample of the unharvested popcorn (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(5) In addition to the notices required by this section, if you are going to claim an indemnity or any unit, you must give us notice not later than 10 days after the earliest of:

(a) Total destruction of the popcorn on the unit;

(b) Harvest of the unit; or

(c) December 10 of the crop year.

b. You may not destroy or replant any of the popcorn on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the popcorn which is not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the popcorn on the unit;

(2) Harvest of the unit; or

(3) December 10 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of the popcorn on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this result, the total production of popcorn to be counted (see subsection 9.e.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature popcorn production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 15.0 percent; or

(b) Which, due to insurable causes, is not of merchantable popcorn quality and is rejected by the processor, will be adjusted by:

(i) dividing the value per pound of the damaged popcorn by the contract price per pound for undamaged popcorn; and

(ii) Multiplying the result by the number of pounds of such popcorn.

(2) Any production from yellow or white dent corn will be counted as popcorn on a weight basis.

(3) Any ear production for which we cannot determine a shelling factor will be considered to have an 80 percent shelling factor.

(4) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(5) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of popcorn becomes general in the county and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(6) The amount of production of any unharvested popcorn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the popcorn is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

f. A replanting payment may be made on any insured popcorn 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.

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

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date established by the actuarial table; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed 150 pounds multiplied by the price election, multiplied by your share.

(3) If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

(4) The Corporation will transfer the original liability to the replanted crop without reduction by the amount of the replant payment and without increase in the original premium charged for insurance coverage when the crop is replanted in accordance with the requirements of the original planting.

(5) If seasonal conditions dictate replanting by broadcast method, and such method differs from the requirements of the original planting, the Corporation will transfer the original liability to the replanted crop reduced by the amount of the replant payment and without increase in the original premuim charged for insurance coverage.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. We have a policy of paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the crop is planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or ommission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 do to preserve any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for 2 years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all of the popcorn produced on each unit including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless

canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of popcorn crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding popcorn insurance in the county.

b. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the acturial table.

c. *Crop year* means the period within which the popcorn is normally grown and is designated by the calender year in which the popcorn is normally harvested.

d. *Harvest* means the completion of removing the grain from the stalk either by hand or machine.

e. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

f. *Insured* means the person who submitted the application accepted by us.

g. *Loss ratio* means the ratio of indemnity to premium.

h. *Person* means 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.

i. *Replanting* means performing the cultural practices necessary to replant insured acreage to popcorn.

j. *Replant payment* that means payment made to the insured in accordance with the provisions of subsection 9.f. of this policy which payment is subject to offset for premium owed.

k. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. *Tenant* means a person who rents land from another person for a share of the popcorn or a share of the proceeds therefrom.

m. *Unit* means all insurable acreage of popcorn in the county on the date of planting 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the popcorn on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported.

Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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 the Appeal Regulations (7 CFR Part 400—Subpart J).

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[51 FR 37897, Oct. 27, 1986, as amended at 52 FR 3214, Feb. 3, 1987; 52 FR 17547, 17548, May 11, 1987; 55 FR 35888, Sept. 4, 1990]

PARTS 448–449 [RESERVED]

PART 450—PRUNE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

450.1 Availability of prune crop insurance.
450.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
450.3 OMB control numbers.
450.4 Creditors.
450.5 Good faith reliance on misrepresentation.
450.6 The contract.
450.7 The application and policy.

AUTHORITY: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

SOURCE: 50 FR 50277, Dec. 10, 1985, unless otherwise noted.

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 450.1 Availability of prune crop insurance.

Insurance shall be offered under the provisions of this subpart on prunes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 450.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for prunes which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 450.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 450.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 450.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the prune insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§450.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the prune crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§450.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the prune crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a prune contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37 and 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Prune Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Prune—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Direct Mediterranean Fruit Fly damage; or

(7) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(4).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement or wrongdoing by you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good prune farming practices;

(3) The failure to follow recognized good prune irrigation practice;

(4) The failure or breakdown of irrigation equipment or facilities;

(5) The impoundment of water by any governmental, public or private dam or reservoir project; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be any of the varieties of prune plums (''prunes'') which are grown for the production of dried prunes on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be prunes grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured prunes at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) Which is not irrigated except where provided by the actuarial table, or for which adequate facilities and water are not available at the time insurance attaches to carry out a good prune irrigation practice;

(2) On which the trees have not reached the seventh growing season after being set out unless we agree in writing to insure such acreage;

(3) Planted with a vine or tree crop other than prunes;

(4) Which we inspect and consider not acceptable; or

(5) A variety of prunes not established as adapted to the area or excluded by the actuarial table.

e. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of prunes in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any prunes grown in the county. This report must be submitted annually on or before March 1. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval. By applying for prune crop insurance, you authorize us to examine records maintained by the Prune Marketing Committee, if applicable, or prune packer for the purpose of determining or verifying your production and acreage.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (seventh growing season and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent (through adjustment to your average yield) for each 1 percent reduction in excess of 10 percent.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance attaches for each crop year on March 1 and ends at the earliest of:

a. Total destruction of the prunes;

b. The date harvest of the prunes (by variety) should have started;

c. Harvest of the prunes;
d. Final adjustment of a loss;
e. October 1 in California; or
f. October 15 in Oregon.

8. Notice of Damage or Loss

a. In case of damage or probable loss:
(1) You must give us written notice of:
(a) The dates of damage; and
(b) The causes of damage.
(2) You must give us written notice if during the period before harvest, the prunes on any unit are damaged and you decide not to further care for or harvest any part of them.
(3) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.
(4) If probable loss or damage is determined within 15 days of or during harvest, immediate notice must be given.
(5) If you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:
(a) After total destruction of the prunes;
(b) Discontinuance of harvest on the unit; or
(c) Before harvest would normally start if any acreage on the unit is not to be harvested.
(6) Unless notice has been given under subsection (5) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:
(a) Harvest of the unit;
(b) October 1 of the crop year in California; or
(c) October 15 of the crop year in Oregon.
b. You must obtain written consent from us before you destroy any of the prunes which are not to be harvested.
c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:
(1) Total destruction of the prunes on the unit;
(2) Harvest of the unit;
(3) October 1 of the crop year in California; or
(4) October 15 of the crop year in Oregon.
b. We will not pay any indemnity unless you:
(1) Establish the total production of prunes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period;
(2) Authorize us in writing to examine and obtain any records pertaining to the production and marketing of the insured prunes under this contract from the prune packer Prune Marketing Committee, if applicable, or prune packer; and
(3) Furnish all information we require concerning the loss.
c. The indemnity will be determined on each unit by:
(1) Multiplying the insured acreage by the production guarantee;
(2) Subtracting therefrom the total production of prunes to be counted (see section 9e);
(3) Multiplying the remainder by the price election; and
(4) Multiplying this result by your share.
d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.
e. The total production to be counted for a unit will include all harvested and appraised production on a natural condition prune basis which grades substandard or better.
(1) Any production of substandard prunes which results from damage by insurable causes will be adjusted by:
(a) Dividing the value per ton of such prunes by the market price per ton of standard prunes (of the same size count); and
(b) Multiplying the result by the number of tons of such prunes.
(2) Appraised production to be counted will include:
(a) Potential production lost due to uninsured causes and failure to follow recognized good prune farming practices;
(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and
(c) Any unharvested production.
(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:
(a) Not harvested before the harvest of prunes becomes general in the county;
(b) Further damaged by an insured cause and reappraised by us; or
(c) Harvested.
(4) If you elect to exclude hail and fire as insured causes of loss and the prunes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire''.
f. You must not abandon any acreage to us.
g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value for the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Idemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all prunes produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity claim will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture will be the date both such payment and setoff are approved.

d. The cancellation and termination dates are January 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of prune crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding prune insurance in the county.

b. *Average yield* means the yield established from your production records, which is approved by us and shown on our form.

c. *Contiguous land* means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

d. *County* means the county shown on the application and any additional land located in a local producing are bordering on the county, as shown by the actuarial table.

e. *Crop year* means the period beginning with the date insurance attaches and extending through the normal harvest time and designated by the calendar year in which the prunes are normally harvested.

f. *Direct Mediterranean Fruit Fly damage* means the actual physical damage to the prunes on the unit which causes such prunes to be unmarketable and will not include unmarketability of such prunes as a direct result of a quarantine, boycott, or refusal to accept the prunes by any entity without regard to actual physical damage to such prunes.

g. *Harvest* means picking of the prunes from the trees or ground either by hand or machine for the purpose of removal from the orchard.

h. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

i. *Insured* means the person who submitted the application accepted by us.

j. *Market price for standard prunes* means the price per ton shown on the processor's settlement sheet for each size count of standard prunes.

k. *Natural condition prunes* means prunes in the condition in which they normally come from a dry yard or dehydrator.

l. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

m. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

n. *Standard prunes* means any natural conditioned prunes:

(1) Grading C or better in accordance with U.S. Standards for grades of dried prunes; or

(2) Which conform to the grading specifications currently regulating the handling of dried prunes in States where Federal Marketing Orders for dried prunes are applicable.

o. *Substandard prunes* mean any natural condition prunes failing to meet the applicable grading specifications for standard prunes.

p. *Tenant* means a person who rents land from another person for a share of the prunes or a share of the proceeds therefrom.

q. *Unit* means all insurable acreage of prunes in the county located on contiguous land on the data insurance attaches 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the prunes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on files in your service office. Units will be determined

when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsiderations of or appeal those determinations in accordance with Appeal Regulations.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[50 FR 50277, Dec. 10, 1985, as amended at 51 FR 29205, 29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 55 FR 35888, Sept. 4, 1990]

PART 451—CANNING AND PROCESSING PEACH CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and 1987 Crop Years

Sec.

451.1 Availability of canning and processing peach crop insurance.
451.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
451.3 OMB control numbers.
451.4 Creditors.
451.5 Good faith reliance on misrepresentation.
451.6 The contract.
451.7 The application and policy.

AUTHORITY: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

SOURCE: 51 FR 1241, Jan. 10, 1986, unless otherwise noted.

Subpart—Regulations for the 1986 and 1987 Crop Years

§ 451.1 Availability of canning and processing peach crop insurance.

Insurance shall be offered under the provisions of this subpart on canning and processing peaches in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 451.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for canning and processing peaches which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 451.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 451.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§451.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the canning and processing peach insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§451.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the canning and processing peach crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§451.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the canning and processing peach crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a canning and processing peach contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Canning and Processing Peach Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Canning and Processing Peach Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted

Application and ''we,'' ''us'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption;

(6) Direct Mediterranean Fruit Fly damage; or

(7) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(3).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement or wrongdoing by you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good peach farming practices;

(3) The failure to follow recognized good peach irrigation practice;

(4) The failure or breakdown of irrigation equipment or facilities;

(5) The impoundment of water by any governmental, public or private dam or reservoir project;

(6) Split pits regardless of cause; or

(7) Any cause not specified in section 1a as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be any of the varieties of clingstone peaches (''peaches'') which are grown for the production of canning or processing peaches on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be peaches grown on insurable acreage as designated by the acturial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured peaches at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) Which is not irrigated or for which adequate facilities and water are not available at the time insurance attaches to carry out a good peach irrigation practice;

(2) On which the trees have not reached the fifth growing season after being set out unless we agree in writing to insure such acreage;

(3) Planted with a vine or tree crop other than peaches;

(4) Which we inspect and consider not acceptable; or

(5) A variety of peaches not established as adapted to the area or excluded by the actuarial table.

e. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of peaches in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any peaches grown in the county. This report must be submitted annually on or before March 1. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval. By applying for peach crop insurance, you authorize us to examine records maintained by the Cling Peach Advisory Board for the purpose of determining or verifying your production and acreage.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (fifth growing season and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent (through adjustment to your average yield) for each 1 percent reduction in excess of 10 percent.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the sales closing date as established by the actuarial table for submitting applications for the crop year.

5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election,

times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-quarter percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance attaches for each crop year on March 1 and ends at the earliest of:

a. Total destruction of the peaches;

b. The date harvest of the peaches (by variety) should have started;

c. Harvest of the peaches;

d. Final adjustment of a loss; or

e. September 15.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice of:

(a) The dates of damage; and

(b) The causes of damage.

(2) You must give us written notice if during the period before harvest, the peaches on any unit are damaged and you decide not to further care for or harvest any part of them.

(3) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(4) If probable loss or damage is determined within 15 days of or during harvest, immediate notice must be given.

(5) If you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours:

(a) After total destruction of the peaches;

(b) Discontinuance of harvest on the unit; or

(c) Before harvest would normally start if any acreage on the unit is not to be harvested.

(6) Unless notice has been given under subsection (5) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earliest of:

(a) Harvest of the unit; or

(b) September 15 of the crop year.

b. You must obtain written consent from us before you destroy any of the peaches which are not to be harvested.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peaches on the unit;

(2) Harvest of the unit; or

(3) September 15 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of peaches on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period;

(2) Authorize us in writing to examine and obtain any records pertaining to the production and marketing of the insured peaches under this contract from the peach canner or Cling Peach Advisory Board; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of peaches to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production which the California State Inspection Service grades No. 2 or better.

(1) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good peach farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent; and

(c) Any unharvested production.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of peaches becomes general in the county;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(3) If your elect to exclude hail and fire as insured causes of loss and the peaches are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire''.

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all peaches produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or

before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity claim will be the date you sign the claim; or

(2) A payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are January 31.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for 3 consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation data (November 31 for the 1988 crop year only). Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of peach crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding canning and processing peach insurance in the county.

b. *Average yield* means the yield established from your production records, which is approved by us and shown on our form.

c. *Contiguous land* means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

d. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

e. *Crop year* means the period beginning with the date insurance attaches and extending through the normal harvest time and designated by the calendar year in which the peaches are normally harvested.

f. *Direct Mediterranean Fruit Fly damage* means the actual physical damage to the peaches on the unit which causes such peaches to be unmarketable and will not include unmarketability of such peaches as a direct result of a quarantine, boycott, or refusal to accept the peaches by any entity without regard to actual physical damage to such peaches.

g. *Harvest* means picking of the peaches from the trees either by hand or machine for the purpose of removal from the orchard.

h. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

i. *Insured* means the person who submitted the application accepted by us.

j. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

k. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. *Tenant* means a person who rents land from another person for a share of the proceeds therefrom.

m. *Unit* means all insurable acreage of peaches in the county located on contiguous land on the date insurance attaches 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 entity on a share basis.

Land rented for cash, fixed commodity payment, or any consideration other than a share in the peaches on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to

affect the construction or meaning of any of the provisions of the contract.

19. Determinations

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.

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[51 FR 5697, Feb. 18, 1986, as amended at 51 FR 29205, 29207, Aug. 15, 1986; 51 FR 45296, Dec. 18, 1986; 52 FR 3214, Feb. 3, 1987; 52 FR 41692, Oct. 30, 1987; 53 FR 46850, Nov. 21, 1988; 55 FR 35888, Sept. 4, 1990]

PARTS 452–453 [RESERVED]

PART 454—FRESH MARKET TOMATO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1987 and Succeeding Crop Years

Sec.

454.1 Availability of guaranteed plan of fresh market tomato crop insurance.
454.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
454.3 OMB control numbers.
454.4 Creditors.
454.5 Good faith reliance on misrepresentation.
454.6 The contract.
454.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 52 FR 4593, Feb. 13, 1987, unless otherwise noted.

Subpart—Regulations for the 1987 and Succeeding Crop Years

§ 454.1 Availability of guaranteed plan of fresh market tomato crop insurance.

Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a company which is reinsured by the Corporation. If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled. The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums. An insured whose contract with the Corporation, or with a Company reinsured by the Corporation

under the Act, has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility. All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for a Contract under the Act and the present status of the other applications or contracts.

§454.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for fresh market tomatoes which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§454.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§454.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§454.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the fresh market tomato insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§454.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the fresh market tomato crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§454.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the fresh market

tomato crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1987 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a fresh market tomato contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1987 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Policy for the 1987 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Guaranteed Production Plan of Fresh Market—Tomato Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(5).

b. We will not insure against any loss of production due to:

(1) Damage that occurs or becomes evident after the tomatoes have been harvested;

(2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good tomato irrigation practices;

(4) The failure or breakdown of irrigation equipment or facilities;

(5) The failure to follow recognized good tomato farming practices;

(6) The impoundment of water by any governmental, public, or private dam or reservoir project;

(7) Disease or insect infestation; or

(8) Any cause not specified in subsection 1.a. as an insured loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be transplanted tomatoes (excluding cherry-type tomatoes) planted for harvest as fresh market tomatoes, grown on insurable acreage, and for which a guarantee and premium rate are set by the actuarial table.

b. The acreage insured for each crop year will be tomatoes planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured tomatoes at the time of planting. However, only for the purpose of determining the amount of indemnity, your insured share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage of tomatoes grown by any person if the person had not previously:

(1) Grown fresh market tomatoes for commercial sales; or

(2) Participated in the management of a fresh market tomato farming operation, in at least one of the three previous years.

e. We do not insure any acreage:

(1) Of tomatoes grown for direct consumer marketing;

(2) If the farming practices carried out are not in accordance with farming practices for which premium rates have been established;

(3) Except in Pennsylvania, on which tomatoes, peppers, eggplants, or tobacco have been grown within the previous two years and the soil was not fumigated or nematicide was not applied before planting tomatoes;

(4) Which is destroyed, it is practical to replant to tomatoes, and such acreage is not replanted (the unavailability of plants is not a valid reason for failure to replant);

(5) Initially planted before or after the planting period set by the actuarial table;

(6) Of volunteer tomatoes;

(7) Planted to a type or variety of tomatoes not established as adapted to the area or excluded by the actuarial table;

(8) Planted for experimental purposes;

(9) Planted with another crop; or

(10) Of tomatoes not subject to an agreement between the producer and the packer to pack the production (excluding insureds with their own packing facilities). Such agreement must be executed before reporting acreage.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

3. Report of Acreage, Share, and Practice

You must report on our form:

a. All the acreage of tomatoes in the county in which you have a share;

b. The practice, including the row width; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tomato plantings in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the acreage reporting date, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The final stage production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantees per acre are progressive by stages and increase, at specified intervals, to the final stage production guarantee. The stages and production guarantees are:

(1) First Stage is from planting until qualifying for stage 2, the production guarantee is 50% of the final stage production guarantee.

(2) Second Stage is from the earlier of stakes driven, one tie and pruning, or 30 days after planting until qualifying for stage 3, the production guarantee is 75% of the final stage production guarantee.

(3) Third Stage is from 60 days after planting until qualifying for stage 4, the production guarantee is 90% of the final stage production guarantee.

(4) Fourth Stage (Final Stage) is from the earlier of 75 days after planting or the beginning of harvest, the production guarantee is the final stage guarantee.

c. Any acreage of tomatoes damaged to the extent that growers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though the tomatoes continue to be cared for. The production guarantee for such acreage will be the guarantee for the stage in which such damage occurs.

d. Coverage level 2 will apply if you do not elect a coverage level.

e. You may change the coverage level and price election on or before the sales closing date set by the actuarial table for submitting applications for the crop year.

f. You must report production to us for the prior crop year before the sales closing date as established by the actuarial table. If you do not provide the required production report, we will assign a yield for the crop year for which the report is not furnished. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the insured crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your guarantee for the prior crop year. If you have filed a claim for the prior crop year, the yield determined in adjusting your indemnity claim will be considered your production report.

5. Annual Premium

The annual premium amount is computed by multiplying the final stage production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting, times any applicable premium adjustment factor for which you may qualify as contained in the actuarial table because you did not select optional units.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you,

or from a replanting payment, or 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.

7. Insurance Period

Insurance (on a per acre basis) attaches when the tomatoes are planted and ends at the earliest of:

a. Total destruction of the tomatoes;

b. Discontinuance of harvest;

c. The date harvest should have started on any acreage which was not harvested;

d. 120 days after the date of transplanting or replanting;

e. Completion of harvest;

f. Final adjustment of a loss; or

g. November 20 of the crop year in California and September 20 in all other states.

8. Notice of Damage or Loss

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant tomatoes damaged due to any insured cause (see subsection 9.f.);

(b) During the period before harvest begins, the tomatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tomatoes and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is determined within 15 days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

(a) Total destruction of the tomatoes on the unit;

(b) Discontinuance of harvest of any acreage on the unit;

(c) The date harvest would normally start if any acreage on the unit is not to be harvested;

(d) 120 days after transplanting or replanting of the tomatoes; or

(e) November 20 of the crop year in California and September 20 in all other states.

b. You may not destroy or replant any of the tomatoes on which a replanting payment will be claimed until we give written consent.

c. You must obtain written consent from us before you destroy any of the tomatoes which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tomatoes on the unit;

(2) Discontinuance of harvesting on the unit; or

(3) The date harvest should have started on the unit on any acreage which will not be harvested.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tomatoes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee for the applicable stage;

(2) Subtracting therefrom the total production of tomatoes to be counted (see subsection 9.e.);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (in 25-pound carton equivalents) to be counted for a unit will include all harvested and appraised production.

(1) All tomato production marketed, and any harvested unmarketed production meeting the standards for grading 85% or better U.S. No. 1 with classification size of 6 x 7 ($2\frac{8}{32}$ inch minimum diameter) or larger will be considered production to count.

(2) Appraised production to be counted will include:

(a) Unharvested production of mature green and ripe tomatoes with classification size of 6 x 7 ($2\frac{8}{32}$ inch minimum diameter) or larger remaining after the final harvest;

(b) Potential production on unharvested acreage and potential production on acreage when final harvest has not been completed;

(c) Potential production lost due to uninsured causes; and

(d) Not less than the guarantee for any acreage abandoned or put to another use

without prior written consent or which is damaged solely by an uninsured cause.

(3) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tomatoes becomes general in the county for the planting period and reappraised by us;

(b) Further damaged by an insured cause and reappraised by us; or

(c) Harvested.

(4) The amount of production of any unharvested tomatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you elect to exclude hail and fire as insured causes of loss and the tomatoes are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

f. A replanting payment may be made on any insured tomatoes 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 as determined on the final planting date. The acreage to be replanted must have sustained a loss in excess of 50 percent of the plant stand.

(1) No replanting payment will be made on acreage on which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed 70 cartons multiplied by the price election, multiplied by your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

i. An indemnity will not be paid unless you comply with all policy provisions.

j. It is our policy to pay your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. However, we will pay simple interest on the net indemnity ultimately found to be due to you, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. Interest due will be paid from and including the 61st day after the date you sign, date, and submit to us the properly completed claim-for-indemnity form. 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

k. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the tomatoes are planted for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

l. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay you for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for three years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all tomatoes produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellation and Termination

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. The cancellation and termination dates are:

State	Cancellation and termination dates
California, Florida, Georgia, and South Carolina.	February 15.
All other states	April 15.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. The contract will terminate if no premium is earned for three consecutive years.

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by November 30 preceding the cancellation date for counties with a February 15 cancellation date, and by December 31 preceding the cancellation date for counties with an April 15 cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of Terms

For the purposes of tomato crop insurance:

a. *Acre* means 43,560 square feet of land on which row widths do not exceed 6 feet or if row widths exceed 6 feet, the land area on which at least 7,260 linear feet of rows are planted.

b. *Actuarial table* means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding fresh market tomato insurance in the county.

c. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. *Crop year* means the period within which the tomatoes are normally grown and is designated by the calendar year in which the tomatoes are normally harvested.

e. *Harvest* means the picking of marketable tomatoes on the unit.

f. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

g. *Insured* means the person who submitted the application accepted by us.

h. *Mature green tomato* means a tomato which:

(1) Has heightened gloss because of the waxy skin that cannot be torn by scraping;

(2) Has well formed jelly-like substance in the locules;

(3) Has seeds that are sufficiently hard so they are pushed aside and not cut by a sharp knife in slicing; and

(4) Shows no red color.

i. *Person* means 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.

j. *Planting* means transplanting the tomato plants into the field.

k. *Plant stand* means the number of live plants per acre before the plants were damaged due to insurable causes.

l. *Potential production* means the number of 25-pound cartons of mature green or ripe tomatoes with classification size of 6 x 7 (2⁸⁄₃₂ inch minimum diameter) or larger which the tomato plants would produce or would have produced, per acre, by the end of the insurance period.

m. *Replanting* means performng the cultural practices necessary to replant insured acreage to tomatoes.

n. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

o. *Tenant* means a person who rents land from another person for a share of the tomatoes or a share of the proceeds therefrom.

p. *Tomatoes grown for direct consumer marketing* means tomatoes grown for the purpose of selling directly to the consumer.

q. *Unit* means all insurable acreage of tomatoes in the county on the date of planting for the crop year:

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

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

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the tomatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive Headings

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

19. Determinations

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 the Appeal Regulations (7 CFR Part 400—Subpart J).

20. Notices

All notices required to be given by you must be in writing and received by your service office 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.

21. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[52 FR 4593, Feb. 13, 1987, as amended at 53 FR 46850, Nov. 21, 1988; 54 FR 48077, Nov. 21, 1989; 55 FR 35888, Sept. 4, 1990]

PART 455—MACADAMIA NUT CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1988 and Succeeding Crop Years

Sec.

455.1 Availability of macadamia nut crop insurance.
455.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
455.3 OMB control numbers.
455.4 Creditors.
455.5 Good faith reliance on misrepresentation.
455.6 The contract.
455.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 53 FR 6569, Mar. 2, 1988, unless otherwise noted.

Subpart—Regulations for the 1988 and Succeeding Crop Years

§455.1 Availability of macadamia nut crop insurance.

(a) Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended, (the Act). The counties shall be designated by the

Manager of the Corporation from those approved by the Board of Directors of the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation (hereinafter ''Reinsured companies'') offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a Reinsured company. If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled. The person must repay all amounts received in violaton of this section with interest at the rate contained in the contract for delinquent premiums.

(b) An insured whose contract with the Corporation or with a Reinsured company under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a Reinsured company unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility. All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for a Contract under the Act and the present status of the applications or contracts.

§ 455.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for macadamia nuts which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time of application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§ 455.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§ 455.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 455.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the macadamia nut insurance contract, whenever—

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation or a Reinsured company:

(1) Is indebted to the Corporation or a Reinsured company for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the

insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000, or a Reinsured company finds that:

(1) An agent or employee of the Corporation or a Reinsured company did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Request for relief under this section must be submitted to the Corporation or to the Reinsured Company, whichever is applicable, in writing.

[53 FR 6569, Mar. 2, 1988, as amended at 54 FR 30007, July 18, 1989]

§455.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation or a Reinsured company of a duly executed application for insurance on a form prescribed by the Corporation or a Reinsured company. The contract shall cover the macadamia nut crop as provided in the policy. The contract shall consist of the application, the policy and the county actuarial table. This contract is not continuous. Application must be made annually for the macadamia nut contract on or prior to the sales closing date established by the actuarial table. The forms referred to in the contract are available at the applicable service offices.

§455.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the macadamia nut crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation or a Reinsured company at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation or a Reinsured company may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) A contract in the form provided for in this subpart will be in effect as a macadamia nut contract applicable for one year. A new application must be submitted for each subsequent crop year.

(d) The application for the 1988 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Macadamia Nut Crop Insurance Policy for the 1988 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

FEDERAL CROP INSURANCE CORPORATION

Macadamia Nut—Crop Insurance Policy

(This is NOT a continuous contract. Refer to Section 15)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Earthquake;

(3) Fire;

(4) Volcanic eruption;

(5) Wildlife; or

(6) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(4).

b. We will not insure against any loss of production due to:

(1) Unmarketability as a direct result of quarantine, boycott, or refusal of any entity to accept production unless production has actual physical damage due to a cause specified in subsection 1.a.;

(2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good macadamia nut farming practices;

(4) Water contained by any governmental, public, or private dam or reservoir project;

(5) Flooding on any unit subject to a flood or water flowage easement;

(6) Flooding on any unit located between any body of water and a primary flood control structure for that body of water;

(7) Failure or breakdown of irrigation equipment or facilities;

(8) Failure to carry out a good macadamia nut irrigation practice; or

(9) Any cause not specified in subsection 1.a. as an insured cause of loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be all varieties of macadamia nuts grown for processing on insurable acreage which has been inspected and accepted by us and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be macadamia nuts grown on insurable acreage as designated by the actuarial table, and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured macadamia nuts at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your insured share will not exceed your share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any macadamia nuts:

(1) If the farming practices carried out are not the same as those for which the guarantee and premium rate have been established;

(2) Of a type of variety not established as adapted to the area or excluded by the actuarial table;

(3) Produced by macadamia trees that have not reached the fifth growing season after transplanting or grafting;

(4) If the macadamia trees have not produced an average yield of at least 190 pounds of wet inshell nuts per acre in a previous year;

(5) If the trees are interplanted with a crop other than macadamia nuts;

(6) If acceptable production records of at least the previous crop year are not available;

(7) If there is less than a 50 percent stand of bearing trees based on the original planting pattern; or

(8) Which we consider not acceptable.

e. We may limit the insurable acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of Acreage, Share, Variety, Practice, and Number of Bearing Trees

You must report on our form by unit:

a. All the acreage of macadamia nuts in the county in which you have a share;

b. Your share at the time insurance attaches;

c. The variety;

d. The dates on which the trees were transplanted or grafted;

e. The practice; and

f. The number of bearing trees.

You must designate separately any acreage that is not insurable. This report must be submitted annually prior to the time insurance attaches. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good macadamia nut irrigation practice. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report within 15 days after the time insurance attaches, we may elect to determine, by unit, the insured acreage, share, practice, and number of bearing trees, or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (fifth growing season after transplanting or grafting and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent for each percent reduction in excess of 10 percent.

c. You may change the coverage level and price election for the succeeding crop year on or before December 31 of the current crop year.

d. You must report production to us for the insured crop year by December 31 of that crop year. If you do not provide the required production report, we will assign a yield for the insured crop year. The yield assigned by us will not be more than 75 percent of the yield used to determine your guarantee for the insured crop year. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the succeeding crop year. If you have filed a claim for the insured crop year, the production report will be calculated based on the actual production used to determine the indemnity payment.

5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

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 premium balance starting on the first day of the month following the premium billing date.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or 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.

7. Insurance Period

Insurance on insurable acreage attaches for each crop year on January 1. However, if we accept your application for insurance after January 1, insurance does not attach until the thirtieth (30th) day after you sign and submit a properly completed application. Insurance will not attach to any acreage inspected by us and determined to be unacceptable. Insurance ends on a per-acre basis at the earliest of:

a. Total destruction of the macadamia nuts on the unit;

b. The date harvest would normally start on the unit on any acreage which will not be harvested;

c. Completion of harvest;

d. Final adjustment of a loss; or

e. December 31 of the crop year.

8. Notice of Damage or Loss

a. You must give us written notice:

(1) Without delay if damage resulting in probable loss occurs at any time during the period before harvest; and

(2) At least fifteen (15) days before the beginning of harvest if you anticipate a loss on any unit.

b. If probable loss is determined within fifteen (15) days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than seventy-two (72) hours after the earliest of:

(1) Total destruction of the macadamia nuts on the unit;

(2) Discontinuance of harvest of any acreage on the unit;

(3) The date harvest would normally start if any acreage on the unit is not to be harvested; or

(4) December 31 of the crop year.

c. You must obtain written consent from us before you destroy any of the macadamia nuts which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than sixty (60) days after the earliest of:

(1) Total destruction of the macadamia nuts on the unit;

(2) Harvest of the unit; or

(3) December 31 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of macadamia nuts on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of macadamia nuts to be counted (see subsection 9.e.);

(3) Multiplying the remainder of the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (wet inshell pounds) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good macadamia nut farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our prior written consent; and

(c) Any production detached from trees and not removed from the orchard.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Further damaged by an insured cause and reappraised by us; or

(b) Harvested.

(3) We may determine the amount of production of any unharvested macadamia nuts on the basis of field appraisals conducted after the end of the insurance period.

(4) If you elect to exclude hail and fire as insured causes of loss and the macadamia nuts are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. It is our policy to pay your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. However, we will pay simple interest computed on the net indemnity ultimately found to be due to you, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. Interest due will be paid from and including the 61st day after the date you sign, date, and submit to us the properly completed claim-for-indemnity form. 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.

The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payble under such other insurance.

For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to an Indemnity—Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay for your loss, then your right of 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.

14. Records and Access to Farm

You must keep, for three years, after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all macadamia nuts produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in: (a) Cancellation of the contract prior to the

crop year to which the records apply; (b) assignment of production to units by us; or (c) a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year.

b. The term of this contract ends as shown in section 7 of this policy. We are under no obligation to send you any renewal notice or other notice that the contract term is ending and the receipt by you of any such notice is not a waiver of this provision.

c. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

d. This contract will automatically terminate at the end of the current contract period unless we offer to renew the contract for a subsequent crop year and you accept.

16. Meaning of Terms

For the purposes of macadamia nut crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us. The Actuarial Table is available for public inspection in your service office and shows the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding macadamia nut insurance in the country.

b. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. *Crop year* means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the macadamia nuts are normally harvested.

d. *Harvest* means the picking of the macadamia nuts from the ground.

e. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

f. *Insured* means the person who submitted the application accepted by us.

g. *Person* means 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.

h. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. *Tenant* means a person who rents land from another person for a share of the macadamia nuts or a share of the proceeds therefrom.

j. *Unit* means all insurable acreage of macadamia nuts in the county on the date of planting 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the macadamia nuts on such land will be considered as owned by the lessee.

Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

k. *Wet inshell* means the weight of the macadamia nuts as they are removed from the orchard with the nuts meats in the shells after removal of the husk and prior to being dried.

17. Descriptive Headings

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

18. Determinations

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 the Appeal Regulations (7 CFR Part 400, Subpart J).

19. Notices

All notices required to be given by you must be in writing and received by your

service office 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.

20. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[53 FR 6569, Mar. 2, 1988, as amended at 55 FR 35887, Sept. 4, 1990]

PART 456—MACADAMIA TREE CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1988 and Succeeding Crop Years

Sec.

456.1 Availability of macadamia tree crop insurance.
456.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
456.3 OMB control numbers.
456.4 Creditors.
456.5 Good faith reliance on misrepresentation.
456.6 The contract.
456.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 53 FR 31827, Aug. 22, 1988, unless otherwise noted.

Subpart—Regulations for the 1988 and Succeeding Crop Years

§ 456.1 Availability of macadamia tree crop insurance.

Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a company which is reinsured by the Corporation. If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled. The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

An insured whose contract with the Corporation or with a Company reinsured by the Corporation under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility. All applicants for insurance under the Act must advise the agent, in writing at the time of application, of any previous applications for a Contract under the Act and the present status of the applications or contracts.

§ 456.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees,

coverage levels, and prices at which indemnities shall be computed for macadamia trees which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

§456.3 OMB control numbers.

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

§456.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§456.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the macadamia tree insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§456.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation (or by a Company reinsured by the Corporation) of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the macadamia tree crop as provided in the policy. The contract shall consist of the application, the policy and the county actuarial table. This contract is not continuous. Application must be made annually for the macadamia tree contract on or prior to the sales closing date established by the actuarial table. The forms referred to in the contract are available at the applicable service offices.

§456.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the macadamia tree crop as landlord or owner-operator if the person wishes to participate in the program. The application must be submitted to the Corporation (or the Company reinsured by the Corporation) at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. 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 service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during

such period, the Corporation will immediately discontinue the acceptance of applications.

(c) A contract in the form provided for in this subpart will be in effect as a macadamia tree contract applicable for one year. A new application must be submitted for each subsequent crop year.

(d) The application for the 1988 and succeeding crop years is found at subpart D of part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Macadamia Tree Crop Insurance Policy for the 1988 and succeeding crop years are as follows:

MACADAMIA TREE CROP INSURANCE POLICY

(This is not a continuous contract. Refer to Section 15)

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of Loss

a. The insurance provided is against unavoidable damage to macadamia trees resulting from the following causes occurring within the insurance period:

(1) Fire;

(2) Volcanic eruption; or

(3) Wind;

Unless those causes are excepted, excluded, or limited by this policy or the actuarial table.

b. We will not insure against any loss due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove;

(2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good macadamia nut orchard practices; or

(4) Any cause not specified in subsection 1.a. as an insured cause of loss.

2. Crop, Acreage, and Share Insured

a. The crop insured will be all macadamia trees grown for the production of macadamia nuts on insurable acreage which has been annually inspected and accepted by us and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be all macadamia tree acreage designated as insurable by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord or owner-operator in the insured macadamia trees at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your insured share will not exceed your share at the time of loss.

d. We do not insure any macadamia trees:

(1) If the orchard maintenance practices carried out are not the same as those for which the guarantee and premium rate have been established;

(2) Of a type or variety not established as adapted to the area or excluded by the actuarial table;

(3) Interplanted with another crop;

(4) Which we consider not acceptable; or

(5) That are less than one year of age when the insured period begins.

e. We may limit the insurable acreage to any acreage limitation, established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of Acreage, Share, Variety, and Practice

You must report on our form by unit:

a. all the acreage of macadamia trees in the county in which you have a share;

b. your share at the time insurance attaches;

c. the types of trees;

d. the number of trees set out;

e. the dates on which the trees were set out or grafted; and

f. If more than 10 percent of the trees on any unit has been replaced in the previous five crop years, the date of replacement.

You must designate separately any acreage that is not insurable. This report must be submitted annually prior to the time insurance attaches. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good macadamia orchard irrigation practice. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report within 15 days after the time insurance attaches, we may elect to determine, by unit, the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of Insurance and Coverage Levels

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. If, at the time insurance attaches, the number of macadamia trees on a unit is less than 90 percent of the number of macadamia trees that would comprise a complete planting pattern, the amount of insurance will be reduced 1 percent for each percent below 90 percent.

5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre times the premium rate, times the insured acreage, times your share on the date insurance attaches.

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 premium balance starting on the first day of the month following the premium billing date.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its agenices.

7. Insurance Period

Insurance attaches on insurable acreage for each crop year on January 1. However, if we accept your application for insurance after January 1, insurance does not attach until the tenth (10th) day after you sign and submit a properly completed application. Insurance will not attach to any acreage determined by us, after inspection, to be unacceptable. Insurance ends at the earlier of:

a. Total destruction of the macadamia trees; or

b. December 31 of the crop year.

8. Notice of Damage or Loss

a. You must give us written notice without delay if damage resulting in probable loss occurs at any time during the insurance period. Such notice must include the dates and causes of damage.

b. If you are going to claim an indemnity on any unit, we must be allowed to inspect all insured trees before any pruning or tree removal.

c. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than sixty (60) days after the earlier of:

(1) Total destruction of the trees on the unit; or

(2) December 31 of the crop year.

b. We will not pay any indemnity unless you:

(1) Furnish all records we require concerning all trees on the unit;

(2) Show that any damage to the trees has been directly caused by one or more of the insured causes during the insurance period; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the amount of insurance per acre;

(2) Multiplying this result by the applicable percent of loss, which is determined for:

(a) Coverage level 3 by subtracting 25 percent from the actual percent of damage and dividing the result of 75 percent.

(b) Coverage level 2 by subtracting 35 percent from the actual percent of damage and dividing the result by 65 percent; or

(c) Coverage level 1 by subtracting 50 percent from the actual percent of damage and dividing the result by 50 percent; and

(3) Multiplying the result for the applicable coverage level by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the amount of insurance on the unit will be computed on the information you reported, but all of the insurable acreage planted, whether or not reported as insurable, will count against the amount of insurance.

e. The total amount of indemnity will include both trees damaged and trees destroyed due to an insurable cause.

(1) Any grove with over 80 percent actual damage will be determined to be 100 percent damaged.

(2) Any percentage of damage by uninsured causes will not be included in the percent of damage.

(3) If you elect to exclude fire as an insured cause of loss and the macadamia trees are damaged by fire, appraisals will be made in accordance with Form FCI–78–A, ''Request to Exclude Hail and Fire.''

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. It is our policy to pay your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other

charges in connection with any claim for indemnity, whether we approve or disapprove such claim. However, we will pay simple interest computed on the net indemnity ultimately found to be due to you if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. Interest due will be paid from and including the 61st day after the date you sign, date, and submit to us the properly completed claim-for-indemnity form.

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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the trees on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us, if at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to an Indemnity-Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. 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 any such right. If we pay for your loss, then your right of 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.

14. Records and Access to Orchard

You must keep, for three years after the time of loss, records of the trees destroyed or damaged on each unit, including separate records showing the same information for any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply or a determination that no indemnity is due. Any person designated by us will have access to such records and the orchard for purposes related to the contract.

15. Life of Contract

a. This contract will be in effect for the crop year specified on the application.

b. The term of this contract begins and ends as shown in Section 7 of this policy. We are under no obligation to send you any renewal notice or other notice that the contract term is ending, and the receipt by you of any such notice is not a waiver of this provision.

c. This contract will not be renewed for any successive contract term if any amount due us on this or any other contract with you is not paid on or before the termination date. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. Since the premium must be paid prior to insurance attaching, the termination date is the date insurance attaches.

e. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches

for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. 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.

f. This contract will automatically terminate at the end of the current contract period.

16. Meaning to Terms

For the purposes of macadamia tree crop insurance:

a. *Age* means the number of years after the later of when the trees have been set out or grafted. Age determination will be made for the unit on January 1 of each crop year.

b. *Actuarial table* means the forms and related materials for the crop year approved by us. The actuarial table is available for public inspection in your service office and shows the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding macadamia tree insurance in the county.

c. *County* means the county shown on the application.

d. *Crop year* means the period beginning with the date insurance attaches and extending through December 31 of the same calendar year and will be designated by the calendar year in which insurance attaches.

e. *Destroyed* means damage to trees to the extent that we determine that replacement is required.

f. *Grafting* means to unite a macadamia tree shoot to an established macadamia tree root stock for future production of macadamia nuts.

g. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

h. *Insured* means the person who submitted the application accepted by us.

i. *Person* means 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.

j. *Planting pattern* means the spacing oftrees on a uniform geometrical basis so that each tree is a uniform distance from other trees and resulting in a specific number of trees per acre.

k. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. *Unit* means all insurable acreage of macadamia trees in the county on the date of planting for the crop year:

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

(2) In which you are a joint owner.

Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

17. Descriptive Headings

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

18. Determinations

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 the Appeal Regulations (7 CFR part 400, subpart J).

19. Notices

All notices required to be given by you must be in writing and received by your service office 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.

20. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[53 FR 31827, Aug. 22, 1988, as amended at 55 FR 1786, Jan. 19, 1990; 55 FR 35887, Sept. 4, 1990]

PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

Sec.

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457.115 Nursery frost, freeze, and cold damage exclusion option.
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457.118 Malting barley crop insurance.
457.119 Texas citrus fruit crop insurance provisions.
457.120 [Reserved]
457.121 Arizona-California citrus crop insurance provisions.

AUTHORITY: 7 U.S.C. 1506(l), 1506(p).

SOURCE: 56 FR 1351, Jan. 14, 1991, unless otherwise noted.

§ 457.1 Applicability.

The provisions of this part are applicable only to crops for which a crop provision is published as a section to 7 CFR part 457 and then only for the crops and crop year designated by the application section.

§ 457.2 Availability of Federal crop insurance.

(a) Insurance shall be offered under the provisions of this section on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The crops and counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

(b) The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing the same terms and conditions as the contract set out in this part. These contracts are clearly identified as being reinsured by the Corporation.

(c) No person may have in force more than one contract on the same crop for the same crop year, in the same county, whether insured by the Corporation or insured by a company which is reinsured by the Corporation.

(d) If a person has more than one contract under the Act outstanding on the same crop for the same crop year, in the same county, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the Corporation that the duplicate multiple peril contract of insurance was inadvertent and without the fault of the person.

(e) If the multiple contracts of insurance are shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop in the county for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled.

(f) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract (see § 457.8, paragraph 21).

(g) An insured whose contract with the Corporation or with a company reinsured by the Corporation under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multiple peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility.

(h) All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for insurance or policies of insurance under the Act and the present status of any such applications or insurance.

[56 FR 1351, Jan. 14, 1991, as amended at 58 FR 58262, Nov. 1, 1993]

§457.3 Premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees or amounts of insurance, coverage levels, and prices at which indemnities shall be computed for the insured crop which will be included in the actuarial table on file in the applicable agents' office for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect an amount of insurance or a coverage level and price from among those contained in the actuarial table for the crop year.

§457.4 OMB control numbers.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB numbers 0563–0003, 0563–0009, and 0563–0010.

§457.5 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§457.6 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the crop insurance contract, whenever:

(a) A person entering into a contract of crop insurance under these regulations who, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing. The Corporation reviewing officers must, upon application by the person claiming relief under this section, refer such application to the appropriate official of the Corporation for determination as to whether to grant relief under this section. Corporation reviewing officers do not have authority to grant relief under this section.

(c) The reinsured companies may use arbitration panels established under contracts for reinsurance issued by them under the FCIC Act to grant relief under the same terms and conditions as contained in paragraphs (a) and (b) of this section or, may establish procedures to administratively handle relief in accordance with such terms and conditions.

[56 FR 1351, Jan. 14, 1991, as amended at 58 FR 58262, Nov. 1, 1993]

§457.7 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation or the reinsured company of a duly executed application for insurance on a form prescribed by the

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.

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.

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 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 allowed 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

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 voidance 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:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Small Grains Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Adequate stand*—A population of live plants per unit of acreage which will produce at least the yield used to establish your production guarantee.

(b) *Days*—Calendar days.

(c) *Final planting date*—The date contained in the Special Provisions by which the insured crop must initially be planted in order to be insured for the full production guarantee.

(d) *Good farming practices*—The cultural practices necessary for the insured crop to make usual and normal progress toward maturity and which can be expected to produce at least the yield used to determine the production guarantee. Good farming practices are generally those in use in the county for production of the insured crop and are recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(e) *Harvest*—Combining or threshing the insured crop for grain or cutting for hay or silage on any acreage. A crop which is swathed prior to combining is not considered harvested.

(f) *Initially planted*—The first occurrence of planting the insured crop on insurable acreage for the crop year.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the production guarantee on the irrigated acreage planted to the insured crop.

(i) *Late planted*—Acreage planted during the late planting period.

(j) *Late planting period*—(not applicable for fall-planted wheat)—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(k) *Latest final planting date*—

(1) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate a final planting date for spring-planted acreage only;

(2) The final planting date for fall-planted acreage in all counties for which the Special Provisions designate a final planting date for fall-planted acreage only; or

(3) The final planting date for spring-planted acreage in all counties for which the Special Provisions designate final planting dates for both spring-planted and fall-planted acreage.

(l) *Local market price*—The cash grain price per bushel for the U.S. No. 2 grade of the insured crop offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of the insured crop. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

(m) *Nurse crop* (companion crop)—A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

(n) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Except for flax, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Flax seed must initially be placed in rows to be considered planted.

(o) *Practical to replant*—(subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) does not apply to small grains.) Our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, etc., that a replanting of the insured crop will attain maturity in the remainder of the crop year. It will not be considered practical to replant after the end of the late planting period or the final planting date if a late planting period is not applicable (see section 7) except that it may be determined practical to replant after the end of the late planting period or the final plant date if such procedure is generally occurring in the area.

(p) *Prevented planting*—Inability to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

(q) *Production guarantee*—The number of bushels determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(r) *Replanting*—Performing the cultural practices necessary to replace seed for the insured crop, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(s) *Small grains*—Wheat, barley, oats, rye, and flax.

(t) *Swathed*—Severance of the stem and grain head from the ground without removal of the seed from the head and placing into a windrow.

(u) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance policy (§ 457.8) may be divided into optional units if, for each optional unit you claim, all the conditions of subsections 2.(a), (b), and (c), and the conditions of paragraph 2.(d)(1), (d)(2, or (d)(3) are met, or if we agree to such division in writing. Optional units must be established at the time you file your report of acreage for each crop year.

(a) You must have verifiable records of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner which results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have measurements of stored production or market production from each optional unit in a manner that permits us to verify the production from the optional unit.

(d) Each optional unit must meet one or more of the following:

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands. In areas which have not been surveyed using the systems identified above or another system approved by us, and in areas where boundaries are not readily discernable, each optional unit must be located in separate ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to or instead of establishing optional units by section, section equivalent, or ASCS Farm Serial Number, optional units may be established if each optional unit contains only irrigated acreage or only non-irrigated acreage. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage and the non-irrigated acreage in an appropriate manner.

(3) *Optional Units by Initially Planted Winter Wheat or Initially Planted Spring Wheat:* For wheat only, in addition to or instead of establishing optional units by section, section equivalent, or ASCS Farm Serial Number as described in paragraph 2.(d)(1) or by irrigated and non-irrigated practices as described in paragraph 2.(d)(2), optional units maybe established if each optional unit contains only initially planted winter wheat or only initially planted spring wheat. Optional units may be established in this manner only in counties having both fall and spring final planting dates as designated by the Special Provisions.

Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these conditions, we will combine all optional units which are not established in compliance with these provisions into the basic unit from which they were formed. We may do this at any time we discover that you have failed to comply with these conditions. If failure to comply with these provisions is determined to be inadvertent, and if the optional units are combined, the premium paid for electing optional units will be refunded to you.

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

In addition to the requirements under section 3 (Insurance Guarantees, Coverage Levels, and Prices for determining Indemnities) of the Common Crop Insurance Policy (§ 457.8) you may select only one price election for each crop insured under this policy in the county.

4. Contract Changes

The contract change date is December 31 preceding the cancellation date for counties with an April 15 cancellation date and June 30 preceding the cancellation date for all other counties (see the provisions under section 4. (Contract changes) in the Common Crop Insurance Policy § 457.8).

5. Cancellation and Termination Dates

The cancellation and termination dates are:

Crop, state and county	Cancellation date	Termination date
Wheat:		
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel Counties; all Iowa Counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties and all Iowa counties north thereof; all Wisconsin Counties except Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties and all Wisconsin counties north and west thereof; and all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.
Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt, and San Miguel Counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humboldt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, and Dubuque Counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels, Roosevelt, Sheridan, and Valley Counties; New York; Oregon; Rhode Island; all South Dakota counties except Harding, Perkins, Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties and all South Dakota counties north and east thereof; Washington; and all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties.	September 30	November 30.
Matanuska-Susitna County, Alaska; Arizona; California; Nevada; and Utah	October 31	November 30.
All Alaska Counties except Matanuska-Susitna County; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels, Roosevelt, Sheridan, and Valley Counties, Montana; New Hampshire; North Dakota; Harding, Perkins, Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Jerauld, Aurora, Douglas, and Bon Homme Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin, and all Wisconsin counties north and west thereof; Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	April 15	April 15.
Barley:		
All New Mexico counties except Taos County; Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey, and all states south and east thereof.	September 30	September 30.
Kit Carson, Lincoln, Elbert, El Paso, Pueblo, Las Animas Counties, Colorado and all Colorado Counties south and east thereof; Connecticut; Kansas; Massachusetts; and New York.	September 30	November 30.
Arizona; California; and Clark and Nye Counties, Nevada	October 31	November 30.
All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo, and Las Animas Counties and all Colorado counties south and east thereof; all Nevada counties except Clark and Nye Counties; Taos County, New Mexico; and all other states except: Arizona, California, Connecticut, Kansas, Massachusetts, New York; and (except) Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, and New Jersey and all states south and east thereof.	April 15	April 15.
Oats:		
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; All New Mexico counties except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia, and all Virginia counties east thereof.	September 30	September 30.
Arizona; All California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties.	October 31	October 31.
Del Norte, Humbolt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California; Taos County, New Mexico; all Virginia counties except Patrick, Franklin, Pittsylvania, Campbell, Attomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties and all Virginia counties east thereof; and all other except Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.	April 15	April 15.
Rye:		
All states	September 30	September 30.
Flax:		
All states	April 15	April 15.

6. Insured Crop

(a) The crop insured will be each small grain you elect to insure, that is grown in the county on insurable acreage, and for which premium rates are provided by the actuarial table:

(1) In which you have a share;

(2) That is planted for harvest as grain (a grain mixture in which barley or oats is the predominate grain may also be insured if allowed by the Barley or Oat Special Provisions, or if we agree in writing to insure such mixture. The crop insured will be the grain which is predominate in the mixture. The production from such mixture will be considered as the predominate grain on a weight basis);

(3) That is not:

(i) Interplanted with another crop except as allowed in paragraph 6.(a)(2);

(ii) Planted into an established grass or legume; or

(iii) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

(4) We may agree, in writing, to insure a crop prohibited under paragraph 6.(a)(3) if you so request. Your request to insure such crop must be in writing, and submitted to your agent not later than 15 days after the acreage reporting date.

(b) If you anticipate destroying any acreage prior to harvest you:

(1) May report all planted acreage when you report your acreage for the crop year and specify any acreage to be destroyed as uninsurable acreage. (By doing so, no coverage will be considered to have attached on the specified acreage and no premium will be due for such acreage. If you do not destroy such acreage, you will be subject to the under-reporting provisions contained in subsection 6.(f) of the Common Crop Insurance Policy (§ 457.8)); or

(2) If the actuarial table provides a reduced premium rate for acreage destroyed by a date designated in the Special Provisions, you may report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage. Your premium amount will be reduced by the amount shown on the Actuarial Table for any acreage you destroy prior to a date designated in the Special Provisions if you do not claim an indemnity on such acreage. In accordance with subsection 14.(b) of the Common Crop Insurance Policy (§ 457.8), you must obtain our consent before and give us notice after you destroy any of the insured crop so your acreage report can be revised to make you eligible for this reduction in premium.

(c) In counties for which the Wheat Special Provisions designate both fall and spring final planting dates, you may elect a winter coverage endorsement for wheat. This endorsement provides two options for alternative coverage for wheat that is damaged between the fall final planting date and the spring final planting date. Coverage under the endorsement will be effective only if you designate the coverage option you elect by executing the endorsement by the sales closing date for winter wheat in the county.

7. Insurance Period

In lieu of the requirements under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), and subject to any provisions provided by the Wheat crop insurance winter coverage endorsement (§ 457.102) if you have elected such endorsement, the insurance period is as follows:

(a) Insurance attaches on each unit or part thereof on the later of the date we accept your application or the date the insured crop is planted.

(1) For oats, rye and flax, the following limitations apply:

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the insured crop except as allowed in subsection 12.(c).

(ii) Any acreage of the insured crop damaged before the final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical (see subsection 1.(o)).

(2) For barley and wheat, the following limitations apply:

(i) The acreage must be planted on or before the final planting date designated in the Special Provisions for the type (winter or spring) except as allowed in subsection 12.(c).

(ii) Whenever the Special Provisions designate only a fall final planting date, any acreage of winter barley or wheat damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(iii) Whenever the Special Provisions designate both fall and spring final planting dates, winter barley or wheat planted on or before the final planting date which is damaged:

(A) Before the fall planting final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a winter type of the insured crop unless we agree that replanting is not practical.

(B) On or after the fall final planting date, but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to an appropriate variety of the insured crop unless we agree that replanting is not practical.

If you have elected coverage under one of the available wheat winter coverage options available in the county, the insurance period for wheat will be in accordance with the selected options.

(iv) Whenever the Special Provisions designate a spring final planting date, any acreage of spring barley or wheat damaged before such final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree that replanting is not practical.

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted barley or wheat is not insured unless you request such coverage and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. Insurance will then attach to acreage having an adequate stand on the earlier of the spring final planting date or the date we agree to accept the acreage for insurance. If such fall planted acreage is not to be insured it must be recorded on the acreage report as an uninsured fall planted crop.

(b) Insurance ends on each unit at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on the unit;

(4) September 25 following planting in Alaska, or October 31 of the calendar year in which the crop is normally harvested in all other states; or

(5) Abandonment of the crop on the unit.

8. Causes of Loss

In addition to the provisions under section 12 (Causes of Loss) of the Common Crop Insurance Policy, any loss covered by this policy must occur within the insurance period.

The specific causes of loss for small grains are:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage allowed because of insufficient or improper application of pest control measures;

(d) Plant disease, but not damage allowed because of insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply.

9. Replanting Payments

(a) A replant payment for wheat only is allowed as follows:

(1) You comply with all requirements regarding replanting payments contained under section 13 (Replanting Payment) of the Common Crop Insurance Policy and in any winter coverage endorsement for which you are eligible and which you have elected;

(2) The wheat must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage;

(3) The acreage must have been initially planted to spring wheat in those counties with only a spring final planting date;

(4) The damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated;

(5) Replanting must take place not later than 25 days after the spring final planting date; and

(6) The replant wheat must be seeded at a rate that is normal for initially planted wheat (if new seed is planted at a reduced seeding rate into a partially damaged stand of wheat, the acreage will not be eligible for a replanting payment).

(b) No replanting payment will be made for acreage initially planted to winter wheat in any county for which the Special Provisions contain only a fall final planting date.

(c) In accordance with subsection 13.(c) of the Common Crop Insurance Policy (§457.8), the maximum amount of the replanting payment per acre will be the lesser of 20 percent (20%) of the production guarantee or 3 bushels, multiplied by your price election multiplied by your share.

(d) When wheat is replanted using a practice that is uninsurable for an original planting, the liability for the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

10. Duties in the Event of Damage or Loss

In addition to your duties under section 14 of the Common Crop Insurance Policy (§457.8), if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or for any

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (bushels) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) Which is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 11.(d));

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If:

(A) Agreement on the appraised amount of production is not reached, you may elect to continue to care for the crop, or we will give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.

(B) You elect to continue to care for the crop, we will determine the amount of production to count for the acreage using the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested.

(2) All harvested production from the insurable acreage.

(d) Mature wheat, barley, oat, and rye production may be adjusted for excess moisture and quality deficiencies. Flax production may be adjusted for quality deficiencies only.

(1) Production will be reduced by .12 percent for each .1 percentage point of moisture in excess of:

(i) 13.5 percent for wheat;

(ii) 14.5 percent for barley;

(iii) 14.0 percent for oats; and

(iv) 16.0 for rye.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Wheat not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (excluding heat damage), shrunken or broken kernels, or defects (excluding foreign material and heat damage), or grading garlicky, light smutty, smutty or ergoty;

(B) Barley not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, percentage of sound barley, damaged kernels, thin barley, or black barley, or grading smutty, garlicky, or ergoty;

(C) Oats not meeting the grade requirements for U.S. No. 4 (grade U.S. sample grade) because of test weight or percentage of sound oats, or grading smutty, garlicky, or ergoty;

(D) Rye not meeting the grade requirements for U.S. No. 3 (grades U.S. No. 4 or worse) because of test weight, percent damaged kernels or thin rye, or grading smutty, garlicky, or ergoty;

(E) Flaxseed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) due to damaged kernels; or

(ii) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged grain that is less than the local market price of U.S. No. 2 production;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grain grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or

conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by one loss adjustor.

(4) Production of small grains that is eligible for quality adjustment, as specified in paragraphs 11.(d) (2) and (3), will be reduced as follows:

(i) The market price of the qualifying damaged production and the local market price will be the prices on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those which are usual, customary, and reasonable. Any reduction in price due to the following factors will not be accepted:

(A) Moisture content;

(B) Damage due to uninsured causes; or

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the grain; except, if the price of the damaged production can be increased by conditioning, we may reduce the price of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning. We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the production to those buyers.

(ii) The value of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor.

(iii) The number of bushels remaining after any reduction due to excessive moisture (the moisture-adjusted gross bushels (if appropriate)) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

12. Late Planting and Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection (c)), and acreage you were prevented from planting (see subsection (d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planting acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planting acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). For example, assume you insure one unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by 93 percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the latest final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(c) Late Planting:

(1) For spring-planted wheat acreage in counties for which the Special Provisions designate a spring final planting date, and

all barley, flax, oat, and rye acreage which is planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the insured crop continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(p)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be 50 percent (50%) of the production guarantee for timely planted acres. In counties for which the Special Provisions designate a spring final planting date, the prevented planting guarantee will be based on your approved yield for spring-planted acreage of the insured crop. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11(c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the latest final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the latest final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for wheat for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the wheat coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting

coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop that are timely planted and late planted, if the late planting period is applicable. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date for spring-planted acreage of the insured crop in counties for which the Special Provisions designates a spring final planting date, or the acreage reporting date for fall-planted acreage of the insured crop in counties for which the Special Provisions designates a fall final planting date only. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

[59 FR 9391, Feb. 28, 1994, as amended at 60 FR 62723, Dec. 7, 1995]

§ 457.102 Wheat crop insurance winter coverage endorsement.

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Wheat Crop Insurance Winter Coverage Endorsement

(This is a Continuous Endorsement)

(a) In return for payment of the additional premium designated in the Actuarial Table, this endorsement is attached to and made part of your Small Grains Crop Provisions subject to the terms and conditions described herein.

(b) This endorsement is available only in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date.

(c) This endorsement modifies the provisions of sections 7 and 11 of the Small Grains Crop Insurance policy (§ 457.101).

(1) You must have a Small Grains Crop Insurance policy in force and elect to insure wheat under that policy.

(2) You may select either Option A or Option B. Failure to select either Option A or Option B means that you have rejected both Options and this endorsement would be void.

(3) Insurance Period. Coverage under this endorsement begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

(4) The provisions under section 14 of the Common Crop Insurance Policy (§ 457.8) are amended to require that all notices of damage must be provided to us by the spring final planting date designated in the Special Provisions.

Option A (30 Percent Coverage and Acreage Release)

Whenever any winter wheat is damaged during the insurance period (see section 3, above), and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may take any one of the following actions:

(a) Destroy the remaining crop on such acreage. By doing so, you agree to accept an amount of production to count against the unit production guarantee equal to 70 percent of the production guarantee for the damaged acreage, or an appraisal determined in accordance with paragraph 11.(c)(1) of the Small Grains Crop Insurance Provisions (§ 457.101) if such an appraisal results in a greater amount of production. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in the provisions under section 11. (Settlement of Claim) of the Small Grains Crop Insurance Provisions (§ 457.101). You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to utilize such acreage for the production of spring wheat, you must:

(1) Plant the spring wheat in a manner which results in a clear and discernible break in the planting pattern at the boundary between it and any remaining winter wheat; and

(2) Store or market the production from such acreage in a manner which permits us to verify the amount of spring wheat production separately from any winter wheat production.

In the event you are unable to provide records of production that are acceptable to us, the spring wheat acreage will be considered to be a part of the original winter wheat unit. If you elected to insure the spring wheat acreage as a separate optional unit, any premium amount for such acreage will be considered earned and payable to us.

(b) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option.

(c) Replant the acreage to an appropriate variety of wheat, if it is practical, and receive a replanting payment in accordance with the terms of section 9. (Replanting Payments) of the Small Grains Crop Provisions (§ 457.101). By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option, and the production guarantee for winter wheat will remain in effect.

Option B (WITH FULL WINTER DAMAGE COVERAGE)

Whenever any winter wheat is damaged during the insurance period and at least 20 acres or 20 percent of the acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

(a) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains Crop Insurance Provisions (§ 457.101), and this Option.

(b) Replant the acreage to an appropriate variety of wheat, if it is practical, and receive a replanting payment in accordance with the terms of section 9. (Replanting Payments) of the Small Grains Crop Provisions (§ 457.101). By doing so, coverage will continue under the terms of the Common Crop Insurance Policy (§ 457.8), the Small Grains

Crop Insurance Provisions (§457.101), and this Option, and the production guarantee for winter wheat will remain in effect.

(c) Accept our appraisal of the crop on the damaged acreage as production to count against the production guarantee for the damaged acreage, destroy the remaining crop on such acreage, and be eligible for any indemnity due under the terms of the Common Crop Insurance Policy (§457.8) and the Small Grains Crop Provisions (§457.101). The appraisal will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in the provisions of section 11. (Settlement of Claim) of the Small Grains Crop Insurance Provisions (§457.101). You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to utilize such acreage for the production of spring wheat, you must:

(1) Plant the spring wheat in a manner which results in a clear and discernable break in the planting pattern at the boundary between it and any remaining winter wheat; and

(2) Store or market the production from such acreage in a manner which permits us to verify the amount of spring wheat production separately from any winter wheat production.

In the event you are unable to provide records of production that are acceptable to us, the spring wheat acreage will be considered to be a part of the original winter wheat unit. If you elected to insure the spring wheat acreage as a separate optional unit, any premium amount for such acreage will be considered earned and payable to us.

[59 FR 9397, Feb. 28, 1994]

§457.103 Malting barley option.

The Malting Barley Option Provisions for the 1995 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Small Grains Crop Insurance Malting Barley Endorsement

(This is a continuous Endorsement. Refer to section 2 of the Common Crop Insurance Policy)

In return for payment of the additional premium designated in the actuarial table, it is hereby agreed that the Common Crop Insurance Policy (§457.8) and Small Grains Crop Provisions (§457.101) are amended to incorporate the following terms and conditions:

(a) This Endorsement must be submitted to us on or before the final date for accepting applications for the initial crop year in which you wish to insure your malting barley acreage under this Option.

(b) You must have a Common Crop Insurance Policy (§457.8) and a Small Grains Crop Insurance policy (§457.101) in force and elect to insure barley under those policies.

(c) You must provide:

(1) Acceptable records of the sale of malting barley for malting purposes for three of the previous five crop years by the production reporting date; and

(2) Before the acreage reporting date, written contract with a brewery or business that makes or sells malt or processed mash to a brewery, which states the quantity contracted and purchase price or method for determining such price by the acreage reporting date. Our liability under this Option will be limited to the lesser of the number of contracted bushels or your production guarantee.

(d) All barley acreage in the county planted to an approved malting variety in which you have a share will be insured under this Endorsement. All barley acreage of any nonmalting variety will be insured under the terms of the Small Grains Endorsement. Malting barley and basic barley acreage will be separate basic units. Further unit division may be allowed in accordance with the Common Crop Insurance Policy.

(e) Your price election will be provided by the actuarial table.

(f) In lieu of subparagraphs 11.(d)(2)(i)(B) and 11.(d)(1)(ii) of the Small Grains Crop Provisions:

(1) Mature malting barley production will be reduced .12 percent for each one tenth (.1) percentage point of moisture in excess of 13.0 percent; and

(2) Mature malting barley production, which due to insurable causes, is not accepted by a buyer of malting barley and will not meet the applicable standards for two-rowed or six-rowed malting barley will be adjusted by:

(i) Dividing the value per bushel for the insured malting barley by the price election for malting barley; and

(ii) Multiplying the result not to exceed one (1.0) by the number of bushels of such barley.

(3) All grade determination must be made by a grader licensed to inspect barley under the United States Grain Standards Act using samples obtained by a licensed sampler or our loss adjuster. Any production which is not sampled and graded as provided by this section will be considered as malting barley meeting the applicable standards.

(g) As used in the Endorsement:

(1) Applicable standards—For two-rowed and six-rowed malting barley are defined in the Official United States Standards for barley.

(2) Approved malting variety—The varieties specified in the Special Provisions.

(3) Brewery—A facility where malt liquors are commercially produced for human consumption.

(4) Value per bushel means:

(i) The local market price of U.S. No. 2 barley (basic barley) if the insure mature malting barley production, due to insurable causes, grades U.S. No. 4 or better and does not grade smutty, garlicky, or ergoty; or

(ii) The local market price of basic barley of the same quality as the insured malting barley, if the malting barley does not grade better than U.S. No. 5.

The prices used for this adjustment will be the prices on the earlier of the date such quality-adjusted barley is sold or the date of final inspection for the unit.

[59 FR 9397, Feb. 28, 1994]

§ 457.104 Cotton crop insurance provisions.

The cotton crop insurance provisions for the 1995 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Cotton Crop Provisions

If a conflict exists among the Common Crop Insurance Policy (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the common policy and these crop provisions will control the common policy.

1. Definitions

(a) *Cotton*—Varieties identified as American Upland Cotton.

(b) *Days*—Calendar days.

(c) *Final planting date*—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

(d) *Good farming practices*—The cultural practices generally in use in the county for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(e) *Growth area*—A geographic area designated by the Secretary of Agriculture for the purpose of reporting cotton prices.

(f) *Harvest*—The removal of the seed cotton from the open cotton boll, or the severance of the open cotton boll from the stalk by either manual or mechanical means.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(i) *Late planted*—Acreage planted to cotton during the late planting period.

(j) *Late planting period*—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(k) *Mature cotton*—Cotton that can be harvested either manually or mechanically.

(l) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Cotton must be planted in rows to be considered planted. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the special provisions or by written agreement to insure such crop. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any crop.

(m) *Practical to replant*—In lieu of subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to moisture availability, condition of the field, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

(o) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for non-irrigated skip-row planting patterns, and multiplying the result by the coverage level percentage you elect.

(p) *Replanting*—Performing the cultural practices necessary to replace the cotton seed, and replacing the seed in the insured acreage with the expectation of growing a successful crop.

(q) *Skip-row*—A planting pattern that:

(1) Consists of alternating rows of cotton and fallow land or land planted to another crop the previous fall; and

(2) Qualifies as a skip-row planting pattern as defined by the ASCS or successor agency.

(r) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

(s) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate and price election must be set out in the written agreement. In specific instances a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the acreage, there is a determination that the crop has the expectancy of making at least the guaranteed yield. However, no prevented planting liability will be established as a result of any request submitted after the sales closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plan the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that we can verify the production from each optional unit or the production from each optional unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable;

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands an equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to or instead of establishing optional units by Section, section equivalent, or ASCS Farm Serial Number, optional units may be based or irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or ASCS Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

Basic units may not be divided into optional units on any basis including, but not limited to: Production practice, type, variety, or planting period, other than as described above. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions on all optional units is determined to be inadvertent, and the optional units are combined, premium paid for the purpose of electing optional units will be refunded to you.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8), you may select only one price election for all cotton in the county insured under this policy.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2. (f) of the Common Crop Insurance Policy (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	February 15
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagon, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crocket, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28
All other Texas counties and all other states	March 15

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Common Crop Insurance Policy (§ 457.8), the crop insured will be all the cotton lint, in the county for which premium rates are provided by the actuarial table:

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions or by written agreement):

(1) Colored cotton lint;

(2) Planted into an established grass or legume;

(3) Interplanted with another spring planted crop;

(4) Grown on acreage from which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(5) Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than fifty percent (50%) of the small grain plants reach the heading stage.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Common Crop Insurance Policy (§ 457.8):

(a) The acreage insured will be only the land occupied by the rows of cotton when a skip row planting pattern is utilized; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree that replanting is not practical (see subsection 1.(m)).

8. Insurance Period

(a) In lieu of subsection 11.(b) of the Common Crop Insurance Policy (§ 457.8) (Harvest of the unit), insurance will end upon the removal of the cotton from the field.

(b) In accordance with the provisions under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the calendar date for the end of the insurance period is the date immediately following planting as follows:

(1) September 30 in Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof;

(2) January 31 in Arizona, California, New Mexico, Oklahoma, and all other Texas counties; and

(3) December 31 in all other states.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control meaures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

10. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Common Crop Insurance Policy (§ 457.8), in the event of damage or loss:

(1) The cotton stalks must remain intact for our inspection; and

(2) If you initially discover damage to the insured crop within 15 days of harvest, or during harvest, you must leave representative samples of the unharvested crop in the

field for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit.

(b) The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss given to us.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage;

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes;

(D) For which you fail to provide records of production that are acceptable to us; or

(E) On which the cotton stalks are destroyed, in violation of section 10;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production of white cotton may be adjusted for quality deficiencies in accordance with subsection 11.(d)); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production of appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage, including any mature cotton retrieved from the ground.

(d) Mature white cotton may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for cotton of like quality (price quotation ''A'') for the applicable growth area is less than seventy-five percent (75%) of price quotation ''B.'' Price quotation ''B'' is defined as the price quotation for the applicable growth area for cotton of the color and leaf grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. Price quotations ''A'' and ''B'' will be the price quotations contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service on the date the last bale from the unit is classed. If the date the last bale classed is not available, the price quotations will be determined on the date the last bale from the unit is delivered to the warehouse, as shown on the producer's account summary obtained from the gin. If eligible for adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation ''A'' by seventy-five percent (75%) of price quotation ''B.''

(e) Colored cotton lint will not be eligible for quality adjustment.

12. Late Planting and Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection (c)), and acreage you were prevented from planting (see subsection (d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late

planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subparagraph 12(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(c) Late Planting

(1) For cotton acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of cotton continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting cotton (see subsection 1(n)), you may elect:

(i) To plant cotton during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 12(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 245 pounds per acre (700 pounds multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 11 (c) and (d); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for

harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the cotton crop in the county. If the cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to cotton on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to cotton during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section) unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the

crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of cotton acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of cotton on one optional unit and 40 acres of cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

[59 FR 49154, Sept. 27, 1994, as amended at 60 FR 62725, Dec. 7, 1995]

§ 457.105 Extra long staple cotton crop insurance provisions.

The Extra Long Staple Cotton Crop Insurance Provisions for the 1995 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

ELS Cotton Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Cotton*—Varieties identified as Extra Long Staple (ELS) cotton and American Upland (AUP) cotton if ELS cotton is destroyed by an insured cause and acreage is replanted to AUP cotton.

(b) *Days*—Calendar Days.

(c) *ELS cotton*—Extra Long Staple cotton (also called Pima cotton, American-Egyptian cotton, and American Pima cotton).

(d) *Final planting date*—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

(e) *Good farming practices*—The cultural practices generally in use in the county for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(f) *Harvest*—The removal of the seed cotton from the open cotton boll, or the severance of the open cotton boll from the stalk by either manual or mechanical means.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(i) *Mature ELS cotton*—ELS cotton that can be harvested either manually or mechanically.

(j) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Cotton must be planted in rows to be considered planted. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the Special Provisions or by written agreement to insure such crop. The yield conversion factor normally applied to non-irrigated skip-row cotton acreage will not be used if the land between the rows of cotton is planted to any crop.

(k) *Practical to replant*—(In lieu of subsection 1.(ff) of the Common Crop Insurance Policy (§ 457.8) practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to moisture availability, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to

the calendar date for the end of the insurance period. It will not be considered practical to replant after the final planting date unless replanting is generally occurring in the area.

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

(m) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by any applicable yield conversion factor for non-irrigated skip-row planting patterns, and multiplying the result by the coverage level percentage you elect.

(n) *Replanting*—Performing the cultural practices necessary to replace the ELS cotton seed, and replacing the seed with either ELS or AUP cotton seed in the insured acreage with the expectation of growing a successful crop.

(o) *Skip-row*—A planting pattern that:

(1) Consists of alternating rows of cotton and fallow land or land planted to another crop the previous fall; and

(2) Qualifies as a skip-row planting pattern as defined by the Agricultural Stabilization and Conservation Service or successor agency.

(p) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions.

(q) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing prior to the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate and price election must be set out in the written agreement. In specific instances a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the acreage, there is a determination that the crop has the expectancy of making at least the guaranteed yield. However, no prevented planting liability will be established as a result of any request submitted after the sales closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance Policy (§457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that we can verify the production from each optional unit or the production from each optional unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-irrigated Practices:* In addition to or instead of establishing optional units by Section, section equivalent, or ASCS Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or ASCS Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these provisions, we will combine all optional units

which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions on all optional units is determined to be inadvertent, and the optional units are combined, premium paid for the purpose of electing optional units will be refunded to you.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8) you may select only one price election for all the cotton in the county insured under this policy.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Common Crop Insurance Policy (§ 457.8) the cancellation and termination dates are March 15.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Common Crop Insurance Policy (§ 457.8), the crop insured will be all the cotton lint in the county for which premium rates are provided by the actuarial table:

(a) In which you have a share; and

(b) That is not (unless allowed by the Special Provisions or by a written agreement):

(1) Planted into an established grass or legume;

(2) Interplanted with another spring planted crop;

(3) Grown on acreage from which a hay crop was harvested in the same calendar year unless the acreage is irrigated; or

(4) Grown on acreage on which a small grain crop reached the heading stage in the same calendar year unless the acreage is irrigated or adequate measures are taken to terminate the small grain crop prior to heading and less than fifty percent (50%) of the small grain plants reach the heading stage.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Common Crop Insurance Policy (§ 457.8):

(a) The acreage insured will be only the land occupied by the rows of cotton when a skip row planting pattern is utilized; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree that replanting is not practical (see subsection 1.(k)).

8. Insurance Period

(a) In lieu of subsection 11.(b) of the Common Crop Insurance Policy (§ 457.8) (Harvest of the unit), insurance will end upon the removal of the cotton from the field.

(b) In accordance with the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the calendar date for the end of the insurance period is January 31 immediately following planting.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

10. Duties in the Event of Damage or Loss

(a) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Common Crop Insurance Policy (§ 457.8), in the event of damage or loss:

(1) You must give us notice if you intend to replant any acreage originally planted to ELS cotton to AUP cotton;

(2) The cotton stalks must remain intact for our inspection; and

(3) If you initially discover damage to any insured crop within 15 days of harvest, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of the field in the unit.

(b) The stalks must not be destroyed, and required samples must not be harvested, until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed and written notice of probable loss is given to us.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes;

(D) For which you fail to provide records of production that are acceptable to us; or

(E) On which the cotton stalks are destroyed in violation of section 10;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies in accordance with subsection:

(A) 11.(d) and (e) if it is mature ELS cotton; or

(B) 11.(f) if it is AUP cotton insured under these crop provisions); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provided sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage, including any mature cotton retrieved from the ground.

(d) Mature ELS cotton production may be adjusted for quality when production has been damaged by insured causes. Such production to count will be reduced if the price quotation for ELS cotton of like quality (price quotation ''A'') is less than seventy-five percent (75%) of price quotation ''B.'' Price quotation ''B'' will be the price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. The price quotations for prices ''A'' and ''B'' will be the price quotations contained in the Weekly Cotton Market Review published by the USDA Agricultural Marketing Service the week the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined the week the last bale from the unit is delivered to the warehouse as shown on the producer's account summary obtained from the gin. In the absence of either price quotation for the applicable week, the price quotations for the nearest prior week for which an ELS cotton price quotation was listed for both prices will be used. If eligible for adjustment, the amount of production to be counted will be determined by multiplying the number of pounds of such production by the factor derived from dividing price quotation ''A'' by seventy-five percent (75%) of price quotation ''B.''

(e) For ELS cotton to be eligible for quality adjustment as shown in subsection 11.(d), ginning must have been completed at a gin using roller equipment.

(f) Any AUP cotton harvested or appraised from acreage originally planted to ELS cotton in the same growing season will be reduced by the factor obtained by dividing the price per pound of the AUP cotton by the price quotation for ELS cotton of the grade, staple length, and micronaire reading designated in the Special Provisions for this purpose. The price used for the ELS cotton will be the price contained in the Weekly Cotton Market Review published by the USDA Agricultural Marketing Service the week the last bale from the unit is classed. The price used for the AUP cotton will be the price contained in the Daily Spot Cotton Quotations published by the USDA Agricultural Marketing Service the day the last bale from the unit is classed. If the date the last bale is classed is not available, the price quotations will be determined when the last bale from the unit is delivered to the warehouse, as shown on the producers account summary obtained from the gin. If either

price quotation is unavailable for the dates stated above, the price quotations for the nearest prior date for which price quotations for both the AUP and ELS cotton are available will be used. If prices are not yet available for the insured crop year, the previous season's average prices will be used.

12. Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage you were prevented from planting (see subsections 12.(b) through (g)). This coverage provides a reduced production guarantee.

The reduced guarantee will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage). (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 100 acres, of which 50 acres were planted by the final planting date and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted; and

(2) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Thirty-five percent (0.35) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Seventeen and five tenths percent (0.175) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 12(b)(2))).

The total of the two calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 100 acres in the unit.

(b) If you were prevented from planting ELS cotton (see subsection 1(l)), you may elect:

(1) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the final planting date. In either case, the production guarantee for such acreage will be thirty-five percent (35%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 600 pounds per acre, your prevented planting production guarantee would be 210 pounds per acre (600 pounds multiplied by 0.35). If you elect to plant the insured crop after the final planting date, production to count for such acreage will be determined in accordance with subsections 11(c) through (f); or

(2) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to seventeen and five tenths percent (17.5%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 700 pounds per acre, your prevented planting production guarantee would be 122.5 pounds per acre (700 pounds multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(c) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(d) In addition to the provisions of section 11 (Insurance Period) of the Common Crop

Insurance Policy (§457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase an ELS cotton crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the ELS cotton coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(e) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(f) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(1) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(2) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(i) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(ii) The number of acres planted to ELS cotton on the FSA Farm Serial Number during the previous crop year; or

(iii) One hundred percent (100%) of the simple average of the number of acres planted to ELS cotton during the crop years that you certified to determine your yield.

(3) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(4) Prevented planting coverage will not be provided for any acreage:

(i) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(ii) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(iii) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(iv) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year;

(v) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(2)(i) of this section, or a substitute crop allowed in paragraph (a)(2)(ii) of this section);

(vi) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(vii) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(5) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of ELS cotton acres timely planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of ELS cotton on one optional unit and 40 acres of ELS cotton on the second optional unit, your prevented planting eligible acreage would be reduced to zero. (i.e., 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(g) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

(h) Late planting provisions are not available under these crop provisions.

[59 FR 49169, Sept. 27, 1994, as amended at 60 FR 62726, Dec. 7, 1995]

§ 457.107 Florida citrus fruit crop insurance provisions.

The Florida Citrus Fruit Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Florida Citrus Fruit Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

*Amount of insurance (acre).*The dollar amount determined by multiplying the Reference Maximum Dollar Amount shown on the Actuarial Table for the citrus fruit times the coverage level you elect, times your share.

*Box.*A standard field box as prescribed in the State of Florida Citrus Fruit Laws.

*Citrus fruit type.*Any of the following:

(1) Type I—Early and mid-season oranges;

(2) Type II—Late oranges juice;

(3) Type III—Grapefruit for which freeze damage will be adjusted on a juice basis;

(4) Type IV—Navel Oranges, Tangelos and Tangerines;

(5) Type V—Murcott Honey Oranges (also known as Honey Tangerines) and Temple Oranges;

(6) Type VI—Lemons and Limes; and

(7) Type VII—Grapefruit for which freeze damage will be adjusted on a fresh fruit basis, and late oranges fresh.

*Days.*Calendar days.

*FSA.*Farm Service Agency, an agency of the United States Department of Agriculture or a successor agency.

*Freeze.*The formation of ice in the cells of the fruit caused by low air temperatures.

*Good farming practices.*The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce the expected yield for the type and age of citrus fruit, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

*Harvest.*The severance of mature citrus fruit from the tree by pulling, picking, or any other means, or collecting the marketable fruit from the ground.

*Hurricane.*A windstorm classified by the U.S. Weather Service as a hurricane.

*Interplanted.*Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

*Non-contiguous land.*Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal, will be considered as contiguous.

*Potential production.*Citrus fruit that would have been produced had damage not occurred, including citrus fruit that:

(1) Was harvested before damage occurred;

(2) Remained on the tree after damage occurred; and

(3) Was lost from either an insured or uninsured cause;

But not including citrus fruit that:

(1) Was lost before insurance attached for any crop year;

(2) Was lost by normal dropping; or

(3) Any tangerines that normally would not meet the 210 pack size (2 and 4/16 inch minimum diameter) under United States Standards by the end of the insurance period for tangerines.

*Written agreement.*A written document that alters designated terms of this policy in accordance with section 11.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) will be divided into basic units by each citrus fruit type shown in section 1 of these crop provisions or designated in the Special Provisions.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional

units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(e) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(f) Each optional unit must meet one of the following criteria, as applicable:

(1) *Optional Units by Section, Section Equivalent, or Farm Service Agency (FSA) Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(2) *Optional Units on Acreage Located on Non-Contiguous Land:* Optional units may be established if each optional unit is located on non-contiguous land.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one coverage level for each Florida citrus fruit type shown in section 1 of these crop provisions or designated in the Special Provisions, that you elect to insure. If different amounts of insurance are available for citrus fruit within a type, you must select the same coverage level for each citrus fruit. For example, if you choose the 75 percent coverage level for a specific citrus fruit within a type, you must also choose the 75 percent coverage level for all other citrus fruit within that type.

(b) In lieu of the production reporting date contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), potential production for each unit will be determined during loss adjustment.

(c) By the sales closing date contained in the Special Provisions, for the first year of insurance for acreage interplanted with another citrus fruit crop, and anytime the planting pattern of such acreage is changed, you must report the following:

(1) The age of the interplanted trees and type if applicable;

(2) The planting pattern; and

(3) Any other information we request in order to establish your amount of insurance.

(d) We will reduce acreage or the amount of insurance or both, as necessary, based on our estimate of the effect of the interplanted citrus fruit trees on the insured citrus fruit crop. If you fail to notify us of any circumstance that may reduce the acreage or amount of insurance, we will reduce the acreage or amount of insurance or both as necessary any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is March 15 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation date is April 30 preceding the crop year. The termination date is April 30 of the crop year.

6. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all acreage of each citrus fruit type that you elect to insure, in which you have a share, that is grown in the county shown on the application, and for which a premium rate is quoted in the actuarial table.

(b) In addition to the citrus fruit not insurable in section 8 (Insured Crop) of the Basic Provisions (§ 457.8), we do not insure any citrus fruit:

(1) That cannot be expected to mature each crop year within the normal maturity period for the type;

(2) Produced by trees that have not reached the fifth growing season after being set out, unless otherwise provided in the Special Provisions or by a written agreement to insure such citrus fruit;

(3) Of ''Meyer Lemons'' and oranges commonly known as ''Sour Oranges'' or ''Clementines''; or

(4) Of the Robinson tangerine variety, for any crop year in which you have elected to exclude such tangerines from insurance. (You must elect this exclusion prior to the crop year for which the exclusion is to be effective, except that for the first crop year you must elect this exclusion by the later of April 30 or the time you submit the application for insurance.)

(c) Upon our approval, prior to the date insurance attaches, you may elect to insure or exclude from insurance any insurable acreage that has a potential production of less than 100 boxes per acre. If you:

(1) Elect to insure such acreage, we will consider the potential production to be 100 boxes per acre when determining the amount of loss; or

(2) Elect to exclude such acreage, we will disregard the acreage for all purposes related to this contract.

(d) In addition to the provisions in Section 6(f) (Report of Acreage) of the Basic Provisions (§ 457.8), if you fail to notify us of your election to insure or exclude acreage, and the potential production from such acreage is 100 or more boxes per acre, we will determine the percent of damage on all of the insurable acreage for the unit, but will not allow the percent of damage for the unit to be increased by including such acreage.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, citrus fruit interplanted with another citrus fruit crop is insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins on May 1 of each crop year, except that for the year of application if your application is received by us after April 21, but prior to May 1, insurance will attach on the 10th day after your properly completed application, acreage, and production reports are received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet the requirements for insurability contained in your policy. You must provide any information that we require for the crop to determine the condition of the grove to be insured.

(2) The calendar date for the end of the insurance period for each crop year is:

(i) January 31 for tangerines and navel oranges;

(ii) April 30 for lemons, limes, tangelos, early and mid-season oranges; and

(iii) June 30 for late oranges, grapefruit, Temple, and Murcott Honey Oranges.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date of any crop year, and if after inspection we consider the acreage acceptable, then insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of citrus fruit on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to, no premium will be due and no indemnity paid for, such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(2) Freeze;

(3) Hail;

(4) Hurricane; or

(5) Tornado.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Any damage to the blossoms or trees; or

(2) Inability to market the citrus fruit for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Calculating the amount of insurance for the unit by multiplying the number of acres by the respective dollar amount of insurance per acre for the citrus fruit and multiplying that result by your share;

(2) Calculating the average percent of damage to the respective citrus fruit, rounded to the nearest tenth of a percent (0.1%). The percent of damage will be the ratio of the number of boxes of citrus fruit considered damaged from an insured cause divided by the undamaged potential production. Citrus fruit will be considered undamaged potential production if it is:

(i) Marketed or could be marketed as fresh fruit;

(ii) Harvested prior to inspection by us; or

(iii) Harvested within 7 days after a freeze;

(3) Subtracting the coverage level percentage from 100 percent;

(i) Subtracting this result from the result of section (10)(b)(2); and

(ii) If the result section (10)(b)(3)(i) is positive, dividing this result by the coverage level percentage;

(4) Multiplying the result of section (10)(b)(3)(ii) by the amount of insurance for the unit for the respective citrus fruit.

(For example, if the average percent of damage is 70 percent and the coverage level is 75 percent (the deductible is 25 percent), the amount payable is 60 percent times the amount of insurance (70% damage - 25 % level deductible)=45% (45% ÷ 75%) 60% adjusted damage times the amount of insurance); and

(5) Totaling all such results of section (10)(b)(4) to determine the amount payable for the unit.

(c) Citrus fruit of Types IV, V, and VII that are seriously damaged by freeze, as determined by a fresh-fruit cut of a representative sample of fruit in the unit in accordance with the applicable provisions of the State of Florida Citrus Fruit laws, and that are not or could not be marketed as fresh fruit, will be considered damaged to the following extent:

(1) If less than 16 percent of the fruit in a sample shows serious freeze damage, the fruit will be considered undamaged; or

(2) If 16 percent or more of the fruit in a sample shows serious freeze damage, the fruit will be considered 50 percent damaged, except that:

(i) For tangerines of Type IV, damage in excess of 50 percent will be the actual percent of damaged fruit; and

(ii) Citrus of Types IV (except tangerines), V, and VII, if it is determined that the juice loss in the fruit exceeds 50 percent, such percent will be considered the percent of damage.

(d) Notwithstanding the provisions of section 10(c) of these crop provisions as to citrus fruit of Types IV, V, and VII, in any unit that is mechanically separated using the specific-gravity (floatation) method into undamaged and freeze-damaged fruit, the amount of damage will be the actual percent of freeze-damaged fruit not to exceed 50 percent and will not be affected by subsequent fresh-fruit marketing. However, the 50 percent limitation on mechanically-separated, freeze-damaged fruit will not apply to tangerines of citrus fruit Type IV.

(e) Any citrus fruit of Types I, II, III, and VI damaged by freeze, but that can be processed into products for human consumption, will be considered as marketable for juice. The percent of damage will be determined by relating the juice content of the damaged fruit to:

(1) The average juice content of the fruit produced on the unit for the three previous crop years based on your records, if they are acceptable to us; or

(2) The following juice content, if acceptable records are not furnished:

(i) Type I—52 pounds of juice per box

(ii) Type II—54 pounds of juice per box

(iii) Type III—45 pounds of juice per box

(iv) Type VI—43 pounds of juice per box

(f) Any citrus fruit on the ground that is not collected and marketed will be considered as 100 percent damaged if the damage was due to an insured cause.

(g) Any citrus fruit that is unmarketable either as fresh fruit or as juice because it is immature, unwholesome, decomposed, adulterated, or otherwise unfit for human consumption due to an insured cause will be considered as 100 percent damaged.

(h) Citrus fruit of Types IV, V, and VII that are unmarketable as fresh fruit due to serious damage from hail as defined in the applicable United States Standards for Grades of Florida fruit will be considered totally lost.

11. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply to us in writing for each written agreement no later than the sales closing date, except as provided in section 11(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved by us, the written agreement will include all variable terms of the contract, including, but not limited to, crop type and variety, the guarantee, premium rate, and price election;

(d) Each written agreement will be valid for one year (if the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has

occurred and the crop is insurable in accordance with the policy and written agreement provisions.

[61 FR 69002, Dec. 31, 1996]

Effective Date Note: At 61 FR 69002, Dec. 31, 1996, § 457.107 was added, effective Jan. 30, 1997.

§ 457.108 Sunflower seed crop insurance provisions.

The Sunflower Seed Crop Insurance Provisions for the 1995 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sunflower Seed Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

(a) Days—Calendar days.

(b) Final planting date—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

(c) Good farming practices—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(d) Harvest—Combining or threshing the sunflowers for seed.

(e) Interplanted—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(f) Irrigated practice—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(g) Late planted—Acreage planted to the insured crop during the late planting period.

(h) Late planting period—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(i) Local market price—The cash seed price per pound for oil type sunflower seed grading U.S. No. 2, or non-oil type sunflower seed with a test weight of at least 22 pounds per bushel and less than five percent (5%) kernel damage, offered by buyers in the area in which you normally market the sunflower seed. The local market price for oil type sunflower seed will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of sunflower seed. Factors not associated with grading of sunflower seed under the Official United States Standards for Grain including, but not limited to, oil or moisture content will not be considered.

(j) Planted acreage—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which has been properly prepared for the planting method and production practice. Sunflower seed must initially be planted in rows far enough apart to permit cultivation to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

(k) Practical to replant—In lieu of subsection 1.(ff) of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, and time to crop maturity, that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

(l) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

(m) Production guarantee—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(n) Replanting—Performing the cultural practices necessary to replace the sunflower seed and then replacing the sunflower seed in the insured acreage with the expectation of growing a successful crop.

(o) Timely planted—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

(p) Written agreement—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one

year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate, and price election must be contained in the written agreement. Notwithstanding the sales closing date restriction contained herein, in specific instances a written agreement may be applied for after the sales closing date, and approved if, after physical inspection of the acreage, there is a determination that the crop has the expectancy of making at least the guaranteed yield. However, no prevented planting liability will be established as a result of any request submitted after the sales closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Basic Provisions (§457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period other than as described under this section. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit or the production from each unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) *Optional Units by Section, Section Equivalent, or Consolidated Farm Service Agency (CFSA) Farm Serial Number:* Optional units may be established if each optional unit is located in a separate, legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as the equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single CFSA Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to or instead of establishing optional units by Section, section equivalent or CFSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent or CFSA Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8), you may select only one price election for all the sunflower seed in the county insured under this policy. Notwithstanding the preceding sentence, if the Special Provisions provide different price elections by type, you may select one price election for each sunflower seed type designated in the Special Provisions.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Basic Provisions (§457.8), the cancellation and termination dates are March 15.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the oil and non-oil type sunflower seed in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is planted for harvest as sunflower seed; and

(c) That is not (unless a written agreement allows otherwise):

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8):

(a) We will not insure any acreage which does not meet the rotation requirements shown in the Special Provisions; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree that replanting is not practical (see subsection 1.(k)).

8. Insurance Period

In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the calendar date for the end of the insurance period is November 30, immediately following planting.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) If applicable, failure of the irrigation water supply due to an unavoidable cause of loss occurring after the beginning of planting.

10. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment for sunflower seed is allowed if the sunflowers are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee for the acreage and it is practical to replant (see subsection 1.(k)).

(b) The maximum amount of the replanting payment per acre will be the lesser of twenty percent (20%) of the production guarantee or 175 (pounds of seed), multiplied by your price election, multiplied by your insured share or the share determined in accordance with subsection 10.(c), if applicable.

(c) When more than one person insures the same crop on a share basis, a replanting payment based on the total shares insured by us may be made to the insured person who incurs the total cost of replanting. Payment will be made in this manner only if an agreement exists between the insured persons which:

(1) Requires one person to incur the entire cost of replanting; or

(2) Gives the right to all replanting payments to one person.

(d) When sunflower seed is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss

In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage of each type of sunflower seed by the production guarantee for the applicable type;

(2) Multiplying each result by the price election for the applicable type;

(3) Adding these values;

(4) Multiplying the production to count of each type of sunflower seed by the price election for that type;

(5) Adding these dollar values;

(6) Subtracting the result of step (5) from the result of step (3); and

(7) Multiplying the result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 12.(d)); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us, (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature sunflower seed production may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of ten percent (10%). We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality result in:

(A) Oil type sunflower seed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) because of test weight, kernel damage (excluding heat damage), or a musty, sour or commercially objectionable foreign odor; or

(B) Non-oil type sunflower seed having a test weight below 22 pounds per bushel or kernel damage (excluding heat damage) in excess of five percent (5%) or a musty, sour or commercially objectionable foreign odor; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions, resulted from a cause of loss against which insurance is provided under these crop provisions and within the insurance period ;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed to grade sunflower seed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. (Test weight for quality adjustment purposes may also be determined by our loss adjuster.)

(4) Sunflower seed production that is eligible for quality adjustment, as specified in paragraphs 12.(d)(2) and (3), will be reduced:

(i) In accordance with quality adjustment factor provisions contained in the Special Provisions; or

(ii) As follows, if quality adjustment factor provisions are not contained in the Special Provisions:

(A) The market price of the qualifying damaged production and the local market price will be determined on the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit. The price for the qualifying damaged production will be the market price for the local area to the extent feasible. Discounts used to establish the net price of the damaged production will be limited to those which are usual, customary, and reasonable. The price will not be reduced for:

(*1*) Moisture content;

(*2*) Damage due to uninsured causes; or

(*3*) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the sunflower seed; except, if the price of the damaged production can be increased by conditioning, we may reduce the price of the production after it has been conditioned by the cost of conditioning but not lower than the value of the production before conditioning. (We may obtain prices from any buyer of our choice. If we obtain prices from one or more buyers located outside your local market area, we will reduce such prices by the additional costs required to deliver the sunflower seed to those buyers.);

(B) The value of the damaged or conditioned production will be divided by the local market price to determine the quality adjustment factor; and

(C) The number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds (if appropriate)) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Late Planting and Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Basic Provisions (§ 457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection 13.(c)), and acreage you were prevented from planting (see subsection 13.(d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage), (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted seven (7) days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by ninety-three percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii))).

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date .

(c) Late Planting

(1) For sunflower acreage planted after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of sunflower seed continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from planting sunflowers (see subsection 1(l)), you may elect:

(i) To plant sunflower seed during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 450 pounds per acre (900 pounds multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12 (c) through (e); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 900 pounds per acre, your prevented planting production guarantee would be 225 pounds per acre (900 pounds multiplied by 0.25). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase a sunflower seed crop insurance policy for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for the insured crop in the county. If the sunflower seed coverage remains in effect for the 1997 crop year (is not terminated or cancelled during or after the 1996 crop year, except the policy may have been cancelled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to sunflower seed on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to sunflower seed during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in

the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of sunflower acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of sunflower seed on one optional unit and 40 acres of sunflower seed on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e.,100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

[59 FR 67136, Dec. 29, 1994, as amended at 60 FR 62727, Dec. 7, 1995]

§ 457.109 Sugar Beet Crop Insurance Provisions.

The Sugar Beet Crop Insurance Provisions for the 1997 and succeeding crop years are as follows:

FCIC Policies

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured policies

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies

Sugar Beet Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic Provisions.

1. Definitions

Crop year. In Imperial, Lassen, Modoc, Shasta and Siskiyou counties, California and all other States, the period within which the sugar beets are normally grown, which is designated by the calendar year in which the sugar beets are normally harvested. In all other California counties, the period from planting until the applicable date for the end of the insurance period which is designated by:

(a) The calendar year in which planted if planted on or before July 15; or

(b) The following calendar year if planted after July 15.

Days. Calendar days.

FSA. Farm Service Agency of the United States Department of Agriculture, or a successor agency.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. Topping and lifting of sugar beets in the field.

Initially planted. The first occurrence that land is considered as planted acreage for the crop year.

Interplanted. Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Late planted. Acreage planted to the insured crop during the late planting period.

Late planting period. The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

Local market price. The price per pound for raw sugar offered by buyers in the area in which you normally market the sugar beets.

Planted acreage. Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice. Sugar beets must initially be planted in rows to be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions or by written agreement.

Practical to replant. In lieu of the definition of ''Practical to replant'' contained in section 1 of the Basic Provisions (§ 457.8), practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors, including but not limited to moisture availability, condition of the field, time to crop maturity, and marketing window, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant if production from the replanted acreage cannot be delivered under the terms of the processor contract, or 30 days after the initial planting date for all counties where a late planting period is not applicable, unless replanting is generally occurring in the area.

Prevented planting. Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

Processor. Any business enterprise regularly engaged in processing sugar beets for sugar that possesses all licenses and permits for processing sugar beets required by the State in which it operates, and that possesses facilities, or has contractual access to such facilities, with enough equipment to accept and process the contracted sugar beets within a reasonable amount of time after harvest.

Production guarantee (per acre):

(a) First stage production guarantee—The final stage production guarantee multiplied by 60 percent.

(b) Final stage production guarantee—The number of tons determined by multiplying the approved yield per acre by the coverage level percentage you elect.

Raw sugar. Sugar that has not been extracted from the sugar beet.

Replanting. Performing the cultural practices necessary to replace the sugar beet seed and then replacing the sugar beet seed in the insured acreage with the expectation of growing a successful crop.

Standardized ton. A ton of sugar beets containing the percentage of raw sugar specified in the Special Provisions.

Sugar beet processor contract. A written contract between the producer and the processor, containing at a minimum:

(1) The producer's commitment to plant and grow sugar beets, and to deliver the sugar beet production to the processor;

(2) The processor's commitment to purchase the production stated in the contract; and

(3) A price or formula for a price based on third party data that will be paid to the producer for the production stated in the contract.

Thinning. The process of removing, either by machine or hand, a portion of the sugar beet plants to attain a desired plant population.

Timely planted. Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

Ton. Two thousand (2,000) pounds avoirdupois.

Written agreement. A written document that alters designated terms of this policy in accordance with section 15.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), a basic unit may be divided into optional units if, for each optional unit, you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you.

(d) All optional units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit;

(3) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us;

(4) The sugar beet processor contract provides that the processor will accept all the production from the number of acres designated in the contract (Acreage insured under a sugar beet processor contract which provides that the processor will accept a designated amount of production will not be eligible for optional units).

(5) Each optional unit must meet one or more of the following criteria, as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number.* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of Sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number.

(ii) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices.* In addition to, or instead of, establishing optional units by Section, section equivalent, or FSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or FSA Farm Serial Number. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which the guarantee is based. However, the corners of a field in which a center-pivot irrigation system is used will be considered as irrigated acreage if separate acceptable records of production from the corners are not provided. If the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit, they will be a part of the unit containing the irrigated acreage. However, non-irrigated acreage that is not a part of a field in which a center-pivot irrigation system is used may qualify as a separate optional unit provided that all requirements of this section are met.

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

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the sugar beets in the county insured under this policy.

(b) The production guarantees are progressive by stages, and increase at specified intervals to the final stage. The stages are:

(1) First stage, with a guarantee of 60 percent (60%) of the final stage production guarantee, extends from planting until:

(i) July 1 in Lassen, Modoc, Shasta and Siskiyou counties, California and all other States except Arizona; and

(ii) The earlier of thinning or 90 days after planting in Arizona and all other California counties.

(2) Final stage, with a guarantee of 100 percent (100%) of the final stage production guarantee, applies to all insured sugar beets that complete the first stage.

(c) The production guarantee will be expressed in standardized tons.

(d) Any acreage of sugar beets damaged in the first stage to the extent that growers in the area would not normally further care for the sugar beets will be deemed to have been destroyed, even though you may continue to care for it. The production guarantee for such acreage will not exceed the first stage production guarantee.

4. Contract Changes

In accordance with the provisions of section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is April 30 preceding the cancellation date for counties with a July 15 or August 31 cancellation date and November 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§457.8), the cancellation and termination dates are:

State and County	Cancellation date	Termination date
Arizona; and Imperial County, California.	August 31	August 31.
All California counties, except Imperial, Lassen, Modoc, Shasta and Siskiyou.	July 15	November 30.
All Other States, and Lassen, Modoc, Shasta and Siskiyou Counties, California.	March 15	March 15.

6. Annual Premium

In lieu of the premium computation method contained in section 7 (Annual Premium) of the Basic Provisions (§457.8), the annual premium amount is computed by multiplying the final stage production guarantee by the price election, the premium rate, the insured acreage, your share at the time of planting, and any applicable premium adjustment factors contained in the Actuarial Table.

7. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all the sugar beets in the county for which a premium rate is provided by the Actuarial Table:

(1) In which you have a share;

(2) That are planted for harvest as sugar beets;

(3) That are grown under a sugar beet processor contract executed before the acreage reporting date and are not excluded from the processor contract at any time during the crop year; and

(4) That are not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop;

(ii) Planted into an established grass or legume; or

(iii) Planted prior to submitting a properly completed application.

(b) Sugar beet growers who are also processors may establish an insurable interest if they meet the following requirements:

(1) The processor must meet the definition of a ''processor'' in section 1 of these crop provisions and have a valid insurable interest in the sugar beet crop;

(2) The Board of Directors or officers of the processor must have duly promulgated a resolution that sets forth essentially the same terms as a sugar beet processor contract. Such resolution will be considered a sugar beet processing contract under the terms of the sugar beet crop insurance policy;

(3) The sales records of the processor showing the amount of sugar produced the previous year must be supplied to us to confirm the processor has produced and sold sugar in the past; and

(4) Our inspection of the processing facilities determines that they conform to the definition of processor contained in section 1 of these crop provisions.

8. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Basic Provisions (§457.8):

(a) We will not insure any acreage planted to sugar beets:

(1) The preceding crop year, unless otherwise specified in the Special Provisions for the county;

(2) In any crop year following the discovery of rhizomania on the acreage, unless allowed by the Special Provisions or by written agreement; or

(3) That does not meet the rotation requirements shown in the Special Provisions;

(b) Any acreage of the insured crop damaged before the final planting date, (or within 30 days of initial planting for those counties without a final planting date) to the extent that growers in the area would normally not further care for the crop, must be replanted unless we agree that replanting is not practical.

9. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic

Provisions (§ 457.8), the calendar date for the end of the insurance period is:

(1) July 15 in Arizona and in Imperial County, California;

(2) The last day of the 12th month after the insured crop was initially planted in all California counties except Imperial, Lassen, Modoc, Shasta and Siskiyou;

(3) October 31 in Lassen, Modoc, Shasta and Siskiyou Counties, California, and in Klamath County, Oregon;

(4) November 25 in Ohio;

(5) December 31 in New Mexico and Texas; and

(6) November 15 in all other States and counties.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), regarding the end of the insurance period, the insurance period ends for all units when the production delivered to the processor equals the amount of production stated in the sugar beet processor contract.

10. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

11. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Basic Provisions (§ 457.8), a replanting payment is allowed if the crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent (90%) of the final stage production guarantee for the acreage and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 10 percent (10%) of the final stage production guarantee or one ton, multiplied by your price election, multiplied by your insured share.

(c) When sugar beets are replanted using a practice that is uninsurable for an original planting, our liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

12. Duties In The Event of Damage or Loss

In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8):

(a) Representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The samples must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed; and

(b) You must provide a copy of your sugar beet processor contract or corporate resolution if you are the processor.

13. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which acceptable production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Subtracting the total production to count from the result in paragraph (b)(1);

(3) Multiplying the result of paragraph (b)(2) by your price election; and

(4) Multiplying the result of paragraph (b)(3) by your share.

(c) The total production to count (in standardized tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (unharvested production that is appraised prior to the earliest delivery date that the processor accepts harvested production will not be eligible for a conversion to standardized tons in accordance with section 13 (d) and (e));

(iv) Only appraised production in excess of the difference between the first and final stage production guarantee for acreage that does not qualify for the final stage guarantee will be counted, except that all production from acreage subject to section 13(c)(1) (i) and (ii) will be counted; and

(v) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Harvested production or unharvested production that is appraised after the earliest delivery date that the processor accepts harvested production and that meets the minimum acceptable standards contained in the sugar beet processor contract or corporate resolution will be converted to standardized tons by:

(1) Dividing the average percentage of raw sugar in such sugar beets by the raw sugar content percentage shown in the Special Provisions; and

(2) Multiplying the result (rounded to three places) by the number of tons of such sugar beets.

The average percentage of raw sugar will be determined from tests performed by the processor at the time of delivery. If individual tests of raw sugar content are not made at the time of delivery, the average percent of raw sugar may be based on the results of previous tests performed by the processor during the crop year if it is determined that such results are representative of the total production. If not representative, the average percent of raw sugar will equal the raw sugar content percent shown in the Special Provisions.

(e) Harvested production or unharvested production that is appraised after the earliest delivery date that the processor accepts harvested production and that does not meet the minimum acceptable standards contained in the sugar beet processor contract due to an insured peril will be converted to standardized tons by:

(1) Dividing the gross dollar value of all of the damaged sugar beets on the unit (including the value of cooperative stock, patronage refunds, etc.) by the local market price per pound on the earlier of the date such production is sold or the date of final inspection for the unit;

(2) Dividing that result by 2,000; and

(3) Dividing that result by the county average raw sugar factor contained in the Special Provisions for this purpose.

For example, assume that the total dollar value of the damaged sugar beets is $6,000.00; the local market price is $0.10; and the county average raw sugar factor is 0.15. The amount of production to count would be calculated as follows: (($6,000.00÷$0.10)÷2,000)÷0.15=200 tons.

14. Late and Prevented Planting

(a) In lieu of provisions contained in the Basic Provisions (§457.8) regarding acreage initially planted after the final planting date and the applicability of a Late Planting Agreement Option, insurance will be provided for acreage planted to the insured crop during the late planting period (see section 14(c)), and acreage you were prevented from planting (see section 14(d)). These coverages provide reduced production guarantees and are applicable in all counties except California counties with a July 15 cancellation date. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on such acreage: coverage for those acres will not be provided; no premium will be due; and no indemnity will be paid for such acreage.

(b) You must provide written notice to us not later than the acreage reporting date if you were prevented from planting.

(c) Late planting.

(1) For sugar beet acreage planted during the late planting period, the production guarantee for the applicable stage for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (1%) for the 1st through the 10th day; and

(ii) Two percent (2%) for the 11th through the 25th day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Basic Provisions (§457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of sugar beets continues after the final planting date, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period)

(1) If you were prevented from timely planting sugar beets, you may elect:

(i) To plant sugar beets during the late planting period. The production guarantee for such acreage will be determined in accordance with section 14(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be 35 percent of the final stage production guarantee for timely planted acres. For example, if your final stage production guarantee for timely planted acreage is 20.0 tons per acre, your prevented planting production guarantee would be 7.0 tons per acre (20.0 tons multiplied by 0.35). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with section 13; or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the 10th day following the final planting date for the insured crop; or

(B) A production guarantee equal to 17.5 percent of the final stage production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the 10th day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your final stage production guarantee for timely planted acreage is 20.0 tons per acre, your prevented planting production guarantee would be 3.5 tons per acre (20.0 ton multiplied by 0.175). You may elect to exclude prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Production guarantees for timely, late, and prevented planting acreage within a unit will be combined to determine the production guarantee for the unit. For example, assume you insure 1 unit in which you have a 100 percent share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres were not planted but are eligible for a prevented planting production guarantee. The production guarantee for the unit will be computed as follows:

(i) For the timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(ii) For the late planted acreage, multiply the per acre production guarantee for timely planted acreage by 93 percent and multiply the result by the 50 acres planted late; and

(iii) For prevented planting acreage, multiply the final stage per acre production guarantee for timely planted acreage by:

(A) Thirty five percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(B) Seventeen and one-half percent and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (B) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see section 14(d)(1)(iii)).)

Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(3) You must have the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee. Proof that these inputs were available may be required.

(4) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for sugar beets for the 1997 crop year, prevented planting coverage will begin on the 1997 sales closing date for sugar beets in the county. If the sugar beet coverage remains in effect for the 1998 crop year (is not terminated or canceled during or after the 1997 crop year), prevented planting coverage for the 1998 crop year began on the 1997 sales closing date. Cancellation for the purpose of transferring the policy to a different insurance provider when there is no lapse in coverage will not be considered terminated or canceled coverage for the purpose of the preceding sentence.

(5) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all FSA Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) Eligible acreage will not exceed the number of acres required to be grown in the current crop year under a contract executed with a processor prior to the acreage reporting date or the number of acres needed to produce the amount of contracted production based on the APH yield for the acreage.

(ii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iii) A prevented planting production guarantee will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in section 14(d)(2)(iii)(A), or a substitute crop allowed in section 14 (d)(2)(iii)(B), unless you provide adequate records of acreage and production showing that the acreage was double-cropped in each of the last 4 years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double-cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(iv) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of sugar beet acres timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of sugar beets on one optional unit and 40 acres of sugar beets on the second optional unit, your prevented planting eligible acreage would be reduced to zero (*i.e.,* 100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(6) In accordance with the provisions of section 6 (Report of Acreage) of the Basic Provisions (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee, the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

15. Written Agreements

Designated terms of this policy may be altered by written agreement. The following conditions will apply:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 15(e).

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election.

(d) Each written agreement will only be valid for one year. If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy.

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

[61 FR 58775, Nov. 19, 1996]

§ 457.110 Fig crop insurance provisions.

The Fig Crop Insurance Provisions for the 1994 and subsequent crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Fig Crop Provisions

If a conflict exists between the Common Crop Insurance Policy (§ 457.8) and the Special Provisions, the Special Provisions will control. If a conflict exists between these Crop Provisions and the Special Provisions, the Special Provisions will control.

1. Definitions

(a) *Good farming practices*—The cultural practices necessary for the insured crop to make usual and normal progress toward maturity and which can be expected to produce at least the yield used to determine the production guarantee. Good farming practices are generally those in use in the county for production of the insured crop and are recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(b) *Harvest*—The picking of the figs from the trees or ground by hand or machine for the purpose of removal from the orchard.

(c) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage for the insured crop.

(d) *Manufacturing grade production*—Production that meets the minimum grade standards and is defined as ''manufacturing grade'' by the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

(e) *Marketable figs*—Figs that grade manufacturing grade or better in accordance with the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

(f) *Noncontiguous land*—Land which is not touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

(g) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(h) *Substandard production*—Production that does not meet minimum grade standards and is defined as ''substandard'' by the Marketing Order for Dried Figs, as amended, which is in effect on the date insurance attaches.

2. Unit Division

In addition to the provisions of subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), a unit will consist of all the insurable acreage of an insurable type of fig in the county. Unless limited by the Special Provisions, these units may be further divided into optional units if, for each optional unit you claim, all the conditions of subsections 2.(a), and (b) are met, or if we agree in writing. Optional units must be established at the time you file your report of acreage for each crop year.

(a) You must have verifiable records of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) The acreage of insured figs must be located on noncontiguous land. Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these conditions, we will combine all optional units which are not established in compliance with these provisions into the basic unit from which they were formed. We may do this at any time we discover that

you have failed to comply with these conditions. If failure to comply with these provisions is determined to be inadvertent, and if the optional units are recombined, the premium paid for electing optional units will be refunded to you.

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

In addition to the requirements under section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§457.8), you may select only one price election for each fig type designated in the Special Provisions, and insured in the county under this policy.

4. Contract Changes

The contract change date is October 31 preceding the cancellation date (see the provisions under section 4 (Contract Changes) of the Common Crop Insurance Policy (§457.8)).

5. Cancellation and Termination Dates

The cancellation and termination dates are February 28.

6. Report of Acreage

By applying for fig crop insurance, you authorize us to have access to and to determine or verify your production and acreage from records maintained by the California Fig Advisory Board and the fig packer.

7. Insured Crop

The crop insured will be all the commercially grown dried figs that are grown in the county on insurable acreage, and for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown for harvest as dried figs;

(c) That are irrigated;

(d) That have reached the seventh growing season after being set out; and

(e) For which acceptable production records for at least the previous crop year are provided;

(f) That are not figs:

(1) Grown on acreage with less than 90 percent of a stand based on the original planting pattern unless we agree, in writing, to insure such figs;

(2) Which we inspect and consider not acceptable;

(3) Grown for the crop year the application is filed unless inspected and accepted by us; or

(4) Grown on acreage acquired for the crop year unless such acreage has been inspected and accepted by us.

8. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§457.8), insurance attaches on each unit the later of the date you submit your application or March 1 of the crop year and ends at the earliest of:

(a) Total destruction of the fig crop;

(b) The date harvest of the figs (by type) should have started on any acreage that will not be harvested;

(c) Harvest of the figs;

(d) Final adjustment of a loss;

(e) Abandonment of the crop; or

(f) October 31 of the crop year.

9. Causes of Loss

(a) In addition to the provisions under section 12 (Causes of Loss) of the Common Crop Insurance Policy (§457.8), any loss covered by this policy must occur within the insurance period. The specific causes of loss for figs are:

(1) Adverse weather conditions;

(2) Earthquake;

(3) Fire;

(4) Volcanic eruption;

(5) Wildlife; or

(6) Failure of the irrigation water supply.

(b) In addition to the causes of loss not insured against contained in section 12 (Causes of Loss) of the Common Crop Insurance Policy (§457.8), we will not insure against:

(1) Any loss of production due to fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove; or

(2) The inability to market the fruit as a direct result of quarantine, boycott, or refusal of any entity to accept production.

10. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production that are acceptable to us for any:

(1) Optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) Basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds) to count from all insurable acreage on the unit will include all harvested and appraised marketable figs.

(1) Figs, which due to insurable causes, grade manufacturing grade will be adjusted by:

(i) Dividing the value per pound of the manufacturing grade production by the highest price election available for the insured type; and

(ii) Multiplying the result (not to exceed 1) by the number of pounds of such manufacturing grade production.

(2) Figs, which due to insurable causes, grade substandard and are delivered to the substandard pool will not be considered production to count, provided all the insured's substandard production is inspected by us and we give written consent to such delivery prior to delivery. If we do not give written consent prior to the delivery to the substandard pool, all production will be counted as undamaged marketable production. Substandard production for which we give written consent to you prior to delivery to the substandard pool, which is not delivered to the substandard pool, and is sold by you, will be considered production to count and adjusted as follows:

(i) Dividing the value per pound received for such substandard production by the highest price election available for the insured type; and

(ii) Multiplying the result (not to exceed 1) by the number of pounds of such substandard production.

(3) Appraised production to be counted will include:

(i) Potential production lost due to uninsured causes and failure to follow recognized good fig farming practices;

(ii) Not less than the production guarantee for the figs on any acreage:

(A) That is abandoned without our consent;

(B) Damaged solely by uninsured causes;

(c) If the figs are destroyed by you without our consent; or

(D) For which you fail to provide records of production that are acceptable to us;

(iii) Unharvested production which would be marketable if harvested; and

(iv) Potential production on insured acreage that you want to abandon and no longer care for if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production. You must notify us within three days of the date harvest should have started if the crop is not harvested; or

(B) You may elect to continue to care for the crop. We will determine the amount of production to count for the acreage using the harvested production or our reappraisal if the crop is not harvested.

[59 FR 9615, Mar. 1, 1994]

§ 457.111 Pear crop insurance provisions.

The Pear Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC Policies:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies:

Pear Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Days. Calendar days.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or a successor agency.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The picking of mature pears from the trees or the collecting of marketable pears from the ground.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Marketable. Pear production acceptable for processing or other human consumption even if failing to meet any U.S. or applicable state grading standard.

Non-contiguous. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

Production guarantee (per acre). The quantity of pears (in tons) determined by multiplying the approved APH yield per acre by the coverage level percentage you elect, and multiplying the result by any applicable adjustment factor provided in section 6(f) of the Basic Provisions (§ 457.8).

Ton. Two thousand (2,000) pounds avoirdupois.

Varietal group. Types of pears with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

Written agreement. A written document that alters designated terms of this policy in accordance with section 12.

2. Unit Division

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), a basic unit, may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(b) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(d) All optional units established for a crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee; and

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us.

(3) Each optional unit must meet one or more of the following criteria as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number.* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(ii) *Optional Units on Acreage Located on Non-Contiguous Land.* In lieu of establishing optional units by section, section equivalent or FSA Farm Serial Number, optional units may be established if each optional unit is located on non-contiguous land.

(iii) *Optional Units on Acreage by Varietal Group.* In addition to, or instead of, establishing optional units by section, section equivalent, FSA Farm Serial Number, or on non-contiguous land, optional units may be established by varietal group when provided for in the Special Provisions.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election for all the pears in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price election for each varietal group designated in the Special Provisions. The price elections you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose one hundred percent (100%) of the maximum price election for one varietal group, you must also choose one hundred percent (100%) of the maximum price election for all other varietal groups.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by varietal group:

(1) Any damage, removal of trees, change in practices or any other circumstance that may reduce the expected yield below the

yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and any time the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield. We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; change in practices or any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time that we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§ 457.8), the contract change date is October 31 preceding the cancellation date for states with a January 31 cancellation date and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are:

States	Cancellation and termination dates
California	January 31.
All other states	November 20.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§ 457.8), the crop insured will be all the pears in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are of varieties adapted to the area;

(c) That are grown on trees that have produced an average of at least five (5) tons of pears per acre in at least one of the four previous crop years unless the Special Provisions or a written agreement establishes a lower production level; and

(d) That are grown in an orchard that, if inspected, is considered acceptable by us.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§ 457.8), that prohibit insurance attaching to a crop planted with another crop, pears interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) Coverage begins:

(i) In California, on February 1 of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard; or

(ii) In all other states, on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is:

(i) September 15 for Bartlett (green and red) and Star Crimson (Crimson Red) varietal groups; or

(ii) October 15 for all other varietal groups.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable interest on any insurable acreage of pears on or before the acreage reporting date of any crop year, insurance will not be considered to have attached to, and no premium will be due, and no indemnity paid, for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Earthquake;

(4) Volcanic eruption; or

(5) Failure of the irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available.

(2) Failure of the fruit to color properly; or

(3) Inability to market the pears for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) 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.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest if you previously gave notice in accordance with section 14 of the Basic Provisions (§457.8), so that we may inspect the damaged production. 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.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate, acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each varietal group if applicable, by its respective production guarantee;

(2) Multiplying the results of section 11(b)(1) by the respective price election for each varietal group, if applicable;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each varietal group, if applicable, by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting this result of section 11(b)(5) from the result of section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 10;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement,

the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) For all states except California, all harvested and appraised marketable pear production from the insurable acreage.

(3) For California, all harvested and appraised production that:

(i) Meets the standards for first grade canning as defined by the California Pear Advisory Board or for U.S. Number 1 as defined by the United States Standards for Grades of Summer and Fall Pears, or Pears for Processing, or for U.S. Extra Number 1 or U.S. Number 1 as defined by the United States Standards for Grades of Winter Pears;

(ii) Is accepted by a processor for canning or packing; or

(iii) Is marketable for any purpose. However, if the pears are damaged by an insured cause, the production to count will be reduced by the greater of the following amounts:

(A) The excess over ten percent (10%) of pears that are size 180 or smaller for varieties other than Forelle, Seckel or Winter Nelis; or

(B) The result of dividing the value per ton of such pears by the highest price election for the insured varietal group, subtracting this result from 1.000, and multiplying this difference (if positive) by the number of tons of such pears.

12. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

13. Pear Quality Adjustment Endorsement

(a) This endorsement applies to any crop year: *Provided*,

(1) The insured pears are located in a State other than California and the actuarial table designates a premium rate for this endorsement;

(2) You have not elected to insure your pears under the Catastrophic Risk Protection (CAT) Endorsement;

(3) You elected it on your application or other form approved by us, and did so on or before the sales closing date for the initial crop year for which you wish it to be effective. By doing so, you agreed to pay the additional premium designated in the actuarial table for this optional coverage; and

(4) You or we did not cancel it in writing on or before the cancellation date. Your election of CAT coverage for any crop year after this endorsement is effective will be considered as notice of cancellation by you.

(b) If the pear production is damaged by hail and if eleven percent (11%) or more of the harvested and appraised production does not grade at least U.S. No. 2 in accordance with applicable United States Standards for Grades of Summer and Fall Pears, United States Standards for Grades of Winter Pears, or United States Standards for Grades of Pears for Processing, as applicable, due solely to hail, the amount of production to count will be reduced as follows:

(i) By two percent (2%) for each full one percent (1%) in excess of ten percent (10%), when eleven percent (11%) through sixty percent (60%) of the pears fail the grade standard; or

(ii) By one hundred percent (100%) when more than sixty percent (60%) of the pears fail the grade standard.

The difference between the reduced production determined in section 13(b) and the total production will be considered as cull production.

(c) Pears that are knocked to the ground by wind or that are frozen and cannot be packed or marketed as fresh pears will be considered one hundred percent (100%) cull production.

(d) Marketable production that grades less than U.S. No. 2 due to causes not covered by this endorsement will not be reduced.

(e) Fifteen percent (15%) of all production considered as cull production in accordance with section 13 (b) and (c) will be production to count.

[61 FR 57580, Nov. 7, 1996]

§457.113 Coarse grains crop insurance provisions.

The coarse grains crop insurance provisions for the 1995 and succeeding crop year are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Coarse Grains Crop Provisions

If a conflict exists among the Common Crop Insurance Policy (§457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the common policy and these crop provisions will control the common policy.

1. Definitions

(a) *Coarse grains*—Corn, grain sorghum, and soybeans.

(b) *Days*—Calendar days.

(c) *Final planting date*—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full production guarantee.

(d) *Good farming practices*—Good farming practices are the cultural practices generally in use in the county for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative Extensive Service as compatible with agronomic and weather conditions in the area.

(e) *Grain sorghum*—The crop defined as sorghum under the United States Grain Standards Act.

(f) *Harvest*—Combining, threshing, or picking the insured crop for grain, or cutting for hay, silage, or fodder.

(g) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(h) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems, and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(i) *Late planted*—Acreage planted to the insured crop during the late planting period.

(j) *Late planting period*—The period that begins the day after the final planting date for the insured crop and ends twenty-five (25) days after the final planting date.

(k) *Local market price*—The cash grain price per bushel for the U.S. No. 2 yellow corn, U.S. No. 2 grain sorghum, or U.S. No. 1 soybeans, offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade for yellow corn and grain sorghum, or U.S. No. 1 grade for soybeans. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein and oil, will not be considered.

(l) *Planted acreage*—Land in which seed has been placed by a machine appropriate for the insured crop and planting method, at the correct depth, into a seedbed which as been properly prepared for the planting method and production practice. Coarse grains must initially be planted in rows to be considered planted. Corn must be planted in rows far enough apart to permit mechanical cultivation. Planting in any other manner will be considered as a failure to follow recognized good farming practices and any loss of production will not be insured unless otherwise provided by the Special Provisions or by written agreement to insure such crop.

(m) *Practical to replant*—In lieu of subsection 1.(ff) of the Common Crop Insurance Policy (§457.8) practical to replant is defined as our determination, after loss or damage to the insured crop, based on factors including, but not limited to moisture availability, condition of the field, and time to crop maturity that replanting to the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period unless replanting is generally occurring in the area.

(n) *Prevented planting*—Inability to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county or the end of the late planting period. You must have been unable to plant the insured crop due to an insured cause of loss that has prevented the majority of producers in the surrounding area from planting the same crop.

(o) *Production guarantee*—The number of bushels (tons for corn insured as silage) determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(p) *Replanting*—Performing the cultural practices necessary to replace the seed of the same insured crop, and replacing the seed for the same crop in the insured acreage with the expectation of growing a successful crop.

(q) *Silage*—A product that results from severing the plant from the land and chopping it for the purpose of livestock feed.

(r) *Timely planted*—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

(s) *Ton*—Two thousand (2000) pounds avoirdupois.

(t) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate and price election must be set out in the written agreement. In specific instances, a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the acreage, there is a determination that the crop has the expectance of making at least the guaranteed yield. However, no prevented planting liability will be established as a result of any request submitted after the closing date. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Common Crop Insurance Policy (§ 457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner that results in a clear and discernable break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that we can verify the production from each optional unit or the production from each unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) *Optional Units by Section, Section Equivalent, or ASCS Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as the equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above or another system approved by us, or in areas where such systems exist but boundaries are not readily discernable, each optional unit must be located in a separate farm identified by a single ASCS Farm Serial Number.

(2) *Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices:* In addition to or instead of establishing optional units by Section, section equivalent, or ASCS Farm Serial Number, optional units may be established based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent, or ASCS Farm Serial Number.

The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and you may not continue into non-irrigated acreage in the same rows or planting pattern. You must plant, cultivate, fertilize, or otherwise care for the irrigated acreage in accordance with recognized good irrigated farming practices.

Basic units may not be divided into optional units on any basis (production practice, type, variety, planting period, etc.) other than as described under this section. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and all the optional units are combined, the premium paid for the purpose of electing optional units will be refunded to you.

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

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Common Crop Insurance Policy (§ 457.8) you may select:

(1) For grain sorghum and soybeans, only one price election for each crop in the county insured under this policy; and

(2) For corn, only one price election for all the corn in the county insured as grain under this policy, and only one price election for all the corn in the county insured as silage under this policy. The price elections you choose for grain and silage must have the same percentage relationship to the maximum price election offered by us for grain and silage. For example, if you choose one hundred percent (100%) of the maximum grain price election and you also insure corn on a silage basis, you must choose one hundred percent (100%) of the maximum silage price election.

(b) For corn only, if you harvest the crop in a manner other than the manner you reported (for example, you reported grain but

harvested as silage) and you did not select a price election for the type harvested, we will assign a price election for the type harvested that bears the same percentage relationship to the maximum price election you selected for the type reported (for example, if you selected a grain price election in the amount of eighty percent (80%) of the maximum price election for grain and you did not select a silage price election, we will assign a silage price election in the amount of eighty percent (80%) of the maximum price election for silage specified in the Special Provisions if you harvest for silage). This assigned price election will be used only to determine the dollar value of production to count for indemnity purposes and will not be used to determine the amount of insurance or premium.

4. Contract Changes

The contract change date is November 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Common Crop Insurance Policy (§ 457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Common Crop Insurance Policy (§ 457.8), the cancellation and termination dates are:

State and county	Cancellation and termination dates
(a) For corn and grain sorghum:	
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 15.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina.	February 28.
All other Texas counties and all other states	March 15.
(b) For soybeans:	
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, LaSalle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	February 15.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28.
All other Texas counties and all other states	March 15.

6. Insured Crop

(a) In accordance with section 8 (Insured Crop) of the Common Crop Insurance Policy (§ 457.8), the crop insured will be each coarse grain crop you elect to insure for which premium rates are provided by the actuarial table:

(1) In which you have a share;

(2) That is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area; and

(3) That is not (unless allowed by the Special Provisions or by written agreement):

(i) Interplanted with another crop except as allowed in paragraph 6.(b)(1); or

(ii) Planted into an established grass or legume.

(b) For corn only, in addition to the provisions of subsection 6.(a), the corn crop insured will be all corn that is:

(1) Planted for harvest either as grain or as silage (see subsection 6.(c)). A mixture of corn and sorghum (grain or forage-type) will be insured as corn silage if the sorghum does not constitute more than twenty percent (20%) of the plants;

(2) Yellow dent or white corn, including mixed yellow and white, waxy or high-lysine corn, and excluding:

(i) High-amylose, high-oil, high-protein, flint, flour, Indian, or blue corn, or a variety genetically adapted to provide forage for wildlife or any other open pollinated corn, unless a written agreement allows insurance of such excluded crops.

(ii) A variety of corn adapted for silage use only when the corn is reported for insurance as grain.

(c) For corn only, if the actuarial table for the county provides a premium rate for:

(1) *Both grain and silage,* all insurable acreage will be insured as the type or types reported by you on or before the acreage reporting date;

(2) *Grain but not silage,* all insurable acreage will be insured as grain unless a written agreement allows insurance on all or a portion of the insurable acreage as silage; or

(3) *Silage but not grain,* all insurable corn acreage will be insured as silage unless a

written agreement allows insurance on all or a portion of the insurable acreage as grain.

(d) For grain sorghum only, in addition to the provisions of subsection 6.(a), the grain sorghum crop insured will be all of the grain sorghum in the county:

(1) That is planted for harvest as grain;

(2) That is a combine-type hybrid grain sorghum (grown from hybrid seed); and

(3) That is not a dual-purpose type of grain sorghum (a type used for both grain and forage), unless a written agreement allows insurance of such grain sorghum.

(e) For soybeans only, in addition to the provisions of subsection 6.(a), the soybean crop insured will be all of the soybeans in the county that are planted for harvest as beans.

7. Insurable Acreage

In addition to the provisions of section 9 (Insurable Acreage) of the Common Crop Insurance Policy (§ 457.8), any acreage of the insured crop damaged before the final planting date, to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee, must be replanted unless we agree that replanting is not practical (see subsection 1.(m)).

8. Insurance Period

In accordance with the provisions under section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the calendar date for the end of the insurance period is the date immediately following planting as follows:

(a) For corn insured as grain:	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30.
(2) Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Pierce, Skagit, Snohomish, Thurston, Wahkiakum, and Whatcom Counties, Washington.	October 31.
(3) All other counties and states	December 10.
(b) For corn insured as silage:	
All states	September 30.
(c) For grain sorghum:	
(1) Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	September 30.
(2) All other Texas counties and all other states	December 10.
(d) For soybeans: All states	December 10.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Common Crop Insurance Policy (§ 457.8), insurance is provided only against the following causes of loss which occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

10. Replanting Payments

(a) In accordance with section 13 (Replanting Payment) of the Common Crop Insurance Policy (§ 457.8), replanting payments for coarse grains are allowed if the coarse grains are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least ninety percent (90%) of the production guarantee for the acreage and it is practical to replant (see subsection 1.(m)).

(b) The maximum amount of the replanting payment per acre will be the lesser of twenty percent (20%) of the production guarantee or the number of bushels (tons for corn insured as silage) set out herein, multiplied by your price election multiplied by your insured share or the share determined under 10.(c), if applicable. The number of bushels or tons are 8 bushels for corn grain; 1 ton for corn silage; 7 bushels for grain sorghum; and 3 bushels for soybeans.

(c) When more than one person insures the same crop on a share basis, a replanting payment based on the total shares insured by us may be made to the insured person who incurs the total cost of replanting. Payment will be made in this manner only if an agreement exists between the insured persons which:

(1) Requires one person to incur the entire cost of replanting; or

(2) Gives the right to all replanting payments to one person.

(d) When the insured crop is replanted using a practice that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss

(a) In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Common Crop Insurance Policy (§457.8), if you initially discover damage to any insured crop within 15 days of or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

(b) For any corn unit that has separate dates for the end of the insurance period (grain and silage):

(1) In lieu of paragraph 14.(a)(2) of the Common Crop Insurance Policy (§457.8), if damage occurs:

(i) Before the earliest end of insurance period date (grain or silage), you must give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after that earliest end of insurance period date); or

(ii) If damage does not occur before the earliest end of insurance period date (grain or silage), but occurs before the latest end of insurance period date (grain or silage), you must give notice within 72 hours of your initial discovery of damage (but not later than 15 days after that latest end of insurance period date).

(2) In lieu of subsection 14.(c) of the Common Crop Insurance Policy (§457.8), 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 latest date for the end of insurance period for the unit. This claim must include all the information we require to settle the claim.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit:

(1) For grain sorghum and soybeans by:

(i) Multiplying the insured acreage by the production guarantee;

(ii) Subtracting from this the total production to count;

(iii) Multiplying the remainder by your price election; and

(iv) Multiplying this result by your share.

(2) For corn by:

(i) Multiplying the insured acreage of each type (grain/silage) by the production guarantee for the applicable type;

(ii) Multiplying each result by the price election for the applicable type;

(iii) Adding these values;

(iv) Multiplying the production to count of each type (see subsection 12.(d)) by the price election for that type (see the provisions under section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities));

(v) Adding these dollar values;

(vi) Subtracting the result of step (v) from the result of step (iii); and

(vii) Multiplying the result by your share.

(c) The total production in bushels (tons for corn silage) (see subsection 12.(d)) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes; or

(D) For which you fail to provide records of production that are acceptable to us;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with subsection 12.(e)); and

(iv) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) The production to count for corn will be in bushels for grain and in tons for silage as follows:

(1) For harvested acreage, according to the method of harvest; and

(2) For unharvested acreage, according to the information contained on your acreage report;

except as otherwise provided in paragraph 12.(c)(1).

(e) Mature coarse grain production (excluding corn insured or harvested as silage) may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable it will be made prior to any adjustment for quality. Corn insured or harvested as silage will be adjusted for excess moisture and quality only as specified in subsection 12.(f).

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of:

(i) Fifteen percent (15%) for corn (If moisture exceeds 30 percent (30%), production will be reduced 0.2 percent for each 0.1 percentage point above 30 percent (30%));

(ii) Fourteen percent (14%) for grain sorghum; and

(iii) Thirteen percent (13%) for soybeans.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Corn not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor;

(B) Grain sorghum not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except smut odor), or meets the special grade requirements for smutty grain sorghum; or

(C) Soybeans not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except garlic odor), or which meet the special grade requirements for garlicky soybeans; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. (Test weight for quality adjustment purposes may be determined by our loss adjuster.)

(4) Coarse grain production that is eligible for quality adjustment, as specified in paragraphs 12.(e) (2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(f) For corn insured or harvested as silage:

(1) Whenever our appraisal of grain content is less than 4.5 bushels of grain per ton of silage, the silage production will be reduced by 1 percentage point for each 0.1(1/10) of a bushel less than 4.5 bushels per ton (If we cannot make a grain appraisal before harvest and you do not leave a representative unharvested sample, in accordance with the policy no reduction for grain-deficient silage will be made.); and

(2) If the normal silage harvesting period has ended, or for any acreage harvested as silage or appraised as silage after September 30 of the crop year we may increase the silage production to count to 65 percent (65%) moisture equivalent to reflect the normal moisture content of silage harvested during the normal silage harvesting period.

(g) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

13. Late Planting and Prevented Planting

(a) In lieu of paragraph 8.(b)(2) and subsection 1.(aa) of the Common Crop Insurance Policy (§ 457.8), insurance will be provided for acreage planted to the insured crop during the late planting period (see subsection 13.(c)), and acreage you were prevented from planting (see subsection 13.(d)). These coverages provide reduced production guarantees. The reduced guarantees will be combined with the production guarantee for timely planted acreage for each unit. The premium amount for late planted acreage and eligible prevented planting acreage will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for late planted acreage or prevented planting acreage exceeds the liability on

such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be be paid for such acreage). (For example, assume you insure one unit in which you have a 100 percent (100%) share. The unit consists of 150 acres, of which 50 acres were planted timely, 50 acres were planted 7 days after the final planting date (late planted), and 50 acres are unplanted and eligible for prevented planting coverage. To calculate the amount of any indemnity which may be due to you, the production guarantee for the unit will be computed as follows:

(1) For timely planted acreage, multiply the per acre production guarantee for timely planted acreage by the 50 acres planted timely;

(2) For late planted acreage, multiply the per acre production guarantee for timely planted acreage by 93 percent (0.93) and multiply the result by the 50 acres planted late; and

(3) For prevented planting acreage, multiply the per acre production guarantee for timely planted acreage by:

(i) Fifty percent (0.50) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if the acreage is left idle for the crop year, or if a cover crop is planted not for harvest. Prevented planting compensation hereunder will not be denied because the cover crop is hayed or grazed; or

(ii) Twenty-five percent (0.25) and multiply the result by the 50 acres you were prevented from planting, if the acreage is eligible for prevented planting coverage, and if you elect to plant a substitute crop for harvest after the 10th day following the final planting date for the insured crop. (This subparagraph (ii) is not applicable, and prevented planting coverage is not available hereunder, if you elected the Catastrophic Risk Protection Endorsement or you elected to exclude prevented planting coverage when a substitute crop is planted (see subsection 13(d)(1)(iii)).)

The total of the three calculations will be the production guarantee for the unit. Your premium will be based on the result of multiplying the per acre production guarantee for timely planted acreage by the 150 acres in the unit.

(b) If you were prevented from planting, you must provide written notice to us not later than the acreage reporting date.

(c) Late Planting

(1) For acreage planted to the insured crop after the final planting date but on or before 25 days after the final planting date, the production guarantee for each acre will be reduced for each day planted after the final planting date by:

(i) One percent (.01) for the first through the tenth day; and

(ii) Two percent (.02) for the eleventh through the twenty-fifth day.

(2) In addition to the requirements of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§457.8), you must report the dates the acreage is planted within the late planting period.

(3) If planting of the insured crop continues after the final planting data, or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(i) The acreage reporting date contained in the Special Provisions for the insured crop; or

(ii) Five (5) days after the end of the late planting period.

(d) Prevented Planting (Including Planting After the Late Planting Period).

(1) If you were prevented from planting the insured crop (see subsection 1(n)), you may elect:

(i) To plant the insured crop during the late planting period. The production guarantee for such acreage will be determined in accordance with paragraph 13(c)(1);

(ii) Not to plant this acreage to any crop except a cover crop not for harvest. You may also elect to plant the insured crop after the late planting period. In either case, the production guarantee for such acreage will be fifty percent (50%) of the production guarantee for timely planted acres. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 15 bushels per acre (30 bushels multiplied by 0.50). If you elect to plant the insured crop after the late planting period, production to count for such acreage will be determined in accordance with subsections 12(c) through (g); or

(iii) Not to plant the intended crop but plant a substitute crop for harvest, in which case:

(A) No prevented planting production guarantee will be provided for such acreage if the substitute crop is planted on or before the tenth day following the final planting date for the insured crop; or

(B) A production guarantee equal to twenty-five percent (25%) of the production guarantee for timely planted acres will be provided for such acreage, if the substitute crop is planted after the tenth day following the final planting date for the insured crop. If you elected the Catastrophic Risk Protection Endorsement or excluded this coverage, and plant a substitute crop, no prevented planting coverage will be provided. For example, if your production guarantee for timely planted acreage is 30 bushels per acre, your prevented planting production guarantee would be 7.5 bushels per acre (30 bushels multiplied by 0.25). You may elect to exclude

prevented planting coverage when a substitute crop is planted for harvest and receive a reduction in the applicable premium rate. If you wish to exclude this coverage, you must so indicate, on or before the sales closing date, on your application or on a form approved by us. Your election to exclude this coverage will remain in effect from year to year unless you notify us in writing on our form by the applicable sales closing date for the crop year for which you wish to include this coverage. All acreage of the crop insured under this policy will be subject to this exclusion.

(2) Proof may be required that you had the inputs available to plant and produce the intended crop with the expectation of at least producing the production guarantee.

(3) In addition to the provisions of section 11 (Insurance Period) of the Common Crop Insurance Policy (§ 457.8), the insurance period for prevented planting coverage begins:

(i) On the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on the sales closing date for the insured crop in the county for the previous crop year, provided continuous coverage has been in effect since that date. For example: If you make application and purchase insurance for corn for the 1996 crop year, prevented planting coverage will begin on the 1996 sales closing date for corn in the county. If the corn coverage remains in effect for the 1997 crop year (is not terminated or canceled during or after the 1996 crop year, except the policy may have been canceled to transfer the policy to a different insurance provider, if there is no lapse in coverage), prevented planting coverage for the 1997 crop year began on the 1996 sales closing date.

(4) The acreage to which prevented planting coverage applies will not exceed the total eligible acreage on all Farm Service Agency (FSA) Farm Serial Numbers in which you have a share, adjusted for any reconstitution that may have occurred on or before the sales closing date. Eligible acreage for each FSA Farm Serial Number is determined as follows:

(i) If you participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted for the crop year, the acreage eligible for prevented planting coverage will not exceed the total acreage permitted to be planted to the insured crop.

(ii) If you do not participate in any program administered by the United States Department of Agriculture that limits the number of acres that may be planted, and unless we agree in writing on or before the sales closing date, eligible acreage will not exceed the greater of:

(A) The FSA base acreage for the insured crop, including acres that could be flexed from another crop, if applicable;

(B) The number of acres planted to the insured crop on the FSA Farm Serial Number during the previous crop year; or

(C) One hundred percent (100%) of the simple average of the number of acres planted to the insured crop during the crop years that you certified to determine your yield.

(iii) Acreage intended to be planted under an irrigated practice will be limited to the number of acres for which you had adequate irrigation facilities prior to the insured cause of loss which prevented you from planting.

(iv) Prevented planting coverage will not be provided for any acreage:

(A) That does not constitute at least 20 acres or 20 percent (20%) of the acreage in the unit, whichever is less (Acreage that is less than 20 acres or 20 percent of the acreage in the unit will be presumed to have been intended to be planted to the insured crop planted in the unit, unless you can show that you had the inputs available before the final planting date to plant and produce another insured crop on the acreage);

(B) For which the actuarial table does not designate a premium rate unless a written agreement designates such premium rate;

(C) Used for conservation purposes or intended to be left unplanted under any program administered by the United States Department of Agriculture;

(D) On which another crop is prevented from being planted, if you have already received a prevented planting indemnity, guarantee or amount of insurance for the same acreage in the same crop year, unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(E) On which the insured crop is prevented from being planted, if any other crop is planted and fails, or is planted and harvested, hayed or grazed on the same acreage in the same crop year, (other than a cover crop as specified in paragraph (a)(3)(i) of this section, or a substitute crop allowed in paragraph (a)(3)(ii) of this section), unless you provide adequate records of acreage and production showing that the acreage has a history of double-cropping in each of the last four years;

(F) When coverage is provided under the Catastrophic Risk Protection Endorsement if you plant another crop for harvest on any acreage you were prevented from planting in the same crop year, even if you have a history of double cropping. If you have a Catastrophic Risk Protection Endorsement and receive a prevented planting indemnity, guarantee, or amount of insurance for a crop and are prevented from planting another

crop on the same acreage, you may only receive the prevented planting indemnity, guarantee, or amount of insurance for the crop on which the prevented planting indemnity, guarantee, or amount of insurance is received; or

(G) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes.

(v) For the purpose of determining eligible acreage for prevented planting coverage, acreage for all units will be combined and be reduced by the number of acres of the insured crop timely planted and late planted. For example, assume you have 100 acres eligible for prevented planting coverage in which you have a 100 percent (100%) share. The acreage is located in a single FSA Farm Serial Number which you insure as two separate optional units consisting of 50 acres each. If you planted 60 acres of the insured crop on one optional unit and 40 acres of the insured crop on the second optional unit, your prevented planting eligible acreage would be reduced to zero (i.e.,100 acres eligible for prevented planting coverage minus 100 acres planted equals zero).

(5) In accordance with the provisions of section 6 (Report of Acreage) of the Common Crop Insurance Policy (§ 457.8), you must report by unit any insurable acreage that you were prevented from planting. This report must be submitted on or before the acreage reporting date. For the purpose of determining acreage eligible for a prevented planting production guarantee the total amount of prevented planting and planted acres cannot exceed the maximum number of acres eligible for prevented planting coverage. Any acreage you report in excess of the number of acres eligible for prevented planting coverage, or that exceeds the number of eligible acres physically located in a unit, will be deleted from your acreage report.

[59 FR 49161, Sept. 27, 1994; 59 FR 60063, Nov. 22, 1994, as amended at 60 FR 62728, 62729, Dec. 7, 1995]

§ 457.114 Nursery crop insurance provisions.

The Nursery Crop Insurance Provisions for the 1996 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Nursery Crop Provisions

If a conflict exists among the Basic Provisions (§ 457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

(a) *Amount of insurance*—The result of multiplying the highest monthly market value reported on the nursery plant inventory summary (including inventory reported by you and accepted by us on a revised nursery plant inventory summary) by .9, multiplied by the percentage for the coverage level you elect.

(b) *Brownout*—A reduction in electric power that affects the unit.

(c) *Crop year*—The 12 month period beginning October 1 and extending through September 30 of the next calendar year, designated by the year in which it ends. (The 1996 crop year begins October 1, 1995, and ends September 30, 1996).

(d) *Crop year loss deductible*—The value calculated by multiplying the highest monthly market value reported on the nursery plant inventory summary by .9 and subtracting from this product the amount of insurance.

(e) *Field market value A*—Ninety percent (90%) of the wholesale market value for the insured plants in the unit immediately prior to the occurrence of the loss.

(f) *Field market value B*—Ninety percent (90%) of the wholesale market value remaining for the insurable plants in the unit immediately following the occurrence of the loss as determined by our appraisal conducted as soon as reasonably possible after the loss is reported.

(g) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to maintain the amount of insurance on the nursery plant inventory.

(h) *Largest dimension*—The distance measured at the top of the standard nursery container from one side directly across to the opposite at the widest point.

(i) *Monthly loss deductible*—The smaller of: (1) The highest monthly market value reported on the nursery plant inventory summary multiplied by .9; or (2) field market value A; multiplied by the number derived by subtracting the coverage level percent from one hundred percent (100%), not to exceed the crop year loss deductible.

(j) *Monthly market value*—The dollar amount determined by multiplying the quantity of each insurable plant by its wholesale market value for that month, less the maximum discount (stated in dollar terms) granted to any buyer, and totalling the resulting values for all insurable plants in the unit.

(k) *Nursery*—A business enterprise that produces ornamental plants in standard nursery containers for the wholesale market.

(l) *Nursery eligible plant listing*—A listing contained in the Actuarial Table that specifies the plants eligible for insurance and any mandatory or recommended storage required

for such plants in each hardiness zone defined by the United States Department of Agriculture.

(m) *Nursery plant inventory summary*—A report that specifies the numbers, growing locations, and wholesale prices of plants included in the nursery inventory.

(n) *Standard nursery containers*—Rigid containers not less than three (3) inches across the largest dimension at the top of the container, and which are appropriate in size and with proper drainage holes for the plant contained. Grow bags, trays, cellpacks, and burlap are not standard nursery containers under these crop provisions.

(o) *Stock plants*—Plants used for reproduction, for growing cuttings, for air layering or for propagating.

(p) *Wholesale market value*—The total dollar valuation of the insurable plants actually contained within the unit at any time. The values used will be based on your wholesale price list if properly supported by your records, less the maximum discount (stated in dollar terms) granted to any buyer.

(q) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, plant type and premium rate must be contained in the written agreement. Notwithstanding the sales closing date restriction contained herein, in specific instances, a written agreement may be applied for after the sales closing date and approved if, after a physical inspection of the nursery plant inventory, there is a determination that the inventory has the expectancy of meeting the amount of insurance. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved. A written agreement will not be approved for other than standard nursery containers.

2. Unit Division

In lieu of the definition of ''unit'' contained in section 1 (Definitions) of the Basic Provisions (§ 457.8), a unit consists of all growing locations in the county within a five mile radius of the named insured locations designated on your nursery plant inventory summary. Any growing location more than five miles from any other growing location, but within the county, may be designated as a separate basic unit or be included in the closest unit listed on your nursery plant inventory summary.

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

The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8) are not applicable to the Nursery Crop Provisions.

4. Contract Changes

The contract change date is June 30 preceding the crop year (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§ 457.8)).

5. CANCELLATION AND TERMINATION DATES

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§ 457.8), the cancellation and termination dates are September 30 preceding the crop year.

6. Nursery Plant Inventory Summary

(a) Section 6 (Report of Acreage) of the Basic Provisions (§ 457.8) is not applicable to the Nursery Crop Provisions.

(b) You must submit a nursery plant inventory summary to us on or before September 30 preceding the crop year.

(c) The nursery plant inventory summary is a projection of the expected inventory for the following 12 months. This summary must include, by unit and by month for each type of plant in the inventory, the:

(1) Container sizes, as measured at the largest dimension at the top of the container;

(2) Number of plants;

(3) Wholesale price for each month of the crop year; and

(4) Your share.

If your inventory usually changes within a specific month, report the largest inventory that you expect to have for that month.

(d) Your annual nursery plant inventory summary will be used to determine your premium and the amount of insurance for each unit. If you do not submit the summary by the reporting date, we may elect to determine the nursery plant inventory for each unit or we may deny liability on any unit. Errors in reporting units may be corrected by us at the time of loss adjustment.

(e) Your wholesale price list may be examined to determine whether the prices listed are reasonable. If the prices are determined to be unreasonable, the previous acceptable wholesale price list will be used or we may establish the wholesale price for each type of plant.

(f) With our consent, you may revise your reported nursery plant inventory summary to correct or change the value of the insurable inventory if the amount of the revision is at least ten percent (10%) of the highest

monthly market value reported on the nursery plant inventory summary or $25,000, whichever is smaller, or if a new plant species is being added that was not originally reported on your nursery plant inventory summary or was approved by written agreement. If you wish to revise the nursery plant inventory summary, you must notify us in writing at least 14 days before a change in inventory value. We must inspect and accept the nursery before insurance attaches on any proposed increase in inventory if:

(1) The storage facilities have changed in any way since our previous inspection; or

(2) The revision includes plants that have specific over-wintering storage requirements and that were not previously reported on your nursery plant inventory summary.

(g) You may not revise your nursery plant inventory summary after the sales closing date to add plants not listed on the Nursery Eligible Plant Listing unless a request for a written agreement to add such plants has been submitted by the sales closing date.

(h) Insurable plants that are not reported on your nursery plant inventory summary will not be insured, but the value of such plants after a loss will be included as production to count. Such unreported inventory may reduce the amount of any indemnity payable to you.

(i) You must designate separately any plant inventory that is not insurable.

7. Annual Premium

We will determine your premium as follows:

(a) The annual premium for each unit will be calculated by:

(1) Determing the total value of each plant type and container size designated on your nursery plant inventory summary for each month by multiplying the number of plants by the price for that type and container size shown on your accepted wholesale price list for that month, less the maximum discount (stated in dollar terms) granted to any buyer, and totalling the resulting values for each separate classification shown on the actuarial table;

(2) Adding the total values of all plant types and container sizes (determined in (1) above) for each month separately to determine the monthly market values. Then compare the resulting twelve (12) monthly market values to determine the highest monthly market value for the crop year;

(3) Taking the total value of each plant type and container size obtained in (1) above for the month having the highest monthly market value for the crop year (determined in (2) above) for each classification specified in the actuarial table and multiplying these values by .9, then multiplying the results by the percentage coverage level you have elected;

(4) Multiplying each product obtained in (3) above by the appropriate premium rate listed on the actuarial table;

(5) Adding the products obtained in (4) above; and

(6) Multiplying the total obtained in (5) above by your share.

(b) The annual premium will be earned in full when insurance attaches. It is due and payable as follows:

(1) Forty percent (40%) on the later of September 30 preceding each crop year or the date we accept the inventory for insurance;

(2) Thirty percent (30%) on January 1 of the crop year; and

(3) Thirty percent (30%) on April 1 of the crop year.

(c) Additional premium earned from an increase in the nursery plant inventory summary is due and payable when the revised nursery plant inventory summary is approved by us.

(d) Premium will not be reduced due to a decrease in the nursery plant inventory summary, unless such decrease results from the deletion of uninsurable inventory from the summary that was erroneously reported as insurable.

8. Insured Plants

In lieu of the provisions of section 8 (Insured Crop) and section 9 (Insurable Acreage) of the Basic Provisions (§457.8), the insured nursery plant inventory will be all nursery plants in the county reported by you or determined by us for which an application is accepted, a premium rate is provided by the actuarial table, and that:

(a) Are grown under an irrigated practice for which you have adequate facilities and water at the time coverage begins in order to carry out a good irrigation practice;

(b) Are classified as woody, herbaceous, or foliage landscape plants;

(c) Do not include plants that produce edible berries, fruits, or nuts;

(d) Are grown in standard nursery containers;

(e) Are grown in an appropriate growing medium;

(f) Are inspected by us and determined to be acceptable;

(g) Are listed on the Nursery Eligible Plant Listing unless a written agreement provides otherwise;

(h) Are not stock plants;

(i) Are grown in accordance with the production practices for which premium rates have been established; and

(j) Meet the ''mandatory'' or ''recommended'' storage requirements, unless you have applied for and received the Frost/Freeze, and Cold Damage Exclusion Option for those nursery plants.

9. Insurance Period

In lieu of the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8), coverage begins on each unit or part of a unit the later of October 1 or the date we accept the inventory for insurance, provided you have complied with the terms of paragraph 7.(b)(1). Coverage will not attach for plant inventory added due to a revised nursery plant inventory summary until any additional premium is paid in full. Insurance ends for each unit at the earliest of:

(a) The date all plant inventory within the unit is sold or otherwise removed unless that inventory is replaced and additional earned premium is paid (If a portion of the plants are sold or otherwise removed from inventory, and are not replaced, insurance only ends on that part of the unit.);

(b) The date of final adjustment of a loss on the unit when the total indemnities paid for the unit equal the amount of insurance for that unit; or

(c) September 30 of the crop year.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided for unavoidable damage caused only by the following causes of loss which occur within the insurance period:

(1) Adverse weather conditions;

(2) Fire, except as specified in (b)(4);

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply, due to an unavoidable cause of loss occurring within the insurance period; or

(9) Frost or freeze if there is a failure or breakdown of frost/freeze protection equipment or facilities and the failure or breakdown is directly caused by an insurable cause of loss, provided the insured nursery plants are damaged by freezing temperatures within 72 hours after the failure of such equipment or facilities and you establish that repair or replacement was not possible between the time of failure or breakdown and the time the freezing temperatures occurred.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we do not insure against any loss caused by:

(1) Brownout;

(2) Failure of the power supply unless such failure is due to an insurable cause of loss;

(3) The inability to market the nursery plants as a direct result of quarantine, boycott, or refusal of a buyer to accept production;

(4) Fire, where weeds and other forms of undergrowth in the vicinity of the building and on your property have not been controlled; or

(5) Collapse or failure of buildings or structures.

11. Duties in the Event of Damage or Loss

In addition to your duties contained under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), you must:

(a) Obtain our written consent prior to:

(1) Destroying, selling or otherwise disposing of any plant inventory that is damaged; or

(2) Changing or discontinuing your normal growing practices with respect to care and maintenance of the insured plant inventory.

(b) Upon our request, provide complete copies of your nursery plant inventory wholesale price list for the 12 month period immediately preceding the loss and your marketing records including plant shipping invoices for the same period.

(c) Submit a claim for indemnity to us on our form, not later than 60 days after the earliest of:

(1) The date of your loss; or

(2) The end of the insurance period.

12. Settlement of Claim

(a) The indemnity will be the amount calculated by us for each unit as follows:

(1) Subtracting field market value B from the lesser of:

(i) Field market value A; or

(ii) The highest monthly market value for the unit reported on the nursery plant inventory summary multiplied by .9;

(2) Subtracting the monthly loss deductible (not to exceed the remaining crop year loss deductible) from the product obtained in (1) above; and

(3) Multiplying the result by your share.

(b) Individual insured losses occurring on the same unit during the crop year may be accumulated if each loss is reported and valued by us to satisfy the crop year loss deductible. Paragraph 12.(a)(2) will not apply to any subsequent individual loss determinations when the total amount of accumulated monthly loss deductibles is equal to or greater than the crop year loss deductible. Total indemnities for a unit will not exceed the amount of insurance for the unit.

(c) The value of any insured plant inventory may be determined on the basis of our appraisals conducted after the end of the insurance period.

[60 FR 31378, June 15, 1995]

§457.115 Nursery frost, freeze, and cold damage exclusion option.

This is not a continuous option. Application for this option must be made on or before the sales closing date for each crop year this Option is to be in effect (see exception in item 2 below).

Insured's Name _____

Address _____

Contract Number _____

Identification Number _____

SSN/EIN _____

Tax I.D. _____

Crop Year _____

Unit Number _____

Hardiness Zone _____

For the crop year designated above, the Nursery Crop Provisions (§457.114) are amended in accordance with the following terms and conditions:

1. You must have the Common Crop Insurance Policy Basic Provisions and Nursery Crop Provisions in force.

2. This option must be submitted to us on or before the final date for accepting applications for the crop year in which you wish to insure your nursery plant inventory under this option. If the provisions of paragraph 6.(f)(2) of the Nursery Crop Provisions apply, we may accept this option after the sales closing date, or we may allow additional plants to be added to this option after such date.

3. Executing this option does not reduce the premium rate for nursery crop insurance.

4. All provisions of the Basic Provisions (§457.8) and Nursery Crop Provisions (§457.114) not in conflict with this option are applicable.

5. Upon execution of this option, the following plant varieties will not have frost, freeze, or cold damage coverage on this unit because the mandatory (Risk Group A) or recommended (Risk Group B) over-wintering requirements will not be met.

Scientific name	Common name	Over-wintering requirements to be excluded

Insured's Signature

_____

Date _____

Insurance Company Representative's Signature and Code Number

_____

Date _____

[60 FR 31380, June 15, 1995]

§457.116 Sugarcane crop insurance provisions.

The Sugarcane Crop Insurance Provisions for the 1996 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sugarcane Crop Provisions

If a conflict exists among the Basic Provisions (§457.8), these crop provisions, and the Special Provisions, the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

(a) *Crop year*—The period within which the insured sugarcane is normally grown and designated by the calendar year in which the harvest of sugarcane normally begins in the county.

(b) *CFSA*—Consolidated Farm Service Agency (previously the Agricultural Stabilization and Conservation Service).

(c) *Good farming practices*—The cultural practices generally in use in the county for the insured crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee and are those recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the area.

(d) *Harvest*—Cutting and removing the mature sugarcane from the field.

(e) *Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

(f) *Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

(g) *Local market price*—The price per pound for raw sugar offered by buyers in the area in which you normally market the sugarcane.

(h) *Plant cane*—The insured crop which grows from seed planted for the crop year.

(i) *Production guarantee*—The number of pounds determined by multiplying the approved yield per acre by the coverage level percentage you elect.

(j) *Stubble cane*—The insured crop which grows from the stubble of sugarcane that was harvested the previous crop year.

(k) *Sugarcane*—means either plant cane or stubble cane.

(l) *Written agreement*—Designated terms of this policy may be altered by written agreement. Each agreement must be applied for by the insured in writing no later than the sales closing date and is valid for one year only. If not specifically renewed the following year, continuous insurance will be in accordance with the printed policy. All variable terms including, but not limited to, crop variety, guarantee, premium rate and price election must be contained in the written agreement. Notwithstanding the sales closing date restrictions contained herein, in specific instances a written agreement may be applied for after the sales closing date, and approved if, after physical inspection of the acreage, it is determined that the crop has the expectancy of making at least the guaranteed yield. All applications for written agreements as submitted by the insured must contain all variable terms of the contract between the company and the insured that will be in effect if the written agreement is disapproved.

2. Unit Division

Unless limited by the Special Provisions, a unit as defined in subsection 1.(tt) of the Basic Provisions (§ 457.8), may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists. Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, variety, and planting period other than as described under this section. If you do not comply fully with these provisions, we will combine all optional units which are not in compliance with these provisions into the basic unit from which they were formed. We may combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined, that portion of the premium paid for the purpose of electing optional units will be refunded to you pro rata for the units combined. All optional units must be reflected on the acreage report for each crop year.

(a) You must have records, which can be independently verified, of planted acreage and production for each optional unit for at least the last crop year used to determine your production guarantee.

(b) You must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit.

(c) You must have records of measurement of stored or marketed production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit or the production from each unit must be kept separate until after loss adjustment under the policy is completed.

(d) Each optional unit must meet one or more of the following criteria as applicable:

(1) Optional Units by Section, Section Equivalent, or Consolidated Farm Service Agency (''CFSA'') Farm Serial Number: Optional units may be established if each optional unit is located in a separate legally identified Section. In the absence of Sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to: Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands as the equivalent of Sections for unit purposes. In areas which have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernible, each optional unit must be located in a separate farm identified by a single CFSA Farm Serial Number.

(2) Optional Units on Acreage Including Both Irrigated and Non-Irrigated Practices: In addition to or instead of establishing optional units by Section, section equivalent or CFSA Farm Serial Number, optional units may be based on irrigated acreage or non-irrigated acreage if both are located in the same Section, section equivalent or CFSA Farm Serial Number. The irrigated acreage may not extend beyond the point at which your irrigation system can deliver the quantity of water needed to produce the yield on which your guarantee is based and may not continue into non-irrigated acreage in the same rows or planting pattern. Non-irrigated corners of a field in which a center-pivot irrigation system exists that do not qualify as a separate optional unit will be a part of the irrigated unit; however, other non-irrigated acreage within the unit being divided may qualify as a separate optional unit provided all requirements of this section are met.

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

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election for all the sugarcane in the county insured under this policy.

(b) Instead of reporting your sugarcane production for the previous crop year as required by subsection 3.(c) of the Basic Provisions (§ 457.8), there is a lag period of one year and you are required to report production from two crop years previously, e.g., 1994 crop year production must be reported by the required date for the 1996 crop year.

4. Contract Changes

The contract change date is June 30 preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Basic Provisions (§457.8)).

5. Cancellation and Termination Dates

In accordance with subsection 2.(f) of the Basic Provisions (§457.8), the cancellation and termination dates are September 30.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all the sugarcane in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is grown for processing for sugar or for seed; and

(c) That is not interplanted with another crop, unless a written agreement allows otherwise.

7. Insurable Acreage

Paragraph 9.(a)(3) of the Basic Provisions (§457.8) is not applicable to the Sugarcane Crop Provisions.

8. Insurance Period

(a) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8), insurance attaches:

(1) At the time of planting for plant cane unless we agree in writing to a later date;

(2) On the first day following harvest of the previous crop for stubble cane except as set out in paragraph 8.(a)(3);

(3) On the later of April 15 or 30 days following harvest of the previous crop for stubble cane:

(i) Damaged during the previous crop year in all states (includes Louisiana); and

(ii) In Louisiana, after the second harvest from stubble cane.

(b) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8) the calendar date for the end of the insurance period is:

(1) January 31 in Louisiana; and

(2) April 30 in all other states.

9. Causes of Loss

In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if applicable, due to an unavoidable cause of loss occurring within the insurance period.

10. Duties in the Event of Damage or Loss or Cutting the Sugarcane for Seed

(a) In addition to your duties under section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), in the event of damage or loss:

(1) All sugarcane stubble must remain intact for our inspection; and

(2) You must give us notice at least 15 days before you begin cutting any sugarcane for seed. Your notice must include the unit number and the number of acres you intend to harvest as seed. After we receive such notice we will appraise the sugarcane for its sugar potential. If you do not give us this notice, the production to count for such acreage will be your approved yield.

(b) In accordance with the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The representative samples of the unharvested crop must be at least 10 feet wide and extend the entire length of each field in the unit. The stubble must not be destroyed and the required samples must not be harvested until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide records of production:

(1) For any optional unit, we will combine all optional units for which acceptable records of production were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting from this the total production to count;

(3) Multiplying the remainder by your price election; and

(4) Multiplying this result by your share.

(c) The total production (pounds of sugar) to count from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee for acreage:

(A) That is abandoned;

(B) Put to another use without our consent;

(C) Damaged solely by uninsured causes;

(D) For which you fail to provide records of production that are acceptable to us; or

(E) On which the sugarcane stubble is destroyed within 15 days after harvest is completed without our consent;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production;

(iv) The difference between the production guarantee and the appraised production for acreage that has an inadequate stand. An appraisal for an inadequate stand will be made if the product of the number of stalks per acre multiplied by two and further multiplied by the percentage of sugar contained in the Special Provisions for this purpose does not equal the per-acre production guarantee; and

(v) Potential production on insured acreage harvested for seed (see paragraph 10.(a)(2));

(vi) Potential production on insured acreage you want to put to another use or you wish to abandon and no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end if you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us. (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count.); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from insurable acreage. Final records of sugar production will be used to determine the amount of production to count. Preliminary mill estimates will not be used.

(d) Harvested sugarcane may be adjusted for low quality if it is damaged by one or more freezes occurring within the insurance period to the extent that it cannot be processed for sugar by the boiling house operation. The amount of production to count for such sugarcane will be determined by dividing the dollar value of the damaged production by the local market price per pound for raw sugar. The prices used for this adjustment will be determined on the earlier of the date such quality-adjusted production is sold or the date of final inspection for the unit.

[60 FR 25602, May 12, 1995]

§ 457.117 [Reserved]

§ 457.118 Malting barley crop insurance.

The malting barley crop insurance provisions for the 1996 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Small Grains Crop Insurance Malting Barley Price and Quality Endorsement

(This is a continuous endorsement. Refer to section 2 of the Common Crop Insurance Policy.)

In return for your payment of premium for the coverage contained herein, this endorsement will be attached to and made part of the Common Crop Insurance Policy (§ 457.8) and Small Grains Crop Provisions (§ 457.101), subject to the terms and conditions described herein.

1. You must have the Common Crop Insurance Policy (§ 457.8) and the Small Grains Crop Insurance Provisions (§ 457.101) in force to elect to insure malting barley under this endorsement.

2. You must select either Option A or Option B on or before the sales closing date. Failure to select either Option A or Option B, or if you elect Option B but fail to have a malting barley contract in effect by the acreage reporting date, will result in no coverage under this endorsement for the applicable crop year. If you elect coverage under Option A, and subsequently enter into a malting barley contract, your coverage will continue under the terms of Option A. Your selection (Option A or B) will continue from year to year unless you cancel or change your selection on or before the sales closing date.

3. You must select either an additional value price election or a percentage of the maximum additional value price election on or before the sales closing date. The percentage of the maximum additional value price election you select does not have to be the same as that selected under the Small

Grains Crop Provisions for feed barley. In the event that you choose a percentage of the maximum additional value price election, we will multiply that percentage by the maximum additional value price election specified in Option A or B to determine the additional value price election that pertains to your contract.

4. The additional premium amount for this coverage will be determined by multiplying your malting barley production guarantee per acre by your selected additional value price election, times the premium rate stated in the Actuarial Table, times the acreage planted to approved malting barley varieties, times your share at the time coverage begins.

5. In addition to the reporting requirements contained in section 6 of the Common Crop Insurance Policy (§ 457.8), you must provide the information required by the Option you select.

6. In lieu of the provisions regarding units and unit division in the Common Crop Insurance Policy (§ 457.8) and the Small Grains Crop Provisions (§ 457.101), all barley acreage in the county that is planted to malting varieties that is insurable under the Small Grains Crop Provisions for feed barley and your selected Option must be insured under this endorsement and will be considered as one unit regardless of whether such acreage is owned, rented for cash, or rented for a share of the crop. The producer's shares in the malting barley acreage to be insured under this endorsement must be designated on the acreage report.

7. In lieu of the provisions in the Common Crop Insurance Policy (§ 457.8) that requires us to pay your loss within 30 days after we reach agreement with you, whenever any production fails one or more of the quality criteria specified herein, the claim may not be settled until the earlier of:

(a) The date you sell, feed, donate, or otherwise utilize such production for any purpose; or

(b) May 31 of the calendar year immediately following the calendar year in which the insured malting barley is normally harvested.

If the production meets all quality criteria contained herein or grades U.S. No. 4 or lower in accordance with the grades and grade requirements for the subclasses Six-rowed and Two-rowed barley, and for the class Barley in accordance with the Official United States Standards for Grain, the claim will be settled within 30 days in accordance with the Common Crop Insurance Policy (§ 457.8).

8. This endorsement does not provide additional prevented planting coverage. Such coverage is only provided in accordance with the provisions of the Small Grain Crop Provisions for feed barley.

9. Production from all acreage insured under this endorsement and any production of feed barley varieties must not be commingled prior to our making all determinations necessary for the purposes of this insurance. Failure to keep production separate may result in denial of your claim for indemnity.

10. Definitions:

(a) *APH*. Actual production history as determined in accordance with 7 CFR part 400, subpart G.

(b) *Approved malting variety*. A variety of barley specified as such in the Special Provisions.

(c) *Brewery*. A facility where malt beverages are commercially produced for human consumption.

(d) *Contracted production*. A quantity of barley the producer agrees to grow and deliver, and the buyer agrees to accept, under the terms of the malting barley contract.

(e) *Licensed grain grader*. A person authorized by the U.S. Department of Agriculture to inspect and grade barley under the U.S. Standards for malt barley.

(f) *Malting barley contract*. An agreement in writing between the producer and a brewery or a business enterprise that produces or sells malt or processed mash to a brewery, or a business enterprise owned by such brewery or business, that contains the amount of contracted production, the purchase price, or a method to determine such price, and other such terms that establish the obligations of each party to the agreement.

(g) *Objective test*. A determination made by a qualified person using standardized equipment that is widely used in the malting industry, and following a procedure approved by the American Society of Brewing Chemists when determining percent germination or protein content; grading performed by following a procedure approved by the Federal Grain Inspection Service when determining quality factors other than percent germination or protein content; or by the Food and Drug Administration when determining concentrations of mycotoxins or other substances or conditions that are identified as being injurious to human or animal health.

(h) *Subjective test*. A determination made by a person using olfactory, visual, touch or feel, masticatory, or other senses unless performed by a licensed grain grader; or that uses non-standardized equipment; or that does not follow a procedure approved by the American Society of Brewing Chemists, the Federal Grain Inspection Service, or the Food and Drug Administration.

(i) *Unit*. All insurable acreage of approved malting varieties in the county on the date coverage begins for the crop year.

OPTION A—(AVAILABLE FOR PRODUCERS OF PRODUCTION CONTRACTED AFTER THE SALES CLOSING DATE, NON-CONTRACTED PRODUCTION, OR A COMBINATION OF CONTRACTED AND NON-CONTRACTED PRODUCTION)

This option provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions.

1. To be eligible for coverage under this option, you must provide us acceptable records of your sales of malting barley and the number of acres planted to malting varieties for at least the four crop years in your APH database prior to the crop year immediately preceding the current crop year. For example, to determine your production guarantee for the 1996 crop year, records must be provided for the 1991 through the 1994 crop years, if malting barley varieties were planted in each of those crop years. Failure to provide acceptable records or reports as required herein will make you ineligible for coverage under this endorsement. You must provide these records to us no later than the production reporting date specified in the Common Crop Insurance Policy (§ 457.8).

2. Your malting barley production guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) A production guarantee calculated in accordance with APH procedures using the malting barley sales and acreage records provided by you.

3. The additional value price per bushel elected cannot exceed the maximum price designated in the Special Provisions.

4. The amount of production to count against your malting barley production guarantee will be determined as follows:

(a) Production to count will include all:

(1) Appraised production determined in accordance with sections 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(2) Harvested production and potential unharvested production that meets, or would meet if properly handled;

(i) Tolerances established by the Food and Drug Administration or other public health organization of the United States for substances or conditions, including mycotoxins, that are identified as being injurious to human health; and

(ii) The following quality standards, as applicable:

	Six-rowed malting barley (percent)	Two-rowed malting barley (percent)
Protein (dry basis)	14.0 maximum	14.0 maximum
Plump kernels	65.0 minimum	75.0 minimum
Thin kernels	10.0 maximum	10.0 maximum
Germination	95.0 minimum	95.0 minimum
Blight damaged	4.0 maximum	4.0 maximum
Injured by mold	5.0 maximum	5.0 maximum
Mold damaged	0.4 maximum	0.4 maximum
Sprout damaged	1.0 maximum	1.0 maximum
Injured by frost	5.0 maximum	5.0 maximum
Frost damaged	0.4 maximum	0.4 maximum

(3) Harvested production that does not meet the quality standards contained in section 4(a)(2) of this Option, but is accepted by a buyer for malting purposes. For such production, the production to count may be reduced or the price used to settle the claim may be adjusted in accordance with sections 4 (b), (c), and (d) of this Option.

(b) The quantity of production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley (except production included in section 4(c)), may be reduced as described in this subsection, provided the failure of such production to meet these standards is due to insurable causes. The production to count of production sold under section 4(a)(3) will be determined by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing the price per bushel received for the damaged production by the result of paragraph (1); and

(3) Multiplying the result of paragraph (2) (not to exceed 1.000) by the number of bushels of damaged production.

(c) The production to count for production that initially fails any quality standard contained in section 4 (a)(2), sold as malting barley, but is conditioned before the sale will not be reduced under section 4(b). Such production will be considered separately from all other production to count. (See section 5(d).)

(d) The additional value price election per bushel used to determine the value of the production to count for production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley, may be reduced by the cost incurred for any conditioning required to improve the quality of production so that it is marketable as malting barley, provided the failure of such production to meet these standards is due to insurable causes.

(e) No reduction in the production to count or the additional value price election will be allowed for moisture content, damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 4(a)(2) of this Option; or any other costs associated with normal handling and marketing of malting barely.

(f) All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss

established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the U.S. Grain Standards Act or laboratory of our choice to verify the results of any test. In the event of a conflict in the test results, our results will determine the amount of production to count.

5. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage times your malting barley production guarantee per acre;

(b) Multiplying the result in subsection (a) of this section times your additional value price election per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with sections 4(a) and (b) of this Option times your elected additional value price per bushel;

(d) Multiplying the production to count determined under section 4(c) of this Option times the additional value price per bushel determined in section 4(d) of the Option;

(e) Adding the results of subsections (c) and (d) of this section;

(f) Subtracting the result of subsection (e) of this section from the result in subsection (b); and

(g) Multiplying the result of subsection (f) of this section times your share.

6. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume the following:

(a) Each unit contains 40 acres;

(b) You have sold an average of 20 bushels per acre of malting barley for each of the last 6 years;

(c) You have selected the 70 percent coverage level;

(d) Your production guarantee under the Small Grains Crop Provisions and the APH regulations for feed barley is 30 bushels per acre;

(e) Your total production from all units under the Small Grains Crop Provisions is 1,000 bushels, all of which fails to meet the quality standards specified by this Option. Two hundred bushels are sold for malting purposes after conditioning. Conditioning costs are $0.05 per bushel; and

(f) Your additional value price election is $0.40 per bushel.

Your malting barley production guarantee is 1120.0 bushels (the lesser of 20 or 30×70 percent coverage level ×80 acres). The value of your production guarantee is $448.00 (1120 bushels ×$0.40 per bushel). Your production to count is 200 bushels. The value of your production to count is $70.00 (200 bushels ×$0.35 ($0.40—$0.05)). Your indemnity for the malting barley unit is $378.00 (($448.00—$70.00) ×100 percent share). Any remaining loss is paid under the Small Grains Crop Provisions for feed barley.

OPTION B—(AVAILABLE FOR PRODUCERS OF CONTRACTED PRODUCTION ONLY)

This option provides coverage for malting barley production and quality losses at a price per bushel greater than that offered under the Small Grains Crop Provisions provided you have a malting barley contract.

1. If you elect this option you must provide us a copy of your malting barley contract on or before the acreage reporting date. All terms and conditions of the contract, including the contract price or futures contract premium price, must be specified in the contract and be effective on or before the acreage reporting date. If you fail to timely provide the contract, or any terms are omitted, we may elect to determine the relevant information necessary for insurance under this Option (B), or deny liability. Only contracted production or acreage is covered by this Option (B).

2. Your malting barley guarantee per acre will be the lesser of:

(a) The production guarantee for feed barley for acreage planted to approved malting barley varieties calculated in accordance with the Small Grains Crop Provisions and APH regulations; or

(b) The number of bushels obtained by:

(1) Dividing the number of bushels of contracted production by the number of acres planted to approved malting varieties in the current crop year; and

(2) Multiplying the result by the percentage for the coverage level you elected under the Small Grains Crop Provisions.

3. The additional value price election per bushel will be the lesser of, as applicable:

(a) The guaranteed sale price per bushel established in the malting barley contract (without regard to discounts or incentives that may apply) minus the maximum price election for feed barley; or

(b) The premium price per bushel (without regard to discounts or incentives) if the sale price is based on a future market price as specified in the malting barley contract.

Under no circumstances will the additional value price election per bushel exceed $2.00 per bushel.

4. The amount of production to count against your malting barley production guarantee will be determined as follows:

(a) Production to count will include all:

(1) Appraised production determined in accordance with sections 11(c)(1) (i) and (ii) of the Small Grains Crop Provisions;

(2) Harvested production and potential unharvested production that meets, or would meet if properly handled, the minimum acceptance standards contained in the malting barley contract for protein, plump kernels, thin kernels, germination, blight damage, mold injury or damage, sprout damage, frost

injury or damage, and mycotoxins or other substances or conditions identified by the Food and Drug Administration or other public health organization of the United States as being injurious to human health, or the following quality standards as applicable:

	Six-rowed malting barley	Two-rowed malting barley
	(percent)	(percent)
Protein (dry basis)	14.0 maximum	14.0 maximum
Plump kernels	65.0 minimum	75.0 minimum
Thin kernels	10.0 maximum	10.0 maximum
Germination	95.0 minimum	95.0 minimum
Blight damaged	4.0 maximum	4.0 maximum
Injured by mold	5.0 maximum	5.0 maximum
Mold damaged	0.4 maximum	0.4 maximum
Sprout damaged	1.0 maximum	1.0 maximum
Injured by frost	5.0 maximum	5.0 maximum
Frost damaged	0.4 maximum	0.4 maximum

(3) Harvested production that does not meet the quality standards contained in section 4(a)(2) of this Option, but is accepted by a buyer for malting purposes. For such production, the production to count may be reduced or the price used to settle the claim may be adjusted in accordance with sections 4 (b), (c), and (d) of this Option.

(b) The quantity of production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley (except production included in section 4(c)), may be reduced as described in this subsection, provided the failure of such production to meet these standards is due to insurable causes. The production to count of production sold under section 4(a)(3) will be determined by:

(1) Adding the maximum barley price election under the Small Grains Crop Provisions and the maximum additional value price;

(2) Dividing the price per bushel received for the damaged production by the result of paragraph (1); and

(3i) Multiplying the result of paragraph (2) (not to exceed 1.000) by the number of bushels of damaged production.

(c) The production to count for production that initially fails any quality standard contained in section 4(a)(2), sold as malting barley, but is conditioned before the sale will not be reduced under section 4(b). Such production will be considered separately from all other production to count. (See section 5(d).)

(d) The additional value price election per bushel used to determine the value of the production to count for production that initially fails any quality standard contained in section 4(a)(2), but is sold as malting barley, may be reduced by the cost incurred for any conditioning required to improve the quality of production so that it is marketable as malting barley, provided the failure of such production to meet these standards is due to insurable causes.

(e) No reduction in the production to count or the additional value price election will be allowed for moisture content, damage due to uninsured causes; costs or reduced value associated with drying, handling, processing, or quality factors other than those contained in section 4(a)(2) of this Option; or any other costs associated with normal handling and marketing of malting barely.

(f) All grade and quality determinations must be based on the results of objective tests. No indemnity will be paid for any loss established by subjective tests. We may obtain one or more samples of the insured crop and have tests performed at an official grain inspection location established under the U.S. Grain Standards Act or laboratory of our choice to verify the results of any test. In the event of a conflict in the test results, our results will determine the amount of production to count.

5. In the event of loss or damage covered by this policy, we will settle your claim by:

(a) Multiplying the insured acreage times your malting barley production guarantee per acre;

(b) Multiplying the result in subsection (a) of this section times your additional value price election per bushel;

(c) Multiplying the number of bushels of production to count determined in accordance with sections 4 (a) and (b) of this Option times your elected additional value price per bushel;

(d) Multiplying the production to count determined under section 4(c) of this Option times the additional value price per bushel determined in section 4(d) of the Option;

(e) Adding the results of subsections (c) and (d) of this section;

(f) Subtracting the result of subsection (e) of this section from the result in subsection (b); and

(g) Multiplying the result of subsection (f) of this section times your share.

6. For example, assume you insure two units of barley under the Small Grains Crop Provisions in which you have a 100% share and that are planted to approved malting varieties. Assume the following:

(a) Each unit contains 40 acres;

(b) You have a contract for the sale of 2500 bushels of malting barley;

(c) You have selected the 70 percent coverage level;

(d) Your production guarantee under the Small Grains Crop Provisions and the APH regulations for feed barley is 35 bushels per acre;

(e) Your total production from all units under the Small Grains Crop Provisions is 1,000 bushels, all of which fails to meet the quality standards specified by this Option. Two hundred bushels are sold for malting purposes after conditioning. Conditioning cost $0.05 per bushel; and

(f) Your additional value price election is $0.60 per bushel.

Your malting barley production guarantee is 1750.0 bushels (the lesser of 35 or 21.875 (2500 contracted bushels ÷80 acres x 70 percent coverage) x 80 acres). The value of your production guarantee is $1050.00 (1750 bushels x $0.60 per bushel). Your production to count is 200 bushels. The value of your production to count is $110.00 (200 bushels x $0.55 ($0.60—$0.05)). Your indemnity for the malting barley unit is $940.00 (($1050.00—$110.00) x 100 percent share). Any remaining loss is paid under the Small Grains Crop Provisions for feed barley.

[61 FR 8855, Mar. 6, 1996; 61 FR 27245, May 31, 1996]

§457.119 Texas citrus fruit crop insurance provisions.

The Texas Citrus Fruit Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Texas Citrus Fruit Crop Provisions

If a conflict exists among the Basic Provisions (§457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Crop. Specific groups of citrus fruit as listed in the Special Provisions.

Crop year. The period beginning with the date insurance attaches to the citrus crop and extending through the normal harvest time. It is designated by the calendar year following the year in which the bloom is normally set.

Days. Calendar days.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Excess rain. An amount of precipitation that damages the crop.

Excess wind. A natural movement of air that has sustained speeds exceeding 58 miles per hour recorded at the U. S. Weather Service reporting station operating nearest to the grove at the time of damage.

Freeze. The formation of ice in the cells of the tree, its blossoms, or its fruit caused by low air temperatures.

FSA. The Farm Service Agency, an agency of the United States Department of Agriculture, or any successor agency.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The severance of mature citrus fruit from the tree by pulling, picking, or any other means, or by collecting marketable fruit from the ground.

Hedged. A process of trimming the sides of the citrus trees for better or more fruitful growth of the citrus fruit.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Local market price. The applicable citrus price per ton offered by buyers in the area in which you normally market the insured crop.

Non-contiguous land. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of way, waterway, or an irrigation canal will be considered as contiguous.

Production guarantee (per acre):

(a) *First stage production guarantee.* The second stage production guarantee multiplied by forty percent (40%).

(b) *Second stage production guarantee.* The quantity of citrus (in tons) determined by multiplying the yield determined in accordance with section 3 by the coverage level percentage you elect.

Ton. Two thousand (2,000) pounds avoirdupois.

Topped. A process of trimming the uppermost portion of the citrus trees for better and more fruitful growth of the citrus fruit.

Varieties. Subclasses of crops as listed in the Special Provisions.

Written agreement. A written document that alters designated terms of a policy in accordance with section 13.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§457.8), will be divided into basic units by each citrus crop designated in the Special Provisions.

(b) Unless limited by the Special Provisions, these basic units may be divided into

optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units established for a crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee; and

(2) You must have records of marketed production or measurement of stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us.

(3) Each optional unit must meet one of the following criteria, as applicable:

(i) *Optional Units by Section, Section Equivalent, or FSA Farm Serial Number:* Optional units may be established if each optional unit is located in a separate legally identified section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure including, but not limited to Spanish grants, railroad surveys, leagues, labors, or Virginia Military Lands, as the equivalent of sections for unit purposes. In areas that have not been surveyed using the systems identified above, or another system approved by us, or in areas where such systems exist but boundaries are not readily discernible, each optional unit must be located in a separate farm identified by a single FSA Farm Serial Number; or

(ii) *Optional Units on Acreage Located on Non-Contiguous Land:* In lieu of establishing optional units by section, section equivalent or FSA Farm Serial Number, optional units may be established if each optional unit is located on non-contiguous land.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8):

(a) You may select only one price election and coverage level for each citrus fruit crop designated in the Special Provisions that you elect to insure. The price election you choose for each crop need not bear the same percentage relationship to the maximum price offered by us for each crop. For example, if you choose one hundred percent (100%) of the maximum price election for early oranges, you may choose seventy-five percent (75%) of the maximum price election for late oranges. However, if separate price elections are available by variety within each crop, the price elections you choose within the crop must have the same percentage relationship to the maximum price offered by us for each variety within the crop.

(b) The production guarantee per acre is progressive by stage and increases at specific intervals to the final stage production guarantee. The stages and production guarantees per acre are:

(1) The first stage extends from the date insurance attaches through April 30 of the calendar year of normal bloom. The production guarantee will be forty percent (40%) of the yield calculated in section 3(e) multiplied by your coverage level.

(2) The second or final stage extends from May 1 of the calendar year of normal bloom until the end of the insurance period. The production guarantee will be the yield calculated in section 3(e) multiplied by your coverage level.

(c) Any acreage of citrus damaged in the first stage to the extent that the majority of producers in the area would not further maintain it will be limited to the first stage production guarantee even though you may continue to maintain it.

(d) In addition to the reported production, each crop year you must report by type:

(1) The number of trees damaged, topped, hedged, pruned or removed; any change in practices or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based; and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary,

based on our estimate of the effect of the following: interplanted perennial crop; removal, topping, hedging, or pruning of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(e) The yield used to compute your production guarantee will be determined in accordance with Actual Production History (APH) regulations, 7 CFR part 400, subpart G, and applicable policy provisions unless damage or changes to the grove or trees, require establishment of the yield by another method. In the event of such damage or changes, the yield will be based on our appraisal of the potential of the insured acreage for the crop year.

(f) Instead of reporting your citrus production for the previous crop year, as required by section 3 of the Basic Provisions (§457.8), there is a one year lag period. Each crop year you must report your production from two crop years ago, *e.g.*, on the 1998 crop year production report, you will provide your 1996 crop year production.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§457.8), the cancellation and termination dates are November 20.

6. Annual Premium

In lieu of the premium computation method in section 7 (Annual Premium) of the Basic Provisions (§457.8), the annual premium amount is computed by multiplying the second stage production guarantee per acre by the price election, the premium rate, the insured acreage, your share at the time coverage begins, and by any applicable premium adjustment percentages contained in the Special Provisions.

7. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all the acreage in the county of each citrus crop designated in the Special Provisions that you elect to insure and for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are adapted to the area;

(c) That are irrigated;

(d) That has produced an average yield of at least three tons per acre the previous year, or we have appraised the yield potential of at least three tons per acre;

(e) That is grown in a grove that, if inspected, is considered acceptable by us; and

(f) That is not sold by direct marketing, unless allowed by the Special Provisions or by written agreement.

8. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§457.8), that prohibit insurance attaching to a crop planted with another crop, citrus interplanted with another perennial crop is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

9. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

(1) Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the grove.

(2) The calendar date for the end of the insurance period for each crop year is the second May 31st of the crop year.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of citrus on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium will be due, and no indemnity paid for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

10. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur within the insurance period:

(1) Excess rain;

(2) Excess wind;

(3) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(4) Freeze;

(5) Hail;

(6) Tornado;

(7) Wildlife; or

(8) Failure of the irrigation water supply if caused by an insured peril or drought that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless a cause of loss specified in section 10(a):

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Inability to market the citrus for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) If the Special Provisions permit or a written agreement authorizing direct marketing exists, 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.

(b) If you intend to claim an indemnity on any unit, you must notify us before beginning to harvest any damaged production so we may have an opportunity to inspect it. 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 all such production will be considered undamaged and included as production to count.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim on a unit basis by:

(1) Multiplying the insured acreage for each crop, or variety if applicable, by its respective production guarantee (see sections 1 and 3);

(2) Multiplying the results of section 12(b)(1) by the respective price election for each crop or variety, if applicable;

(3) Totaling the results of section 12(b)(2);

(4) Multiplying the total production to count of each variety, if applicable (see section 12(c)) by the respective price election;

(5) Totaling the results of section 12(b)(4);

(6) Subtracting this result of section 12(b)(5) from the result of section 12(b)(3); and

(7) Multiplying the result of section 12(b)(6) by your share.

(c) The total production to count (in tons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) For which you fail to provide acceptable production records;

(C) That is damaged solely by uninsured causes; or

(D) From which production is sold by direct marketing, if direct marketing is specifically permitted by the Special Provisions or a written agreement, and you fail to meet the requirements contained in section 11;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us

of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(d) Any citrus fruit that is not marketed as fresh fruit and, due to insurable causes, does not contain 120 or more gallons of juice per ton, will be adjusted by:

(1) Dividing the gallons of juice per ton obtained from the damaged citrus by 120; and

(2) Multiplying the result by the number of tons of such citrus.

If individual records of juice content are not available, an average juice content from the nearest juice plant will be used, if available. If not available, a field appraisal will be made to determine the average juice content.

(e) Where the actuarial table provides, and you elect, the fresh fruit option, citrus fruit that is not marketable as fresh fruit due to insurable causes will be adjusted by:

(1) Dividing the value per ton of the damaged citrus by the price of undamaged citrus fruit; and

(2) Multiplying the result by the number of tons of such citrus fruit. The applicable price for undamaged citrus fruit will be the local market price the week before damage occurred.

(f) Any production will be considered marketed or marketable as fresh fruit unless, due solely to insured causes, such production was not marketed as fresh fruit.

(g) In the absence of acceptable records of disposition of harvested citrus fruit, the disposition and amount of production to count for the unit will be the guarantee on the unit.

(h) Any citrus fruit on the ground that is not harvested will be considered totally lost if damaged by an insured cause.

13. Written Agreements

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section (13)(e);

(b) The application for written agreement must contain all terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

[61 FR 41300, Aug. 8, 1996; 61 FR 57583, Nov. 7, 1996]

§457.120 [Reserved]

§457.121 Arizona-California citrus crop insurance provisions.

The Arizona-California Citrus Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Arizona-California Citrus Crop Provisions

If a conflict exists among the Basic Provisions (§457.8), these crop provisions, and the Special Provisions; the Special Provisions will control these crop provisions and the Basic Provisions; and these crop provisions will control the Basic Provisions.

1. Definitions

Carton. The standard container for marketing the fresh packed citrus fruit crop as shown below. In the absence of marketing records on a carton basis, production will be converted to cartons on the basis of the following average net pounds of packed fruit in a standard packed carton.

Container size	Fruit crop	Pounds
Container #58	Navel oranges, Valencia oranges & Sweet oranges.	38
Container #58	Lemons	40
Container #59	Grapefruit	32
Container #63	Tangerines (including Tangelos) & Mandarin oranges.	25

Crop. Citrus fruit as listed in the Special Provisions.

Crop year. The period beginning with the date insurance attaches to the citrus crop and extending through normal harvest time. It is designated by the calendar year following the year in which the bloom is normally set.

Days. Calendar days.

Dehorning. Cutting of any scaffold limb to a length that is not greater than one-fourth (¼) the height of the tree before cutting.

Direct marketing. Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

Good farming practices. The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and generally recognized by the Cooperative Extension Service as compatible with agronomic and weather conditions in the county.

Harvest. The severance of mature citrus from the tree by pulling, picking, or any other means, or by collecting marketable fruit from the ground.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Irrigated practice. A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

Non-contiguous land. Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway or an irrigation canal will be considered as contiguous.

Production guarantee (per acre). The number of citrus (cartons) determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

Scaffold limb. A major limb attached directly to the trunk.

Set out. Transplanting a tree into the grove.

Variety. Subclass of crop as listed in the Special Provisions.

Written agreement—A written document that alters designated terms of a policy in accordance with section 12.

2. Unit Division

(a) A unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), will be divided into basic units by each citrus crop designated in the Special Provisions.

(b) Unless limited by the Special Provisions, these basic units may be divided into optional units if, for each optional unit you meet all the conditions of this section or if a written agreement to such division exists.

(c) Basic units may not be divided into optional units on any basis including, but not limited to, production practice, type, and variety, other than as described in this section.

(d) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the premium paid for the purpose of electing optional units will be refunded to you for the units combined.

(e) All optional units established for a crop year must be identified on the acreage report for that crop year.

(f) The following requirements must be met for each optional unit:

(1) You must have records, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee; and

(2) You must have records of marketed production or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us; and

(3) Each optional unit must be located on non-contiguous land.

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

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), you may select only one price election and coverage level for each citrus fruit crop designated in the Special Provisions that you elect to insure. The price election you choose for each crop need not bear the same percentage relationship to the maximum price offered by us for each crop. For example, if you choose one hundred percent (100%) of the maximum price election for sweet oranges, you may choose seventy-five percent (75%) of the maximum price election for grapefruit. However, if separate price elections are available by variety within each crop, the price elections you choose for each variety must have the same percentage relationship to the maximum price offered by us for each variety within the crop.

(b) In lieu of reporting your citrus production of marketable fresh fruit for the previous crop year, as required by section 3 of the Basic Provisions (§ 457.8), there is a lag period of one year. Each crop year, you must report your production from two crop years ago, e.g., on the 1998 crop year production report, you will provide your 1996 crop year production.

(c) In addition, you must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8), by type, if applicable:

(1) The number of trees damaged, dehorned or removed; any change in practices or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based; and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed:

(i) The age of the interplanted crop, and type, if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; damage; dehorning; removal of trees; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is August 31 preceding the cancellation date.

5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§457.8), the cancellation and termination dates are November 20.

6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all the acreage in the county of each citrus crop designated in the Special Provisions that you elect to insure and for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is adapted to the area;

(c) That is irrigated;

(d) That is grown in a grove that, if inspected, is considered acceptable by us;

(e) That is not sold by direct marketing, unless allowed by the Special Provisions or by written agreement; and

(f) That has reached at least the sixth growing season after being set out. However, we may agree to insure acreage that has not reached this age if we inspect and approve a written agreement to insure such acreage.

7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§457.8), that prohibit insurance attaching to a crop planted with another crop, citrus interplanted with another perennial crop is insurable unless we inspect the acreage and determine it does not meet the requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

(1) Coverage begins on November 21 of each crop year, except that for the year of application, if your application is received after November 11 but prior to November 21, insurance will attach on the 10th day after your properly completed application is received in our local office unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the grove.

(2) The calendar date for the end of the insurance period for each crop year is:

(i) August 31 for Navel oranges and Southern California lemons;

(ii) November 20 for Valencia oranges; and

(iii) July 31 for all other citrus crops.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins, but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period.

(2) If you relinquish your insurable share on any insurable acreage of citrus on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to and no premium will be due, and no indemnity paid, for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been controlled or pruning debris has not been removed from the grove;

(3) Wildlife;

(4) Earthquake;

(5) Volcanic eruption; or

(6) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather conditions:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Inability to market the citrus for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) If the Special Provisions permit or a written agreement authorizing direct marketing exists, 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.

(b) If you intend to claim an indemnity on any unit, you must notify us before beginning to harvest any damaged production so that we may have an opportunity to inspect it. 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, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each crop, or variety if applicable, by its respective production guarantee;

(2) Multiplying the results of section 11(b)(1) by the respective price election for each crop, or variety, if applicable;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each variety, if applicable (see section 11(c)), by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting this result of section 11(b)(5) from the result of section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share;

(c) The total production to count (in cartons) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) For which you fail to provide acceptable production records;

(C) That is damaged solely by uninsured causes; or

(D) From which production is sold by direct marketing, if direct marketing is specifically permitted by the Special Provisions or a written agreement, and you fail to meet the requirements contained in section 10;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production determined to be marketable as fresh packed fruit; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in

which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count;

(2) All harvested production marketed as fresh packed fruit from the insurable acreage; and

(3) All citrus that was disposed of or sold without an inspection or written consent.

(d) Any production will be considered marketed or marketable as fresh packed fruit unless, due solely to insured causes, such production was not marketed or marketable as fresh packed fruit.

(e) Citrus that cannot be marketed as fresh packed fruit due to insurable causes will not be considered production to count.

(f) If we determine that frost protection equipment was not properly utilized or not properly reported, the indemnity for the unit will be reduced by the percentage of premium reduction allowed for frost protection equipment. You must, at our request, provide us records showing the start-stop times by date for each period the frost protection equipment was used.

12. Written Agreement

Designated terms of this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for written agreement must contain all terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

[61 FR 44147, Aug. 28, 1996]

PART 458—SPECIAL CALIFORNIA CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1992 through 1994 Crop Years

Sec.

458.1 Availability of Special California citrus crop insurance.
458.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
458.3 OMB control numbers.
458.4 Creditors.
458.5 Good faith reliance on misrepresentation.
458.6 The contract.
458.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506, 1516.

SOURCE: 56 FR 30490, July 3, 1991, unless otherwise noted.

§458.1 Availability of Special California citrus crop insurance.

Insurance shall be offered under the provisions of this subpart on citrus in California counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§458.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for California citrus which will be included in the actuarial table on file in the applicable service offices for the county.

(b) At the time of application, the applicant will select the coverage level (50%, 65%, or 75%) for the 1993 and 1994 crop years. The coverage level for the 1992 crop year will be level 1 (50%). The price selection for the 1992 crop year will be established by the actuarial tables for the applicable type for the crop year.

§ 458.3 OMB control numbers.

The OMB control numbers are contained in subpart H of part 400, Title 7 CFR.

§ 458.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to my benefit under the contract.

§ 458.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the Special California citrus insurance contract, whenever:

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation:

(1) Is indebted to the Corporation for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00 finds that:

(1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 458.6 The contract.

The insurance contract shall become effective upon the written acceptance on the Corporation's form by the insured of the Corporation's insurance offer. Said offer will be extended only after receipt by the corporation of an application for insurance on a form prescribed by the Corporation and inspection of the grove by the Corporation. The applicant will have 15 calendar days from the date the insurance offer is tendered to accept such offer. The offer will be withdrawn thereafter if not accepted. The contract shall cover the citrus crop as provided in the policy. The contract shall consist of the application, the insurance offer, the acceptance, the policy, an annual field inspection report, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable services offices.

§ 458.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the citrus crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at any designated service office on or before the applicable sales closing date.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period.

However, if adverse conditions should develop during such period, the Corporation may discontinue the acceptance of applications.

The provision of the Special California Insurance Policy for the 1992 through 1994 crop years are as follows:

Special California Citrus Crop Insurance Policy

(This is a three (3) year term contract. Refer to Section 15.)

Agreement to Insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, ''you'' and ''your'' refer to the insured shown on the accepted Application and ''we,'' ''us,'' ''our'' refer to the Federal Crop Insurance Corporation.

NOTE: This is a three year policy of insurance. The Corporation, after inspection of the grove, will extend to the applicant, an offer of insurance. Upon acceptance of that offer a contract of insurance will be in existence. The first year's premium and the estimated premium for the remaining two years are due and payable to the Corporation within 45 days of acceptance of the insurance offer. The amount of production used to compute the insurance offer each year will be determined only after the Corporation's annual inspection of the insured's grove. The amount of premium for each of the remaining two years will be determined as a result of the corporation's inspection.

TERMS AND CONDITIONS

1. Causes of Loss

(a) For the 1992 crop year the insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Frost;

(2) Freeze;

(3) Excess moisture; and

(4) Hail.

(b) For the 1993 and 1994 crop years the insurance provided is against those causes listed in subsection 1.(a) above, and the following causes occurring within the insurance period:

(1) Fire;

(2) Wildlife;

(3) Excess heat;

(4) Excess wind;

(5) Tornado;

(6) Earthquake;

(7) Volcanic eruption;

(8) Failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; or

(9) Direct Mediterranean Fruit Fly damage; unless those causes are expected, excluded, or limited by the actuarial table or subsection 9.(f)(7).

(c) We will not insure against any loss of production due to:

(1) Fire, where weeds and other forms of undergrowth have not been controlled or tree-pruning debris has not been removed from the grove;

(2) The neglect, mismanagement, abandonment, or wrongdoing of you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good citrus grove practices;

(4) The failure or breakdown of irrigation equipment or facilities;

(5) The failure to carry out a good citrus irrigation practice;

(6) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(7) Any cause not specified in section 1.(a) or 1.(b), as applicable, as an insured loss.

2. Crop, Acreage, and Share Insured

(a) The crop insured will be all of the following citrus types you elect, which are grown in the country on insured acreage and for which a premium rate is provided by the actuarial table:

Type I—Navel oranges;

Type II—Sweet oranges;

Type III—Valencia oranges;

Type IV—Grapefruit;

Type V—Lemons;

Type VI—Kinnow mandarins;

Type VII—Minneola tangelos; or

Type VIII—Orlando tangelos.

(b) The acreage insured for each crop year will include all acreage of citrus of the type(s) elected pursuant to section 2.(a), located on insurable acreage as designated by the actuarial table and in which you have a share at the time insurance attaches for the 1992 crop year.

(c) The insured share is your share as landlord, owner-operator, or tenant in the insured citrus on the date insurance attaches.

(d) We do not insure any acreage:

(1) Which is not irrigated; and

(2) On which the trees have not reached the sixth growing season after being set out.

(e) Insurance will not attach or be considered to have attached to any acreage of the crop, for each crop year, until the acreage has been inspected and accepted by us. Tree damage occurring prior to the insured crop year will result in a commensurate reduction in yield guarantee for a subsequent years insurance coverage.

(f) We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to the date insurance attaches.

3. Report of Acreage, Share, Number of Trees, and Practice

You must report on our form:

(a) All of the acreage of citrus in the county in which you have a share;

(b) The practice;

(c) Your share on the date insurance attaches; and

(d) The number of bearing trees.

You must designate separately any acreage in which you have an interest that is not insurable. The 1992 crop year acreage report must accompany your application for insurance coverage under this contract.

For the 1993 and 1994 crop years, the designated acreage will remain the same as that

noted for 1992 unless, as a result of a subsequent field inspection, we determine that some covered acreage has suffered structural damage sufficient to make it uninsurable. This report must be submitted annually thereafter on or before January 10.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

(a) The coverage levels and prices for computing indemnities are contained in the actuarial table.

(b) Coverage level 1 will apply for the 1992 crop year.

(c) You may select any coverage level for the 1993 and 1994 crop years at the time of application.

(d) The price election for the 1992 crop year will be the maximum available for the 1992 crop year as shown on the actuarial table. The price election for the 1993 and 1994 crop years will be the maximum available as shown on the 1993 crop year actuarial table.

(e) You must report production and acreage to us for at least the four-year period 1987 through 1990 when the application is submitted. However, if the trees had not reached the sixth growing season in 1987, only those years in which the trees were six years or older must be reported. Your guarantee for each crop year will be based on your production history and our appraisal of current crop potential.

In no case will the insurance yield on which the guarantee is based be greater than can be supported by the production history.

5. Premium

(a) The premium amount for each crop year is computed by multiplying the applicable production guarantee as determined in section 4.(e) times the price election, times the premium rate, times the insured acreage, times your share at the time insurance attaches for the 1992 crop year.

(b)(1) The premium for the 1992 crop year is earned at the time the insurance attaches and must be paid within 45 days of acceptance of the Corporation's insurance offer by the applicant. The insurance will be considered accepted when you agree, in writing, to the insurance offer. In addition, a premium deposit for the 1993 and 1994 crop years, calculated as in subsection 5.(a) above, must be submitted within 45 days of the acceptance of the insurance offer. The premium deposit amount will be calculated based on the factors selected for the 1993 and 1994 crop years.

(2) Failure to pay the premium within 45 days of the acceptance of the insurance offer will result in:

(i) The insured being charged interest at a rate of fifteen (15%) percent annum, from the due date of the premium payment to the date actually paid;

(ii) The elimination of the discount permitted under subsection (c) below;

(iii) The withholding of any indemnities payable under the policy until payment is made in full; and

(iv) Legal action to collect the required premium payment.

(c) The 1993 and 1994 crop year premium deposits will be adjusted as follows to reflect the present value of the premium (based on an average annual interest rate of seven percent (7%):

(1) The premium deposit amount for the 1993 crop year will be multiplied by 0.935; and

(2) The premium deposit amount for the 1994 crop year will be multiplied by 0.873.

(d) A portion of the premium deposit may be refunded if, upon subsequent annual field inspections, it is determined that the trees on insured acreage have been damaged in a manner that will result in subsequent production losses. Adjustments will be made to eliminate that portion of guaranteed production relating to tree damage and a pro-rata portion of the premium deposit will be returned to you.

6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you, or 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.

7. Insurance Period

For the 1992 crop year, insurance attaches at the time the Corporation's insurance offer is accepted by the insured. For the 1993 and 1994 crop years, insurance attaches on the December 1 prior to the calendar year of normal bloom, and ends at the earliest of:

(a) Total destruction of the citrus;

(b) Harvest of the citrus;

(c) Final adjustment of a loss; or

(d) The date following the year in which the bloom is normally set as follows:

(1) August 31 for Navel oranges and Southern California lemons;

(2) November 30 for Valencia oranges; or

(3) July 31 for all other types of citrus.

8. Notice of Damage or Loss

(a) In case of damage or probable loss:

(1) You must give us prompt written notice:

(i) After insured damage to the citrus becomes apparent, giving the dates and causes of such damage; or

(ii) If you decide not to further care for or harvest any part of the insured citrus crop.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. If harvest will

begin after the end of the insurance period, notice must be given on or before the calendar date for the end of the insurance period.

(b) You must obtain written consent from us before you destroy any of the citrus which is not to be harvested.

(c) We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity

(a) Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the citrus on the unit:

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

(b) We will not pay any indemnity unless you:

(1) Establish the total production of citrus on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

(c) The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of citrus to be counted (see section 9.(f));

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

(d) If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all the production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

(e) If a determination is made that frost protection equipment was not properly utilized or not properly reported, the indemnity for the unit will be reduced by the percentage of premium reduction allowed for frost protection equipment. You must, at our request, provide us records showing the start-stop times by date for each period the equipment was used.

(f) The total production (cartons) to be counted for each unit will include all harvested production marketed as fresh packed fruit and all appraised production determined to be marketable as fresh packed fruit.

(1) Any production will be considered marketed or marketable as fresh packed fruit unless, due to insurable causes, such production was not marketed or marketable as fresh packed fruit.

(2) In the absence of acceptable records to determine the disposition of harvested citrus, an amount of citrus equal to the guarantee will be treated as production to count.

(3) Appraised production to be counted will include:

(i) Unharvested production, and potential production lost due to uninsured causes and failure to follow recognized good citrus grove practices;

(ii) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent.

(4) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(i) Harvested; or

(ii) Further damaged by an insured cause and reappraised by us.

(5) Citrus which cannot be marketed due to insurable causes will not be considered production.

(6) The amount of production of any unharvested citrus may be determined on the basis of field appraisals conducted after the end of the insurance period.

(7) If you elect to exclude hail and fire as insured causes of loss and the citrus is damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, ''Request to Exclude Hail and Fire.''

(g) You must not abandon any acreage to us.

(h) You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

(i) We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, 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. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

(j) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the date insurance attaches for any crop year, any indemnity will be paid to the person determined to be beneficially entitled thereto.

(k) If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of Loss From a Third Party)

Because you may be able to recover all or part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of 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.

14. Records and Access To Grove

You must keep, for 3 years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all citrus produced on each unit including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the grove for purposes related to the contract.

15. Life of Contract: Cancellation

(a) This contract will be in effect for the crop years 1992, 1993 and 1994, and may not be canceled by you.

(b) If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will continue in force through the end of the insurance period (1994 crop year).

16. Meaning of Terms

For the purposes of California citrus crop insurance:

(a) *Actuarial table*—means the forms and related material for the crop year approved by us and which show the coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding citrus insurance in the county.

(b) *Carton*—as to each insured citrus type, means the standard container for marketing fresh packed fruit as shown below by citrus type. In the absence of marketing records on such a carton basis, production will be converted to cartons on the basis of the following average net pounds of packed fruit in a standard packed carton:

Container Size	Types of Fruit	Pounds
Container #58 ...	Navel oranges, Valencia oranges & Sweet oranges	38
Container #58 ...	Lemons	40
Container #59 ...	Grapefruit	32
Container #63 ...	Tangerines (including Tangelos) & Mandarin oranges	25

(c) *Contiguous land*—means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

(d) *County*—means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

(e) *Crop year*—means the period beginning with the date insurance attaches to the citrus crop and extending through normal harvest time, and will be designated by the calendar year following the year in which the bloom is normally set.

(f) *Direct Mediterranean fruit fly damage*—means the actual physical damage to the citrus on the unit which causes such citrus to be unmarketable and will not include unmarketability of such citrus as a direct result of a quarantine, boycott, or refusal to accept the citrus by any entity without regard to actual physical damage to such citrus.

(g) *Harvest*—means the severance of mature citrus from the tree either by pulling, picking, or by mechanical or chemical means.

(h) *Insurable acreage*—means the land classified as insurable by us and shown as such by the actuarial table.

(i) *Insured*—means the person who submitted the application accepted by us.

(j) *Person*—means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(k) *Service office*—means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

(l) *Tenant*—means a person who rents land from another person for a share of the citrus or a share of the proceeds therefrom.

(m) *Unit*—means all insurable acreage in the county of any one of the citrus types referred to in section 2 of this policy, located on contiguous land on the date insurance attaches 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 entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the citrus on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

17. Descriptive Headings

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

18. Determinations

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 400, Subpart J).

19. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless othewise 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.

CHAPTER V—AGRICULTURAL RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE

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PART 500—CONDUCT ON U.S. NATIONAL ARBORETUM PROPERTY

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AUTHORITY: Secs. 2, 4, 62 Stat. 281; sec. 103, 63 Stat. 380; sec. 205(d), 63 Stat. 389; 40 U.S.C. 318a, 318c, 486(d), 753, 34 FR 6406; 34 FR 7389.

SOURCE: 34 FR 12939, Aug. 9, 1969, unless otherwise noted. Redesignated at 36 FR 22807, Dec. 1, 1971.

§ 500.1 General.

The rules and regulations in this part apply to the buildings and grounds of the U.S. National Arboretum, Washington, D.C., and to all persons entering in or on such property. The Administrator, General Services Administration, has delegated to the Secretary of Agriculture, with authority to redelegate, the authority to make all the needful rules and regulations for the protection of the buildings and grounds of the U.S. National Arboretum (34 FR 6406). The Secretary of Agriculture has in turn delegated such authority to the Administrator, Agricultural Research Service (34 FR 7389). The rules and regulations in this part are issued pursuant to such delegations.

[61 FR 65302, Dec. 11, 1996]

§ 500.2 Recording presence.

Admission to the U.S. National Arboretum during periods when it is closed to the public will be limited to authorized individuals who may be required to sign the register and/or display identification documents when requested by the Security Staff, or other authorized individuals.

[61 FR 65302, Dec. 11, 1996]

§ 500.3 Preservation of property.

It is unlawful to willfully destroy, damage, or remove property or any part thereof.

§ 500.4 Conformity with signs and emergency directions.

Persons in and on property of the U.S. National Arboretum shall comply with official signs of prohibitory or director nature and with the directions of authorized individuals.

[61 FR 65302, Dec. 11, 1996]

§ 500.5 Nuisances.

The use of loud, abusive, or otherwise improper language, unwarranted loitering, sleeping, or assembly, the creation of any hazard to persons or things, improper disposal of rubbish, spitting, prurient prying, the commission of any obscene or indecent act, or any other unseemly or disorderly conduct, throwing articles of any kind from a building, and climbing upon any part of a building, is prohibited.

§ 500.6 Gambling.

Participating in games for money or other personal property, or the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on U.S. National Arboretum property, is prohibited.

[61 FR 65302, Dec. 11, 1996]

§ 500.7 Intoxicating beverages and narcotics.

Entering U.S. National Arboretum property or the operation of a motor vehicle thereon, by a person under the influence of intoxicating beverages or narcotic drug, or the consumption of such beverages or the use of such drug in or on U.S. National Arboretum property, is prohibited.

[61 FR 65302, Dec. 11, 1996]

§ 500.8 Soliciting, vending, debt collection, and distribution of handbills.

The soliciting of contributions, display or distribution of commercial advertising and the collection of private debts, is prohibited. This section does not apply to national or local drives for funds for welfare, health, and other

purposes sponsored or approved by the Agricultural Research Service, concessions, or personal notices posted by employees on authorized bulletin boards. Distribution of material such as pamphlets, handbills, and flyers is prohibited without prior approval of the Director, U.S. National Arboretum.

[61 FR 65302, Dec. 11, 1996]

§500.9 Photographs for news, advertising, or commercial purposes.

Photographs for news purposes may be taken at the U.S. National Arboretum without prior permission. Photographs for advertising and commercial purposes may be taken, but only with the prior approval of the Director, U.S. National Arboretum and fees may be charged.

[61 FR 65302, Dec. 11, 1996]

§500.10 Pets.

Pets, except assistance trained animals, brought upon U.S. National Arboretum property must be kept on leash and have proper vaccinations. The abandonment of unwanted animals on USNA grounds is prohibited.

[61 FR 65302, Dec. 11, 1996]

§500.11 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles in or on U.S. National Arboretum property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of the Security Staff and all posted traffic signs;

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on U.S. National Arboretum property is prohibited;

(c) Except in emergencies, parking in or on U.S. National Arboretum property in other than designated areas is not allowed without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or contrary to the direction of posted signs is prohibited. This section may be supplemented from time to time, by the issuance and posting of specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if incorporated in this part.

[61 FR 65302, Dec. 11, 1996]

§500.12 Weapons and explosives.

No person while in or on U.S. National Arboretum property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except for official purposes.

[61 FR 65303, Dec. 11, 1996]

§500.13 Nondiscrimination.

There shall be no discrimination by segregation or otherwise against any person or persons because of race, religion, color, age, sex, disability or national origin, in furnishing, or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on U.S. National Arboretum property.

[61 FR 65303, Dec. 11, 1996]

§500.14 Exceptions.

The Administrator, Agricultural Research Service, may in individual cases make prior, written exceptions to the rules and regulations in this part if he determines it to be not adverse to the public interest.

§500.15 Penalties and other law.

Whoever shall be found guilty of violating the rules and regulations in this part is subject to fine of not more than $50 or imprisonment of not more than 30 days, or both (see 40 U.S.C. 318c). Nothing contained in the rules and regulations in this part shall be construed as abrogating or authorizing the abrogation of any other regulations or any Federal law or any laws and regulations of the District of Columbia which may be applicable.

PART 501—CONDUCT ON U.S. MEAT ANIMAL RESEARCH CENTER, CLAY CENTER, NEBRASKA

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501.13 Nondiscrimination.
501.14 Non-Federal law enforcement.
501.15 Exceptions.
501.16 Penalties and other law.

AUTHORITY: Secs. 2, 4, 62 Stat. 281; 40 U.S.C. 318(a), (c); sec. 103, 63 Stat. 380; 40 U.S.C. 753; sec. 205(d), 63 Stat. 389; 40 U.S.C. 486(d); 36 FR 1293 and 36 FR 21706.

SOURCE: 37 FR 2423, Feb. 1, 1972, unless otherwise noted.

§ 501.1 General.

The rules and regulations in this part apply to all property of or under the charge or control of the U.S. Meat Animal Research Center, Clay Center, Nebr. (hereinafter referred to as the Research Center), and to all persons entering in or on such property. The Administrator, General Services Administration, has delegated to the Secretary of Agriculture, with authority to redelegate, the authority to make all the needful rules and regulations for the protection of the Research Center (36 FR 1293). The Secretary of Agriculture has delegated this authority to the Director of Science and Education (36 FR 21706) who in turn has delegated such authority to the Administrator, Agricultural Research Service (36 FR 21706). The rules and regulations in this part are issued pursuant to such delegations. It is the responsibility of occupant or cooperating agency to require observance of these rules and regulations.

§ 501.2 Admission.

Admission to the Research Center during ''off duty'' hours shall be restricted to the main arteries and any deviation therefrom by individuals shall be limited to authorized individuals who may be required to sign a register and display identification documents when requested by a guard or other authorized individuals. ''Off duty'' hours will be posted at the Research Center. Admission during ''duty'' hours when the Center is closed to the public in emergency situations will be limited to authorized individuals who may be required to sign a register and display identification documents when requested by a guard or other authorized individual.

§ 501.3 Preservation of property.

It is unlawful to willfully destroy, damage, or remove property or any part thereof. Hunting, fishing, motorcycling, using snowmobiles, and other disturbances or encroachment activities are prohibited except for official purposes.

§ 501.4 Conformity with signs and emergency directions.

Persons in and on property of the Research Center shall comply with official signs of a prohibitory or directory nature, and with the directions of authorized individuals.

§ 501.5 Nuisances.

The use of loud, abusive, or otherwise improper language, unwarranted loitering, sleeping, or assembly, the creation of any hazard to persons or things, improper disposal of rubbish, spitting, prurient prying, the commission of any obscene or indecent act, or any other unseemly or disorderly conduct, throwing articles of any kind from a building, or climbing upon any part of a building is prohibited. Further, conduct which obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways and parking lots, or which otherwise tends to impede or disturb Center employees in the performance of their duties or which otherwise impedes the general public from obtaining the administrative services provided by the Research Center is prohibited.

§ 501.6 Gambling.

Participating in games for money or other personal property, or the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on Research Center property, is prohibited.

§501.7 Intoxicating beverages and narcotics.

Entering Research Center property or the operating of a motor vehicle thereon, by a person under the influence of intoxicating beverages or narcotic drug, hallucinogen, marijuana, barbiturate, or amphetamine (unless prescribed by a physician) or the consumption of such beverages, or the use of any such drug or substance in or on the Research Center property, is prohibited.

§501.8 Soliciting, vending, debt collection, and distribution of handbills.

The soliciting of alms and contributions, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, or the collecting of private debts, in or on Research Center property, is prohibited. This section does not apply to national or local drives for funds for welfare, health, and other purposes sponsored or approved by the Agricultural Research Service, concessions, or personal notices posted by employees on authorized bulletin boards. Distribution of material such as pamphlets, handbills, and flyers or the posting of mateirals on bulletin boards or elsewhere, is prohibited without prior approval of authorized individuals.

§501.9 Photographs for news, advertising, or commercial purposes.

Except where security regulations apply, or a Federal court order or rules prohibit it, photographs for news purposes may be taken in entrances, lobbies, foyers or auditoriums when used for public meetings without prior permission. Photographs for advertising and commercial purposes may be taken only with the prior written permission of the Director, Research Center. Photographs for news, advertising, or commercial purposes may be taken in space or areas occupied by a cooperator only with the consent of the cooperator concerned and the Director, Research Center.

§501.10 Pets.

Animals shall be brought or allowed, as applicable, upon the Research Center only with the prior written approval of the Director, Research Center, except seeing eye dogs may be brought to the reception area serving the offices of the Director, Research Center, without prior approval.

§501.11 Mobile equipment and pedestrian traffic.

(a) Drivers, operators, or pilots of all equipment whether or not motorized in or on Research Center property, or within the scope of Research Center activity, shall operate in a careful and safe manner at all times and shall comply with the signals and directions of guards, special policemen, or other authorized individuals, and all posted traffic signs;

(b) The blocking of entrances, driveways, walks, railways, runways, loading platforms, or fire hydrants in or on Research Center property is prohibited;

(c) Except in emergencies, parking or landing in or on Research Center property in other than designated areas is not allowed without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or parking continuously in excess of ten hours without permission, or contrary to the direction of posted signs is prohibited. This section may be supplemented from time to time by the issuance and posting of specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part hereof;

(d) The operation of unlicensed gasoline powered vehicles is prohibited.

§501.12 Weapons and explosives.

No person while in or on Research Center property shall carry firearms, bows and arrows, darts, other dangerous or deadly weapons, or explosives, either openly or concealed, except as officially authorized, for official purposes.

§501.13 Nondiscrimination.

There shall be no discrimination by segregation or otherwise against any person or persons because of race, sex, religion, color, or national origin, in furnishing, or by refusing to furnish to such person or persons the use of any facility of a public nature, including

all service, privileges, accommodations, and activities provided thereby on Research Center property.

§ 501.14 Non-Federal law enforcement.

Research Center special policemen may be deputized by State or local law enforcement agencies to exercise police power on property outside the Research Center. With the consent of any State or local law enforcement agency, the facilities or services of such State or local law enforcement agency may be utilized by the Research Center.

§ 501.15 Exceptions.

The Administrator, Agricultural Research Service, may in individual cases make prior, written exceptions to the rules and regulations in this part if he determines it to be not adverse to the public interest.

§ 501.16 Penalties and other law.

Whoever shall be found guilty of violating the rules and regulations in this part where the United States has and exercises exclusive or concurrent legislative jurisdiction, is subject to fine of not more than $50 or imprisonment or not more than 30 days, or both (see 40 U.S.C. 318c). Nothing contained in the rules, regulations, or penalties in this part shall be construed as abrogating or authorizing the abrogation of any other rules, regulations, penalties, or any Federal law, or any State and local laws and regulations which may be applicable.

PART 502—CONDUCT ON BELTSVILLE AGRICULTURE RESEARCH CENTER PROPERTY, BELTSVILLE, MARYLAND

Sec.
502.1 General.
502.2 Admission.
502.3 Preservation of property.
502.4 Conformity with signs and emergency directions.
502.5 Nuisances.
502.6 Hunting, fishing, camping, horseback riding.
502.7 Gambling.
502.8 Intoxicating beverages and narcotics.
502.9 Soliciting, vending, debt collection, and distribution of handbills.
502.10 Photographs by visitors or for news, advertising, or commercial purposes.
502.11 Pets.
502.12 Vehicular and pedestrian traffic.
502.13 Weapons and explosives.
502.14 Nondiscrimination.
502.15 Exceptions.
502.16 Penalties and other law.

AUTHORITY: Secs. 2, 4, 62 Stat. 281; 40 U.S.C. 318 (a), (c); sec. 103, 63 Stat. 380; 40 U.S.C. 753; sec. 205(d), 63 Stat. 389; 40 U.S.C. 486(d); 36 FR 18440 and 60 FR 56392.

SOURCE: 37 FR 2424, Feb. 1, 1972, unless otherwise noted.

§ 502.1 General.

The rules and regulations in this part apply to the buildings and grounds of the Beltsville Agricultural Research Center (BARC), Beltsville, MD, and to any persons entering in or on such property. The Administrator, General Services Administration, has delegated to the Secretary of Agriculture, with authority to redelegate, the authority to make all the needful rules and regulations for the protection of the buildings, grounds, equipment, and experimental plants and animals of BARC (36 FR 18440). The Secretary of Agriculture has delegated this authority to the Under Secretary for Research, Education, and Economics (60 FR 56392) who in turn has delegated such authority to the Administrator, Agricultural Research Service (60 FR 56392). The rules and regulations in this part are issued pursuant to such delegations.

[61 FR 51211, Oct. 1, 1996]

§ 502.2 Admission.

Admission to BARC during ''off duty'' hours shall be restricted to the main arteries and any deviation therefrom by individuals shall be limited to authorized individuals who may be required to sign a register and display identification documents when requested by BARC Security or other authorized individual. ''Off duty'' hours will be posted at BARC. Admission during ''duty'' hours when BARC is closed to the public in emergency situations will be limited to authorized individuals who may be required to sign a register and display identification documents when requested by BARC Security or other authorized individual.

[61 FR 51211, Oct. 1, 1996]

§502.3 Preservation of property.

It is unlawful to willfully destroy, damage, or remove property or any part thereof.

§502.4 Conformity with signs and emergency directions.

Persons in and on property of BARC shall comply with official signs of a prohibitory or directory nature, and with the directions of authorized individuals.

[61 FR 51211, Oct. 1, 1996]

§502.5 Nuisances.

The use of loud, abusive or otherwise improper language, unwarranted loitering, sleeping, or assembly, the creating of any hazard to persons or things, improper disposal of rubbish, spitting, prurient prying, the commission of any obscene or indecent act, or any other unseemly or disorderly conduct, throwing articles of any kind from a building, or climbing upon any part of a building is prohibited. Further, conduct which obstructs the usual use of entrances, foyers, corridors, office elevators, stairways and parking lots, or which otherwise tends to impede or disturb BARC employees in the performance of their duties or which otherwise impedes the general public from obtaining the administrative services provided by BARC is prohibited.

[61 FR 51211, Oct. 1, 1996]

§502.6 Hunting, fishing, camping, horseback riding.

The use of BARC grounds for any form of hunting, fishing, camping, or horseback riding is prohibited. Further, the use of these grounds for unauthorized picnicking is also prohibited.

[61 FR 51211, Oct. 1, 1996]

§502.7 Gambling.

Participating in games for money or other personal property, or the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets, in or on BARC property, is prohibited.

[61 FR 51211, Oct. 1, 1996]

§502.8 Intoxicating beverages and narcotics.

Entering BARC property or the operation of a motor vehicle thereon, by a person under the influence of intoxicating beverages or narcotic drug, hallucinogen, marihuana, barbiturate, or amphetamine (unless prescribed by a physician) or the consumption of such beverages, or the use of any such drug or substance in or on BARC property, is prohibited.

[61 FR 51211, Oct. 1, 1996]

§502.9 Soliciting, vending, debt collection, and distribution of handbills.

The soliciting of alms and contributions, commercial soliciting and vending of all kinds or the display or distribution of commercial advertising, or the collecting of private debts, in or on BARC property, is prohibited. This section does not apply to national or local drives for funds for welfare, health, and other purposes sponsored or approved by the Agricultural Research Service, concessions, or personal notices posted by employees on authorized bulletin boards. Distribution of material such as pamphlets, handbills, and flyers or the posting of materials on bulletin boards or elsewhere is prohibited without prior approval of the Director, Beltsville Area.

[61 FR 51211, Oct. 1, 1996]

§502.10 Photographs by visitors or for news, advertising, or commercial purposes.

Photographs may be taken by visitors or for news purposes without prior permission. Photographs for advertising and commercial purposes may be taken at BARC only with the prior written approval of the Director, Beltsville Area.

[61 FR 51212, Oct. 1, 1996]

§502.11 Pets.

Pets, except assistance trained animals, brought upon BARC property must be kept on a leash and have proper vaccinations. Pets that are the property of employees residing on BARC must be up to date on their vaccinations, in accordance with State or local laws, and be kept on a leash or similarly restrained. The abandonment of

unwanted animals on BARC grounds is prohibited.

[61 FR 51212, Oct. 1, 1996]

§ 502.12 Vehicular and pedestrian traffic.

(a) Drivers of all vehicles whether or not motorized in or on BARC property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of the security staff and all posted traffic signs;

(b) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on BARC property is prohibited;

(c) Except in emergencies, parking in or on BARC property in other than designated areas is not allowed without a permit. Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or contrary to the direction of posted signs is prohibited. This section may be supplemented from time to time, by the issuance and posting of specific traffic directives as may be required, and when so issued and posted such directives shall have the same force and effect as if made a part hereof.

(d) The operation of unlicensed gasoline powered vehicles is prohibited.

[37 FR 2424, Feb. 1, 1972, as amended at 61 FR 51212, Oct. 1, 1996]

§ 502.13 Weapons and explosives.

No person while in or on BARC property shall carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, except as officially authorized for official purposes.

[61 FR 51212, Oct. 1, 1996]

§ 502.14 Nondiscrimination.

There shall be no discrimination by segregation or otherwise against any person or persons because of race, religion, color, sex, age, disability or national origin, in furnishing, or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided thereby on BARC property.

[61 FR 51212, Oct. 1, 1996]

§ 502.15 Exceptions.

The Administrator, Agricultural Research Service, may in individual cases, make prior, written exceptions to the rules and regulations in this part, if a determination is made that the exception is not adverse to the public interest.

[61 FR 51212, Oct. 1, 1996]

§ 502.16 Penalties and other law.

Whoever shall be found guilty of violating the rules and regulations in this part is subject to fine of not more than $50 or imprisonment of not more than 30 days, or both (see 40 U.S.C. 318c). Nothing contained in the rules and regulations in this part shall be construed as abrogating or authorizing the abrogation of any other regulations or any Federal law or any laws and regulations of the State of Maryland.

[37 FR 2424, Feb. 1, 1972. Redesignated at 61 FR 51212, Oct. 1, 1996]

PART 503—CONDUCT ON PLUM ISLAND ANIMAL DISEASE CENTER

Sec.

503.1 General.
503.2 Admission.
503.3 Preservation of property.
503.4 Conformity with Plum Island regulations.
503.5 Nuisances.
503.6 Camping, boating, and fishing.
503.7 Gambling.
503.8 Intoxicating beverages and narcotics.
503.9 Soliciting, vending, debt collection, and distribution of handbills.
503.10 Photographs for news, advertising, commercial purposes or for personal use.
503.11 Pets.
503.12 Vehicular and pedestrian traffic.
503.13 Weapons and explosives.
503.14 Nondiscrimination.
503.15 Exceptions.
503.16 Penalties and other law.

AUTHORITY: Secs. 2, 4, 62 Stat. 281; 40 U.S.C. 318(a), (c); sec. 103, 63 Stat. 380; 40 U.S.C. 486(d); 38 FR 31165 and 38 FR 31166.

SOURCE: 39 FR 36563, Oct. 11, 1974, unless otherwise noted.

§ 503.1 General.

The rules and regulations in this part cover the buildings, grounds, and vessels of the Plum Island Animal Disease

Center (PIADC), United States Department of Agriculture, Orient Point, New York, and apply to all persons entering in or on such properties both on the mainland, Orient Point, New York, and on Plum Island. The Administrator, General Services Administration, has delegated to the Secretary of Agriculture authority to make all needful rules and regulations, and to annex to such rules and regulations such reasonable penalties (not to exceed those prescribed in 40 U.S.C. 318c) as will ensure their enforcement for the protection of persons and property at Plum Island, New York. The Secretary of Agriculture has redelegated this authority to the Assistant Secretary for Conservation, Research, and Education, who in turn has delegated it to the Administrator, Agricultural Research Service (38 FR 31166).

§503.2 Admission.

No person will be admitted to PIADC, into animal holding areas, specified restricted areas, laboratory compounds, or into laboratories without having in his or her possession a specific approved pass or permit authorized by the Director, PIADC, to enter such areas. The pass must be presented at the request of the guard or other authorized PIADC safety representative.

§503.3 Preservation of property.

The willful destruction, damage to or removal of property or any part thereof from the Government-owned buildings, grounds, and vessels in or on the PIADC is prohibited.

§503.4 Conformity with Plum Island regulations.

Persons in and on PIADC shall at all times comply with official signs of a prohibitory or directory nature and with the directions of law enforcement or other authorized officials.

§503.5 Nuisances.

The use of loud, abusive or otherwise improper language, unwarranted loitering, sleeping or assembly, the creation of any hazard to persons or things, improper disposal of rubbish, spitting, prurient prying, or the commission of any obscene or indecent act in or on the PIADC is prohibited.

§503.6 Camping, boating, and fishing.

The use of PIADC as a recreational area for camping, boating, fishing, and picnicking is prohibited. The use of Plum Island beaches for unauthorized landings and sightseeing is prohibited.

§503.7 Gambling.

Participating in games for money or other personal property, or the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets in or on the PIADC is prohibited.

§503.8 Intoxicating beverages and narcotics.

Entering the PIADC or operating a motor vehicle thereon by a person under the influence of intoxicating beverages or narcotic drugs, or the consumption of such beverages or the use of such drugs in or on the PIADC, is prohibited.

§503.9 Soliciting, vending, debt collection, and distribution of handbills.

The soliciting of alms and contributions, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, or the collecting of private debts, in or on PIADC is prohibited. This section does not apply to national or local drives for funds for welfare, health, and other purposes, sponsored or approved by the PIADC, or concessions or personal notices posted by employees on authorized bulletin boards. Unauthorized distribution of materials such as pamphlets, handbills, and flyers is prohibited.

§503.10 Photographs for news, advertising, commercial purposes or for personal use.

Photographs on the PIADC for news, advertising, commercial purposes, or personal use may be taken only with prior written permission of Director, PIADC.

§503.11 Pets.

No pets or animals of any kind may be brought to the PIADC.

§ 503.12 Vehicular and pedestrian traffic.

Drivers of all vehicles on the PIADC Government-owned parking areas in PIADC shall drive in a careful and safe manner at all times and shall comply with the signals and directions of guards and all posted traffic signs. Pedestrians will also observe specific safety directives as may be issued and posted from time to time by the Director, PIADC, or his authorized representative.

§ 503.13 Weapons and explosives.

No person while in or on the PIADC shall carry firearms or other dangerous or deadly weapons or explosives either openly or concealed, except when authorized to do so for official purposes by the Director, PIADC, or his authorized representative.

§ 503.14 Nondiscrimination.

There shall be no discrimination by segregation or otherwise against any person or persons because of race, religion, sex, color, or national origin in furnishing or refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations and activities provided by the PIADC.

§ 503.15 Exceptions.

The Director, PIADC, may, in specific cases, make prior written exceptions to the rules and regulations in this part if he determines it to be in the best interest of the Government.

§ 503.16 Penalties and other law.

Whoever shall be found guilty of violating any rule or regulation in this part while in or on the PIADC is subject to a fine of not more than $50 or imprisonment of not more than 30 days, or both. (See 40 U.S.C. 318c.) Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or regulations, or any State and local laws and regulations, applicable to the PIADC.

PART 504—USER FEES

Sec.

504.1 General statement.
504.2 Fees for deposit and requisition of microbial cultures.
504.3 Payment of fees.
504.4 Exemptions from user fee charges.
504.5 Address.

AUTHORITY: 31 U.S.C. 9701.

SOURCE: 50 FR 5365, Feb. 8, 1985, unless otherwise noted.

§ 504.1 General statement.

This part sets forth fees to be charged for the deposit and distribution of microbial patent cultures. The fees set forth in this part are applicable to the Agricultural Research Service (ARS) Patent Culture Collection, Northern Regional Research Center, Peoria, Illinois.

§ 504.2 Fees for deposit and requisition of microbial cultures.

(a) Depositors of microbial cultures must pay a one-time $500 user fee for each culture deposited on or after November 1, 1983.

(b) For cultures deposited on or after November 1, 1983, requesters must pay a $20 user fee for each culture distributed. Cultures which were deposited on or after November 1, 1983 have an identification number greater than 15,722.

§ 504.3 Payment of fees.

(a) Payment of user fees must accompany a culture deposit or request.

(b) Payment shall be made by check, draft, or money order payable to USDA, National Finance Center.

§ 504.4 Exemptions from user fee charges.

(a) USDA laboratories and ARS cooperators designated by the Curator of the ARS Patent Culture Collection are exempt from fee assessments.

(b) The Curator of the ARS Patent Culture Collection is delegated the authority to approve and revoke exemptions from fee assessments.

§ 504.5 Address.

Deposits of and requests for microbial patent cultures should be directed to the Curator, ARS Patent Culture Collection, Northern Regional Research Center, USDA–ARS, 1815 N. University St., Peoria, Illinois 61604; (309) 685–4011.

PART 510—PUBLIC INFORMATION

Sec.
510.1 General statement.
510.2 Public inspection, copying, and indexing.
510.3 Requests for records.
510.4 Denials.
510.5 Appeals.

AUTHORITY: 5 U.S.C. 301, 552; 7 CFR Part 1, Subpart A and Appendix A thereto.

SOURCE: 60 FR 66062, Dec. 21, 1995, unless otherwise noted.

§510.1 General statement.

This part is issued in accordance with the regulations of the Secretary of Agriculture in Part 1, Subpart A of this title and Appendix A thereto, implementing the Freedom of Information Act (FOIA) (5 U.S.C. 552). The Secretary's regulations, as implemented by the regulations in this part, govern the availability of records of the Agricultural Research Service (ARS) to the public.

§510.2 Public inspection, copying, and indexing.

5 U.S.C. 552(a)(2) requires that certain materials be made available for public inspection and copying and that a current index of these materials be published quarterly or otherwise be made available. Members of the public may request access to such materials maintained by ARS at the following office: Information Staff, ARS, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207. Office hours are 8:00 a.m. to 4:30 p.m.

§510.3 Requests for records.

Requests for records of ARS under 5 U.S.C. 552(a)(3) shall be made in accordance with §1.6 of this title and submitted to the FOIA Coordinator, Agricultural Research Service, USDA, 6303 Ivy Lane, Room 456, Greenbelt, MD 20770; Telephone (301) 344–2207; Facsimile (301) 344–2325; TDD (301) 344–2435. The FOIA Coordinator is delegated authority to make determinations regarding such requests in accordance with §1.3(a)(3) of this title.

§510.4 Denials.

If the FOIA Coordinator determines that a requested record is exempt from mandatory disclosure and that discretionary release would be improper, the FOIA Coordinator shall give written notice of denial in accordance with §1.8(a) of this title.

§510.5 Appeals.

Any person whose request is denied shall have the right to appeal such denial. Appeals shall be made in accordance with §1.6(e) of this title and should be addressed as follows: Administrator, Agricultural Research Service, U.S. Department of Agriculture, Washington, DC 20250.

PART 520—PROCEDURES FOR IMPLEMENTING NATIONAL ENVIRONMENTAL POLICY ACT

Sec.
520.1 General statement.
520.2 Definition.
520.3 Policy.
520.4 Responsibilities.
520.5 Categorical exclusions.
520.6 Preparation of an Environmental Assessment (EA).
520.7 Preparation of an Environmental Impact Statement (EIS).

AUTHORITY: National Environmental Policy Act (NEPA) as amended, 42 U.S.C. 4321 *et seq.*; E.O. 11514, 34 FR 4247, as amended by E.O. 11991, 42 FR 26927; E.O. 12144, 44 FR 11957; 5 U.S.C. 301; 40 CFR 1500–1508.

SOURCE: 51 FR 34191, Sept. 25, 1986, unless otherwise noted.

§520.1 General statement.

These procedures assure that research and other activities of the Agricultural Research Service (ARS) comply with the intent of the National Environmental Policy Act of 1969 (NEPA) and appropriate regulations implementing this Act. These procedures incorporate and supplement, and are not a substitute for, CEQ regulations under 40 CFR parts 1500–1508, and Department of Agriculture NEPA Policies and Procedures under 7 CFR part 1b. ARS conducts and supports research as authorized by legislation to support one of the USDA goals of assuring adequate supplies of high quality food and fiber. Information generated through such research often forms the basic data needed to assess the impact of a new technology upon the environment.

Large scale projects simulating commercial practices are normally implemented in cooperation with other agencies of the Federal or State Governments.

§ 520.2 Definition.

Control Agents mean biological material or chemicals which are intended to enhance the production efficiency of an agricultural crop or animal such as through elimination of a pest.

§ 520.3 Policy.

(a) It is ARS policy to comply with the provisions of NEPA and related laws and policies.

(b) Environmental documents should be concise, written in plain language, and address the issues pertinent to the decision being made.

(c) Environmental documents may be substituted or combined with other reports which serve to facilitate decisionmaking.

(d) Costs of analyses and environmental documents are to be planned for during the budgetary process for the plan, program, or project. Special provisions for financing NEPA process activities which are unanticipated and extraordinary may be made in the Office of the Administrator of ARS.

(e) ARS personnel will cooperate with other agencies, States, contractors, or other entities proposing to undertake activities involving the ARS to assure that NEPA considerations are addressed early in the planning process to avoid delays and conflicts as required by 40 CFR 1501.2.

(f) For some activities, project participants outside ARS may be required to provide data and documentation. When an applicant or contractor prepares an environmental assessment (EA) or a contractor prepares an environmental impact statement (EIS), the activities shall be carried out according to 40 CFR 1506.5.

(g) Environmental documents, decision notices, and records of decision must be made available for review by the public. There shall be an early and open process for determining the scope of issues to be addressed in the environmental analysis process (40 CFR 1501.7).

(h) The concepts of tiering to eliminate repetitive discussions applicable to EIS's (40 CFR Part 1502) are also applicable to EA's.

(i) ARS personnel may adopt an existing EA or EIS when a proposed action is substantially the same as the action for which the existing EA or EIS was prepared (40 CFR 1506.3 (b)).

(j) ARS personnel may incorporate by reference any existing documents in order to reduce the bulk of an EA or EIS (40 CFR 1502.21).

(k) After prior consultation with the Council on Environmental Quality, ARS personnel may forego preparation of an EA or EIS in emergency situations (40 CFR 1506.11).

§ 520.4 Responsibilities.

(a) *Administrator.* The Administrator is responsible for environmental analysis and documentation required for compliance with the provisions of NEPA and related laws, policies, plans, programs, and projects. The ARS Assistant Administrator for Cooperative Interactions has been delegated responsibility for the establishment of procedures and coordination necessary to carry out the policies and provisions of NEPA.

(b) *Deputy Administrators and Area Directors.* The Deputy Administrators and Area Directors are responsible to the Administrator for assuring that ARS programs are in compliance with the policies and procedures of NEPA.

§ 520.5 Categorical exclusions.

For the following categories of actions, the preparation of an EA or EIS is not required:

(a) *Department of Agriculture categorical exclusions (7 CFR 1b.3).*

(1) Policy development, planning and implementation which are related to routine activities such as personnel, organizational changes or similar administrative functions;

(2) Activities which deal solely with the functions of programs, such as program budget proposals, disbursement, transfer or reprogramming of funds;

(3) Inventories, research activities and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity;

(4) Educational and information programs and activities;

(5) Activities which are advisory and consultative to other agencies, public and private entities, and

(6) Activities related to trade representation and market development activities overseas.

(b) *ARS categorical exclusions.* ARS actions which, based on previous experience, have been found to have limited scope and intensity and produce little or no individual or cumulative impacts to the human environment. Some examples are:

(1) Repair, replacement of structural components or equipment, or other routine maintenance of facilities controlled in whole or in part by ARS;

(2) Research programs or projects of limited size and magnitude or with only short-term effects on the environment. Examples are:

(i) Research operations conducted within any laboratory, greenhouse or other contained facility where research practices and safeguards prevent environment impacts such as the release of hazardous materials into the environment;

(ii) Inventories, studies or other such activities that have limited context and minimal intensity in terms of changes in the environment;

(iii) Testing outside of the laboratory, such as in small isolated field plots, which does not involve the use of control agents requiring containment or a special license or a permit from a regulatory agency.

(c) *Exceptions to categorical exclusions.* An environmental assessment shall be prepared for an activity which is normally within the purview of categorical exclusion if there are extraordinary circumstances which may cause such activity to have a significant environmental effect.

§520.6 Preparation of an Environmental Assessment (EA).

(a) *Actions requiring EA.* The following actions would normally require an EA:

(1) Programs, supported in the majority by ARS, which may assist in the transition of a particular technology from field evaluation stage to large-scale demonstration or simulated commercial phase;

(2) Field work having an impact on the local environment such as earth excavation, explosives, weather modifications, or other such techniques; and

(3) The testing outside the laboratory, such as small isolated field plots, of control agents which require containment precautions or either a special license or a permit from a regulatory agency.

(b) *Multiple agencies actions.* If more than one Federal agency participates in a program activity, the EA shall be prepared by the lead agency as provided in 40 CFR 1501.5.

(c) *Format and conclusion.* An EA can be in any format provided it covers in a logical and succinct fashion the information necessary for determining whether a proposed Federal action may have a significant environmental impact and thus warrant preparation of an EIS. The EA will contain the information required by 40 CFR 1508.9. This information will include brief discussions of the need for the project or other proposal, alternatives, environmental impacts of the proposed action and alternatives and a listing of agencies and persons consulted.

(d) *Decision notice.* Upon completion of an EA, the responsible official will consider the information it contains, decide whether an EIS is required or that no significant environmental impact will occur, and will document the decision and the reasons for it. The decision and the EA shall be available to the public in a manner appropriate to the situation. If there is a finding of no significant impact, the EA may be combined with the decision notice.

§520.7 Preparation of an Environmental Impact Statement (EIS).

(a) *Actions requiring EIS.* An EIS will normally be prepared for:

(1) Proposals for legislation which are determined to be a major Federal action significantly affecting the quality of the human environment; or,

(2) Other major Federal actions significantly affecting the quality of the human environment. In the experience of ARS, an environmental impact statement shall normally be required in situations when a research project

has advanced beyond the laboratory and small plot testing to full scale field testing over a very large area and involving the introduction of control agents.

(b) *Notice of intent.* If the responsible official recommends the preparation of an EIS, then the public shall be apprised of the decision. This notice shall be prepared according to 40 CFR 1508.22.

(c) *Draft and final EIS.* The process of preparing the draft and final EIS, as well as the format, shall be according to 40 CFR parts 1502–1506.

(d) *Decisionmaking and implementation.* The responsible official may make a decision no sooner than thirty days after the notice of availability of the final EIS has been published in the FEDERAL REGISTER by the Environmental Protection Agency (40 CFR 1506.10). The decision will be documented in a Record of Decision required by 40 CFR 1502.2, and monitoring and mitigation activities will be implemented as required by 40 CFR 1505.3.

CHAPTER VI—NATURAL RESOURCES CONSERVATION SERVICE, DEPARTMENT OF AGRICULTURE

EDITORIAL NOTE: Nomenclature changes to Chapter VI appear at 60 FR 28514, June 1, 1995.

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SUBCHAPTER A—GENERAL

PART 600—ORGANIZATION

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AUTHORITY: 5 U.S.C. 552.

SOURCE: 47 FR 14683, Apr. 6, 1982, unless otherwise noted.

§ 600.1 General.

(a) The Natural Resources Conservation Service (NRCS) was established by the Soil Conservation Act of 1935 (Pub. L. 74–46, 49 Stat. 163 (16 U.S.C. 590 (a-f))) to provide for the protection of land resources against soil erosion and for other related purposes. Subsequent legislation has increased and broadened the NRCS mission. The NRCS organization consists of a National Headquarters located in Washington, D.C., 4 national technical centers, 50 state offices and an equivalent office in the Caribbean Area, approximately 3300 area and field offices, approximately 285 specialized other offices, and 20 plant materials centers. Area and field offices provide assistance to soil and water and other types of conservation districts. Most counties in the states, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands are served by a soil and water or other type of conservation district. Other specialized offices serve local public sponsored projects and certain NRCS soil survey operations.

(b) NRCS is responsible for developing and carrying out a national program of conservation of soil, water, and related resources. Programs administered by NRCS include basic soil and water conservation, watershed protection, flood prevention, cooperative river basin surveys and investigations, Great Plains conservation, resource conservation and development, and others as assigned by the Secretary of Agriculture.

§ 600.2 National headquarters.

(a) *Chief.* The Chief, with the assistance of the Associate Chief, is responsible for the development of rules, policies, and procedures and the general direction and supervision of the programs assigned to NRCS.

(b) *Deputy Chiefs.* Four deputy chiefs assist the Chief as follows:

(1) *Deputy Chief for Administration.* The Deputy Chief for Administration, with the assistance of an Associate Deputy Chief, is responsible for activities in administrative services, personnel, financial management, information resources management, and equal opportunity.

(2) *Deputy Chief for Programs.* The Deputy Chief for Programs, with the assistance of an Associate Deputy Chief, is responsible for activities in basin and area planning, conservation planning and application, land treatment, land use and rural development, operations management, and project development and maintenance.

(3) *Deputy Chief for Technology.* The Deputy Chief for Technology, with the assistance of an Associate Deputy Chief, is responsible for activities in ecological sciences, economics and social sciences, engineering, and international activities.

(4) *Deputy Chief for Assessment and Planning.* The Deputy Chief for Assessment and Planning, with the assistance of an Associate Deputy Chief, is responsible for activities in appraisal and program development, budget planning and analysis, cartography and geographic information systems, evaluation and analysis, resources inventory, and soil survey.

(c) *Assistant Chiefs.* Each assistant chief represents the Chief in designated areas of the United States in coordinating and integrating all aspects of NRCS programs and activities. They provide leadership and guidance to state conservationists and national technical center directors.

(d) *Administrative Support Staff.* The administrative support staff provides

for a coordinated administrative management program for national headquarters activities.

(e) *Legislative Affairs Staff.* The legislative affairs staff provides coordination and assistance to the Chief in the conduct of legislative affairs.

(f) *Public Information Staff.* The public information staff directs a program of information support and public affairs activities.

[49 FR 44743, Nov. 9, 1984]

§ 600.3 National technical centers.

National technical centers are located at Chester, Pennsylvania; Fort Worth, Texas; Lincoln, Nebraska; and Portland, Oregon. Each national technical center provides specialized technical assistance and services to an assigned group of states.

[49 FR 44744, Nov. 9, 1984]

§ 600.4 State offices.

Each office is under the direction and supervision of a state conservationist. Each state conservationist is responsible to the Chief for NRCS programs in a state. The Caribbean Area Office, under the direction and supervision of a director, serves the Commonwealth of Puerto Rico and the U.S. Virgin Islands. The Director of the Caribbean Area has the same responsibility and authority as a state conservationist. All references to state conservationists in this chapter include the Director of the Caribbean Area.

§ 600.5 Area offices.

Except for some states and the Caribbean Area, states have area offices which serve as a supervisory level between the state and field offices. Each area office is under the direction and supervision of an area conservationist who is responsible for NRCS activities in the area.

§ 600.6 Field offices.

Each field office is under the direction and supervision of a district conservationist who is responsible for NRCS activities in the geographical area served by the field office. Usually, the geographical area of a field office includes one or more conservation districts and one or more counties.

§ 600.7 Other field offices.

Other field offices serve specialized activities, such as watershed protection and flood prevention projects, resource conservation and development areas, and NRCS soil survey activities. Direction and supervision of these offices are designated by the state conservationist.

§ 600.8 Plant materials centers.

Plant materials centers assemble and test plant species for conservation uses. Usually, a center serves two or more states, and is under the jurisdiction of the state conservationist of the state in which located. Centers are directed and supervised by a manager who is responsible to an area or the state office as designated by the state conservationist.

PART 601—FUNCTIONS

Sec.
601.1 Functions assigned.
601.2 Function reserved to the Secretary of Agriculture.
601.3 Functions reserved to the Assistant Secretary for Natural Resources and Environment.
601.4 Natural disaster assistance.
601.5 Defense responsibilities.

AUTHORITY: 37 FR 28463, 38 FR 14945, 7 CFR 2.7–2.12; 38 FR 14945–14948, 7 CFR 2.19–2.20; 38 FR 14951–14952, 7 CFR 2.62.

SOURCE: 38 FR 34642, Dec. 17, 1973, unless otherwise noted.

§ 601.1 Functions assigned.

The above authorities assign the following functions to the Natural Resources Conservation Service:

(a) Provide national leadership in the conservation, development, and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure (1) quality in the

natural resource base for sustained use; (2) quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and (3) quality in the standard of living based on community improvement and adequate income.

(b) Participate in evaluating and coordinating land use policy.

(c) Administer the basic program of soil and water conservation under Pub. L. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590 a–f, i–l, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(1) Technical assistance to land users in carrying out locally adopted soil and water conservation programs primarily through the conservation districts in the 50 States, Puerto Rico, and Virgin Islands, but also to communities, watershed groups, Federal and State agencies and other cooperators including such assistance as:

(i) Comprehensive planning assistance in nonmetropolitan districts.

(ii) Assistance in the field of income producing recreation on rural non-Federal lands.

(iii) Forestry assistance, as a part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands.

(iv) Assistance in developing programs relating to natural beauty.

(v) Assistance to other Department agencies in connection with the administration of their program, as follows:

(A) Agricultural Stabilization and Conservation Service in the development and technical servicing of certain programs, such as the rural environmental assistance program, water bank program, Appalachian regional development program and other such similar conservation programs.

(B) Farmers Home Administration in connection with their loan programs.

(2) Soil surveys, including:

(i) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing of soil surveys.

(ii) Conducting soil surveys for resource planning and development.

(iii) Performing the cartographic services essential to carrying out the functions of the Natural Resources Conservation Service, including furnishing photographs, mosaics, and maps.

(3) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. 4 of 1940 (5 U.S.C. App.).

(4) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Natural Resources Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011).

(5) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(d) Administer the watershed protection and flood prevention programs, including:

(1) The 11 authorized watershed projects under Pub. L. 534, 78th Congress, 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service.

(2) The emergency flood control work under section 216 of Pub. L. 516, 81st Congress, 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service.

(3) The cooperative river basin surveys and investigations programs under section 6 of Pub. L. 566, 83rd Congress, 16 U.S.C. 1006, except for responsibilities assigned to the Forest Service. Representation on the Water Resources Council and river basin commissions created by Pub. L. 89–80, 42 U.S.C. 1962, and on river basin interagency committees.

(4) The pilot watershed projects under Pub. L. 46, 74th Congress, 16 U.S.C. 590a–f, and Pub. L. 156, 83rd Congress, except for responsibilities assigned to the Forest Service.

(5) The watershed protection and flood prevention program under Pub. L. 566, 83rd Congress, as amended, 16 U.S.C. 1001–1009, except for responsibilities assigned to the Farmers Home Administration and the Forest Service.

(6) The joint investigations and surveys with the Department of the Army under Pub. L. 87–639, 16 U.S.C. 1009.

(e) Administer the Great Plains Conservation program under Pub. L. 1021, 84th Congress, as amended 16 U.S.C. 590p(b).

(f) Administer the Resource Conservation and Development Program under Pub. L. 46, 74th Congress, 16 U.S.C. 590a–f; Pub. L. 87–703, as amended, 7 U.S.C. 1010–1011; and Pub. L. 97–98, 16 U.S.C. 3451–3461; except for responsibilities assigned to the Farmers Home Administration.

(g) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(h) Assistance to qualifying states and local governments in the development and implementation of coastal management plans or programs prepared under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.) consistent with section 303(d) of that act.

(i) Administer abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87) 91 Stat. 445 et seq., except where it relates to responsibilities assigned to the Forest Service and Agricultural Research Service.

[38 FR 34642, Dec. 17, 1973, as amended at 42 FR 59955, Nov. 23, 1977; 48 FR 19356, Apr. 29, 1983; 50 FR 7906, Feb. 27, 1985]

§ 601.2 Function reserved to the Secretary of Agriculture.

Designation of new project areas in which the resource conservation and development program assistance will be provided.

§ 601.3 Functions reserved to the Assistant Secretary for Natural Resources and Environment.

(a) Executing cooperative agreements and memoranda of understanding containing representations in the name of the Secretary of the Department of Agriculture as a whole, including the cooperation of the Department with conservation districts and other districts organized for soil and water conservation within the States, territories, and possessions.

(b) Giving final approval and transmitting to the Congress watershed work plans that require congressional approval; and approving and transmitting to the Congress comprehensive river basin reports.

(c) Approving additions to authorized Resource Conservation and Development Projects.

(d) Land use policy evaluation and coordination.

[38 FR 34642, Dec. 17, 1973, as amended at 48 FR 19356, Apr. 29, 1983]

§ 601.4 Natural disaster assistance.

(a) To assist in emergencies caused by natural disasters, the NRCS may:

(1) Provide technical and financial assistance under authority of section 216 of the Flood Control Act of 1950 (Pub. L. 81–516, 64 Stat. 184, 33 U.S.C. 701b) as set forth in Part 624 of this chapter.

(2) Provide technical assistance for rehabilitation of land and conservation systems for which other U.S. Department of Agriculture agencies provide cost sharing.

(3) Provide technical assistance on rehabilitation of rural lands damaged by natural disaster.

(4) Provide assistance in evaluating the severity of the disaster, assessing problems created, and determining the amount and kind of emergency work needed for restoration.

(5) Provide available information, maps, and reports on projects described in Parts 621, 622, 623, and 640 of this chapter.

(6) Provide assistance in locating heavy earthmoving equipment.

(7) Make light trucks and other types of NRCS transportation equipment available for emergency use.

(8) Provide technical assistance in locating alternate routes when existing roads and highways cannot be used.

(b) It is the responsibility of the state conservationist in a major disaster, or the head of area and field offices in a local emergency, to determine the extent of NRCS assistance necessary and available.

§601.5 Defense responsibilities.

In the event of a nuclear attack NRCS is responsible for providing:

(a) Technical guidance, based upon results of radiological monitoring and the extent of radiological contamination, to farmers, ranchers, and others relating to:

(1) The selection and use of land for agricultural production.

(2) The harvesting of crops.

(3) The use of crops stored on the farm.

(4) The use, conservation, disposal, and control of water to insure adequate usable water for agricultural purposes and to prevent floods.

(5) The safety of livestock.

(b) Basic soil information, land use guides, and on-site technical assistance in selecting land for production and in applying practices to increase production of food and fiber with maximum efficiency.

SUBCHAPTER B—CONSERVATION OPERATIONS

PART 610—TECHNICAL ASSISTANCE

Subpart A—Conservation Operations

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610.1 Purpose.
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AUTHORITY: 16 U.S.C. 590a–590f, 590q, 3801(a)(9).

SOURCE: 42 FR 38169, July 27, 1977, unless otherwise noted.

Subpart A—Conservation Operations

§ 610.1 Purpose.

This subpart sets forth Natural Resource Conservation Service (NRCS) policies and procedures for furnishing technical assistance in conservation operations.

[61 FR 27999, June 4, 1996]

§ 610.2 Scope.

Conservation operations, including technical assistance, is the basic soil and water conservation program of NRCS. This program is designed to provide assistance to (a) reduce soil losses from erosion; (b) help solve soil, water, and agricultural waste management problems; (c) bring about adjustments in land use as needed; and (d) reduce damage caused by excess water and sedimentation. The Natural Resources Conservation Service is the technical agency of the U.S. Department of Agriculture for providing assistance to conservation districts and other organizations in planning and carrying out their conservation programs. NRCS works with individuals, groups, and units of government to help them plan and carry out conservation decisions to meet their objectives.

§ 610.3 Assistance through conservation districts.

(a) Technical assistance is provided through and in cooperation with conservation districts in the 50 States, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. These districts, formed under authority of State laws, are operated and controlled by local citizens. They provide the leadership and the program needed to meet the conservation objectives of the district.

(b) NRCS furnishes technical assistance to conservation districts as specified in memorandums of understanding. Soil conservationists assigned to conservation districts work directly with land users and others according to the program needs and the priorities established by the conservation districts.

(c) The practical experience of land users is combined with the scientific knowledge and skills of professional conservationists to plan and carry out locally formulated conservation programs.

(d) When requested, technical assistance may be provided to owners, operators, or groups using land that is under the jurisdiction of the United States Department of the Interior if such land is included in a conservation district or if assistance is in accordance with memorandums of understanding identifying the coordination of agency activities.

§ 610.4 Technical assistance furnished.

The Natural Resources Conservation Service provides technical assistance to land users and others who are responsible for making decisions and setting policies that influence land use, conservation treatment, and resource management. Technical assistance furnished by NRCS consists of program assistance, planning assistance, application of conservation practices, and assistance in the technical phases of USDA cost-share programs.

(a) Program assistance is provided to conservation districts and other organizations concerned with the conservation of soil, water, plant, and wildlife resources. This assistance includes providing resource inventory data and identifying conservation problems and needs in order for districts to develop long-range soil and water conservation programs. Individuals, groups, and organizations requesting NRCS assistance through conservation districts include:

(1) Farmers, ranchers, and other land users concerned with the conservation of land and water resources.

(2) County and other local government units such as park authorities, departments of public works, planning, zoning (rural, urban, and flood plain), school, and institution boards, highway departments, and tax assessors.

(3) Citizen groups, youth groups, recreation groups, and garden clubs.

(4) State and local units of government (highway, health, recreation, water resources, and regional planning) involved in establishing public policy regarding the use of resources.

(5) Federal departments and agencies such as Defense, Housing and Urban Development, Public Roads, Health and Human Services; and Interior.

(6) Professional consultants who provide services such as engineering, planning, environmental assessment, tax assessment, and forest management.

(b) Planning assistance includes evaluation of soil, water, vegetation, and other resource data needed for making land use, environmental and conservation treatment decisions. NRCS helps land users make conservation plans for farms, ranches, and other land units. This help includes onsite planning assistance in making conservation plans. The plans are based on a soil survey and interpretations for the intended land uses and conservation treatment. Plans may also include other inventories of soil, water, plant, and related resources needed in the planning process. Information about the responses of each kind of soil and the conservation practices and resource management needed for different land uses is provided. The land user's decisions recorded in the plan are based on his conservation objectives. Conservation plans provide for the orderly installation of conservation practices. Conservation plans reflect changing conditions.

(c) Application assistance is provided to help land users apply and maintain planned conservation work. NRCS assistance for applying the conservation practices in the plan may include:

(1) Designing, constructing, and maintaining conservation practices;

(2) Selecting management alternatives and cultural practices needed to establish and maintain vegetation; and

(3) Other conservation practices needed to protect land and water resources.

(d) The Natural Resources Conservation Service assists in carrying out certain phases of USDA soil and water conservation cost-share programs. NRCS assists individual program participants with conservation plans needed for long-term cost-share agreements. NRCS is assigned responsibility by the Secretary of Agriculture for technical phases of applying conservation practices on the land. This assignment includes:

(1) Determining what practices are needed and feasible to install, (2) selecting sites and planning and designing practices, (3) providing assistance for installing practices, and (4) certifying that the work done is in accordance with NRCS standards and specifications.

[42 FR 38169, July 27, 1977, as amended at 47 FR 56473, Dec. 17, 1982]

§610.5 Interdisciplinary assistance.

Technical assistance is based on the principle that soil, water, plant, and related resources are interdependent and must be managed accordingly. Soil conservationists integrate the various technical fields in providing for the conservation of land and water resources. Staff scientists and specialists develop conservation standards, prepare necessary specifications, provide training, and review work performance, NRCS uses consultants for conservation problems that require special expertise.

Subpart B—Soil Erosion Prediction Equations

SOURCE: 61 FR 27999, June 4, 1996, unless otherwise noted.

§ 610.11 Purpose and scope.

This subpart sets forth the equations and rules for utilizing the equations that are used by the Natural Resources Conservation Service (NRCS) to predict soil erosion due to water and wind. Section 301 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIRA) and the Food Security Act, as amended, 16 U.S.C. 3801–3813 specified that the Secretary would publish the universal soil loss equation (USLE) and wind erosion equation (WEQ) used by the Department within 60 days of the enactment of FAIRA. This subpart sets forth the equations, definition of factors, and provides the rules under which NRCS will utilize the USLE, the revised universal soil loss equation (RUSLE), and the WEQ.

§ 610.12 Equations for predicting soil loss due to water erosion.

(a) The equation for predicting soil loss due to erosion for both the USLE and the RUSLE is $A=R\times K\times LS\times C\times P$. (For further information about USLE see the U.S. Department of Agriculture Handbook 537, ''Predicting Rainfall Erosion Losses—A Guide to Conservation Planning,'' dated 1978. Copies of this document are available from the Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013. For further information about RUSLE see the U.S. Department of Agriculture Handbook 703, ''Predicting Soil Erosion by Water: A Guide to Conservation Planning with the Revised Universal Soil Loss Equation (RUSLE).'' Copies may be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.)

(b) The factors in the USLE equation are:

(1) *A* is the estimation of average annual soil loss in tons per acre caused by sheet and rill erosion.

(2) *R* is the rainfall erosivity factor. Accounts for the energy and intensity of rainstorms.

(3) *K* is the soil erodibility factor. Measures the susceptibility of a soil to erode under a standard condition.

(4) *LS* is the slope length and steepness factor. Accounts for the effect of length and steepness of slope on erosion.

(5) *C* is the cover and management factor. Estimates the soil loss ratio for each of 4 or 5 crop stage periods throughout the year, accounting for the combined effect of all the interrelated cover and management variables.

(6) *P* is the support practice factor. Accounts for the effect of conservation support practices, such as contouring, contour stripcropping, and terraces on soil erosion.

(c) The factors in the RUSLE equation are defined as follows:

(1) *A* is the estimation of average annual soil loss in tons per acre caused by sheet and rill erosion.

(2) *R* is the rainfall erosivity factor. Accounts for the energy and intensity of rainstorms.

(3) *K* is the soil erodibility factor. Measures the susceptibility of a soil to erode under a standard condition and adjusts it bi-monthly for the effects of freezing and thawing, and soil moisture.

(4) *LS* is the slope length and steepness factor. Accounts for the effect of length and steepness of slope on erosion based on 4 tables reflecting the relationship of rill to interrill erosion.

(5) *C* is the cover and management factor. Estimates the soil loss ratio at one-half month intervals throughout the year, accounting for the individual effects of prior land use, crop canopy, surface cover, surface roughness, and soil moisture.

(6) *P* is the support practice factor. Accounts for the effect of conservation support practices, such as cross-slope farming, stripcropping, buffer strips, and terraces on soil erosion.

§ 610.13 Equations For Predicting Soil Loss Due To Wind Erosion.

(a) The equation for predicting soil loss due to wind in the Wind Erosion Equation (WEQ) is E=f(IKCLV). (For further information on WEQ see the paper by N.P. Woodruff and F.H.

Siddaway, 1965. ''A Wind Erosion Equation,'' Soil Science Society of America Proceedings, Vol. 29, No. 5, pages 602–608, which is available from the American Society of Agronomy, Madison, Wisconsin. In addition, the use of the WEQ in NRCS is explained in the Natural Resources Conservation Service (NRCS) National Agronomy Manual, 190–V–NAM, second ed., Part 502, March, 1988, which is available from the NRCS, P.O. Box 2890, Washington, DC 20013.)

(b) [Reserved]

(c) The factors in the WEQ equation are defined as follows:

(1) *E* is the estimation of the average annual soil loss in tons per acre.

(2) *f* indicates the equation includes functional relationships that are not straight-line mathematical calculations.

(3) *I* is the soil erodibility index. It is the potential for soil loss from a wide, level, unsheltered, isolated field with a bare, smooth, loose and uncrusted surface. Soil erodibility is based on soil surface texture, calcium carbonate content, and percent day.

(4) *K* is the ridge roughness factor. It is a measure of the effect of ridges formed by tillage and planting implements on wind erosion. The ridge roughness is based on ridge spacing, height, and erosive wind directions in relation to the ridge direction

(5) *C* is the climatic factor. It is a measure of the erosive potential of the wind speed and surface moisture at a given location compared with the same factors at Garden City, Kansas. The annual climatic factor at Garden City is arbitrarily set at 100. All climatic factor values are expressed as a percentage of that at Garden City.

(6) *L* is the unsheltered distance. It is the unsheltered distance across an erodible field, measured along the prevailing wind erosion direction. This distance is measured beginning at a stable border on the upwind side and continuing downward to the nonerodible or stable area, or to the downwind edge of the area being evaluated.

(7) *V* is the vegetative cover factor. It accounts for the kind, amount, and orientation of growing plants or plant residue on the soil surface.

§610.14 Use of USLE, RUSLE, and WEQ.

(a) All Highly Erodible Land (HEL) determinations are based on the formulas set forth in 7 CFR §12.21 using some of the factors from the USLE and WEQ and the factor values that were contained in the local Field Office Technical Guide (FOTG) as of January 1, 1990. In addition, this includes the soil loss tolerance values used in those formulas for determining HEL. The soil loss tolerance value is used as one of the criteria for planning soil conservation systems. These values are available in the FOTG in the local field office of the Natural Resources Conservation Service.

(b) RUSLE will be used to:

(1)(i) Evaluate the soil loss estimates of conservation systems contained in the FOTG.

(ii) Evaluate the soil loss estimates of systems actually applied, where those systems were applied differently than specified in the conservation plan adopted by the producer or where a conservation plan was not developed, in determining whether a producer has complied with the HEL conservation provisions of the Food Security Act of 1985, as amended, 16 U.S.C. §3801 *et seq.*, set forth in 7 CFR Part 12; and

(2) Develop new or revised conservation plans.

PART 611—SOIL SURVEYS

Subpart A—General

Sec.
611.1 Purpose and scope.
611.2 Cooperative relationships.

Subpart B—Soil Survey Operations

611.10 Standards, guidelines, and plans.
611.11 Reproduction and distribution of soil survey information.

Subpart C—Cartographic Operations

611.20 Function.
611.21 Availability of aerial photography.
611.22 Availability of satellite imagery.

AUTHORITY: Pub. L. 74–46, 49 Stat. 163 (16 U.S.C. 590(a–f); Pub. L. 89–560, 80 Stat. 706 (42 U.S.C. 3271–3274).

SOURCE: 39 FR 7415, Feb. 26, 1974, unless otherwise noted.

Subpart A—General

§ 611.1 Purpose and scope.

(a) This part sets forth policy on soil survey operations of the Natural Resources Conservation Service (NRCS).

(b) NRCS is responsible for soil survey activities of the U.S. Department of Agriculture (USDA). A soil survey provides (1) an orderly, on-the-ground, scientific inventory of soil resources according to their potentialities and problems of use, and (2) information about each kind of soil in sufficient detail to meet all reasonable needs of farmers, agricultural technicians, community planners, engineers, and scientists in planning and transferring the findings of research and experience to specific land areas.

§ 611.2 Cooperative relationships.

(a) Soil surveys on nonfederal lands are carried out cooperatively with state agricultural experiment stations and other state agencies. The cooperative effort is evidenced in a memorandum of understanding setting forth guidelines for actions to be taken by each cooperating party in the performance of soil surveys. Similar cooperative arrangements exist between NRCS and other federal agencies for soil surveys on federal lands.

(b) Arrangements for nonfederal financial participation in the cost of soil surveys may be made with states, counties, soil conservation districts, planning agencies, and other local groups.

Subpart B—Soil Survey Operations

§ 611.10 Standards, guidelines, and plans.

(a) NRCS conducts soil surveys under national standards and guidelines for naming, classifying, and interpreting soils and for publishing soil surveys in the USDA series.

(b) A soil survey work plan of a county or area of similar size that is to be completed for publication is prepared prior to the start of each soil survey. The work plan provides information relevant to the conduct and publication of the soil survey. The plan is signed by representatives of NRCS, land grant universities, and in some states representatives of other state agencies. Federal land administering agencies also sign the work plan if federal lands are included in the survey.

§ 611.11 Reproduction and distribution of soil survey information.

(a) *Published soil surveys.* (1) When soil survey field work is completed on a designated area, NRCS publishes the soil survey as soon as possible so that the information will be available to the public The published soil survey includes soil maps, soil descriptions, and soil interpretations for appropriate uses such as farming, engineering, range, woodland, recreation, and wildlife.

(2) Each party cooperating with NRCS in a soil survey will receive without cost 50 copies of the published soil survey. Prior to publication each may order additional copies at printing cost by preparing a special amendment to the soil survey work plan.

(3) The number of copies to be published and the distribution of a published soil survey are coordinated by NRCS with those cooperating in the survey and with the U.S. Senators from the state and the U.S. Representative from the congressional district in which the survey was made.

(4) Copies of published soil surveys are sent by the Superintendent of Documents, U.S. Government Printing Office, to depository libraries that have requested them. Copies also are sent to interested agencies that have requested them.

(5) Published soil surveys may be obtained without charge if available, from NRCS field and state offices, and from respective members of the United States Senate and House of Representatives. Land grant universities also may have copies. When the supply is exhausted, reference copies generally are available from libraries or on interlibrary loan.

(b) *Interim soil reports.* (1) State and local units of government and others may need soil survey information for subdivision, town, or county planning, tax assessment, and other uses prior to the time a soil survey is published. NRCS may prepare interim reports to provide soil survey information to meet these needs.

(2) Interim soil reports may include copies of soil survey field sheets, soil descriptions, and soil interpretive maps and tables showing the general rating of each kind of soil for various uses such as farming, range, woodland, engineering, recreation, and wildlife.

(c) *Resource conservation plan data.* Information prepared specifically for use in developing resource conservation plans for soil conservation district cooperators is considered confidential. Soil maps and interpretations prepared for this use will not be made available to others without the consent of the landowner as well as the district governing body. However, copies of soil survey field sheets and related data from which the conservation plan was developed may be purchased from the local NRCS field office with prior approval from the NRCS state office. The purchase is subject to the fee schedule cited in §1.2(b) of this title.

(d) *Identity of advance reproductions.* Advance reproductions of individual soil survey field sheets include the name of the soil survey area, the state, the names of the parties cooperating in the survey, date of survey, map scale, and necessary precautionary notes.

[39 FR 7415, Feb. 26, 1974, as amended at 39 FR 27553, July 29, 1974]

Subpart C—Cartographic Operations

§611.20 Function.

The NRCS Cartographic Division provides cartographic services needed to carry out NRCS functions. Cartographic services include general cartography, photogrammetry, aerial photography, planimetric and topographic mapping, drafting, and specialized types of reproduction.

§611.21 Availability of aerial photography.

The Cartographic Division obtains necessary clearnace for all aerial photography for NRCS. New aerial photography of designated areas in the United States is obtained yearly by NRCS through competitive contracting. This photography is obtained only after it is determined that imagery of these areas available from other sources does not meet NRCS scale and quality requirements. Orders for reproductions of NRCS aerial photography are subject to the fee schedule cited in §1.2(b) of this title. Order reproductions from the Cartographic Division, USDA—Natural Resources Conservation Service, Federal Center Building, No. 1, Hyattsville, Maryland 20782.

§611.22 Availability of satellite imagery.

Cloud-free maps of the United States based on imagery received from a satellite are prepared and released to the public by NRCS. The maps offer the first image of the United States not obscured by clouds or distortions. Orders or requests for information should be directed to the Cartographic Division, USDA—Natural Resources Conservation Service, Federal Center Buildings, No. 1, Hyattsville, Maryland 20782. Orders are subject to the fee schedule cited in §1.2(b) of this title.

PART 612—SNOW SURVEYS AND WATER SUPPLY FORECASTS

Sec.
612.1 Purpose and scope.
612.2 Snow survey and water supply forecast activities.
612.3 Data collected and forecasts.
612.4 Eligible individuals or groups.
612.5 Dissemination of water supply forecasts and basic data.
612.6 Application for water supply forecast service.
612.7 Forecast user responsibility.

AUTHORITY: 26 Stat. 653; Sec. 8, Reorg. Plan No. IV of 1940, 54 Stat. 1234 (5 U.S.C. App. II); 5 FR 2421, 3 CFR 1938–1943 Comp. P. 1288.

SOURCE: 40 FR 12067, Mar. 17, 1975, unless otherwise noted.

§612.1 Purpose and scope.

This part sets forth Natural Resources Conservation Service (NRCS) policy and procedure for the administration of a cooperative snow survey and water supply forecast program. The program provides agricultural water users and other water management groups in the western states area with water supply forecasts to enable them to plan for efficient water management. The program also provides the public and the scientific community with a data base that can be used

to accurately determine the extent of the now resource. The western states area comprises Alaska, Arizona, California (east side of the Sierra Nevada mountain range only), Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

§ 612.2 Snow survey and water supply forecast activities.

To carry out the cooperative snow survey and water supply forecast program, NRCS:

(a) Establishes, maintains, and operates manual and automated snow course and related hydro meteorological networks. Planning for such networks is carried out in accordance with OMB Circular A–62.

(b) Determines and provides information on the expected water supply, including seasonal streamflow data. If pertinent and appropriate to the needs of cooperators and not otherwise available to them, may provide necessary interpretative analyses and forecasts required for operation of water-control structures and/or agricultural operations.

(c) On request and to the extent NRCS resources and any required cooperator contributions are available, establishes hydrometeorological stations to cllect and provide data and necessary interpretive analyses to the requesting party. By written agreement NRCS may accept cooperators' funds, materials, equipment, and services for this purpose.

(d) Develops and encourages use of new techniques and improving data collection and processing.

(e) Cooperates with other federal, state, and local agencies, organizations, and Canadian provinces and agencies.

§ 612.3 Data collected and forecasts.

(a) Basic data are currently collected at numerous sites in the western states area. Data sites generally include a snow course where both snow depth and water equivalent of snow are measured. However, special sites may measure only snow depth or water equivalent. Many of these sites also provide related drometeorological data, such as precipitation, temperature, humidity, solar tradiation, and wind.

(b) Water supply forecasts in the western states area are generally made monthly from January through June. Forecasts may be made more frequently for an established need when data are available to NRCS.

§ 612.4 Eligible individuals or groups.

(a) Any individual or group who is a significant water user and who would benefit from a water supply forecast may obtain forecasts from NRCS on a regular basis provided data are available to NRCS to develop a forecast at the desired location.

(b) The program collects and interprets data as a service and an aid to agricultural interests, particularly those served by or affiliated with soil, water, and other conservation districts. Information collected by NRCS for these agricutural users is also made available to other Federal, State, and private agencies and to the general public without charge. Cooperator financial contribution is usually required for special measurements or interpretations beyond the scope of the regular program.

§ 612.5 Dissemination of water supply forecasts and basic data.

Water supply outlook reports prepared by NRCS and its cooperators containing water supply forecasts and basic data are usually issued monthly by each NRCS state office in the western states area for the months of January through June. Other reports jointly issued by NRCS and its cooperators include a fall water supply summary, annual and accumulative summaries of data, and a western states area report covering water supply outlook.

§ 612.6 Application for water supply forecast service.

Requests for obtaining water supply forecasts or related assistance may be directed to any NRCS office in the western states areas. NRCS offices are described in part 600 of this chapter.

§ 612.7 Forecast user responsibility.

The forecast user's obligation to the federal government is to give appropriate credit and recognition to NRCS for information furnished. The Federal

Government does not assume any responsibility for management decisions the user makes which may be based in whole or part on information provided by NRCS.

PART 613—PLANT MATERIALS CENTERS

Sec.
613.1 Purpose.
613.2 Policy and objectives.
613.3 NRCS responsibilities in plant materials.
613.4 Special production of plant materials.
613.5 Plant materials centers.

AUTHORITY: Pub. L. 74–46, 49 Stat. 163 (16 U.S.C. 590a–f); Pub. L. 74–210, 50 Stat. 525 (7 U.S.C. 1010–1011)

SOURCE: 49 FR 12188, Mar. 29, 1984, unless otherwise noted.

§613.1 Purpose.

This part provides Natural Resources Conservation Service (NRCS) policy on the operations of plant materials centers. The centers have responsibilities for assembling, testing, releasing, and providing for the commercial production and use of plant materials for programs of soil, water, and related resource conservation and development.

§613.2 Policy and objectives.

(a) It is NRCS policy to assemble, comparatively evaluate, release, and distribute for commercial increase new or improved plant materials needed for broad programs of resource conservation and development for agriculture, wildlife, urban, recreation, and other land uses and environmental needs. It is NRCS policy to conduct plant materials work in cooperation with other agencies of the U.S. Department of Agriculture, such as the Agricultural Research Service, and with other federal and state research agencies including state agricultural experiment stations. The emphasis of the NRCS plant materials work is to find suitable plants for erosion control adapted to soil and site conditions where vegetation is difficult to establish. In contrast, the emphasis of research agencies and organizations in plant development is to improve economically important crops. The NRCS program of testing and releasing new seed-propagated plant materials follows the guidelines in ''Statement of Responsibilities and Policies Relating to the Development, Release, and Multiplication of Publicly Developed Varieties of Seed-Propagated Crops,'' which was adopted in June 1972 by land grant colleges and interested federal agencies. NRCS releases improved conservation plant materials requiring vegetative multiplication in ways appropriate for particular states and particular species by working with experiment stations, crop improvement associations, and other state and federal agencies.

(b) The objective of the plant materials activity is to select or develop special and improved plants, and techniques for their successful establishment and maintenance to solve conservation problems and needs related to:

(1) Controlling soil erosion on all lands.

(2) Conserving water.

(3) Protecting upstream watersheds.

(4) Reducing sediment movement into waterways and reservoirs through the stabilization of critical sediment sources such as surface mined lands, highway slopes, recreation sites, and urban and industrial development areas.

(5) Stabilizing disposal areas for liquid and solid wastes.

(6) Improving plant diversity and lengthening grazing season on dryland pastures and rangelands.

(7) Replacing brush on mountain slopes with fire-retarding plant cover to reduce the possibility of fires that threaten life and property or result in serious sediment sources.

(8) Improving the effectiveness of windbreaks and shelterbelts for reducing airborne sediment, controlling snow drifting, and preventing crop damage from wind erosion.

(9) Protecting streambank, pond, and lake waterlines from erosion by scouring and wave action.

(10) Improving wildlife food and cover.

(11) Selecting special-purpose plants to meet specific needs for environment protection and enhancement.

(12) Selecting plants that tolerate air pollution agents and toxic soil chemicals.

§ 613.3 NRCS responsibilities in plant materials.

NRCS operates or enters into agreements with state universities or other state organizations to operate plant materials centers. NRCS employs specialists for selecting and using plant materials. NRCS responsibilities are to:

(a) Identify the need for suitable plant materials and cultural and management methods in resource conservation and for environmental protection and enhancement.

(b) Assemble and comparatively evaluate plant materials at the plant materials centers and on sites where soil, climate, or other conditions differ significantly from those at the centers.

(c) Make comparative field plantings for final testing of promising plants and techniques in cooperation with conservation districts and other interested cooperators.

(d) Release cooperatively improved conservation plants and maintain the breeder or foundation stocks in ways appropriate for particular state and plant species by working with experiment stations, crop improvement associations, and other state and federal agencies.

(e) Produce limited amounts of foundation or foundation-quality seed and plants available by grant to or by exchange with conservation districts, experiment stations, other federal and state research agencies, and state seed certifying organizations that will use the material to establish seed fields, seed orchards or plantings for vegetative increase.

(f) Encourage conservation districts, commercial seed producers, and commercial and state nurseries to produce needed plant materials for conservation uses and to assist them in this production.

(g) Encourage the use of improved plant materials in resource conservation and environmental improvement programs.

§ 613.4 Special production of plant materials.

NRCS can produce plant materials in the quantity required to do a specific conservation job if this production will serve the public welfare and only if the plant materials are not available commercially. This function will be performed only until the plant materials are available commercially. Specific production of plant materials by NRCS requires the approval of the Chief.

§ 613.5 Plant materials centers.

(a) The National Plant Materials Center. The National Plant Materials Center at Beltsville, Maryland, serves as the central facility for assembling, increasing, and determining the characteristics of plant materials from foreign and domestic sources. Plant materials with potential value for conservation and related uses are distributed to other plant materials centers.

(b) Other Plant Materials Centers. There are 23 other plant materials centers. Each serves several major land resource areas. Seventeen of these other centers are operated by NRCS, and six by cooperating agencies, as follows:

(1) Operated by NRCS:

Tucson, Arizona
Lockeford, California
Brooksville, Florida
Americus, Georgia
Molokai, Hawaii
Aberdeen, Idaho
Manhattan, Kansas
Quicksand, Kentucky
East Lansing, Michigan
Coffeeville, Mississippi
Elsberry, Missouri
Bridger, Montana
Cape May Courthouse, New Jersey
Big Flats, New York
Corvallis, Oregon
Knox City, Texas
Pullman, Washington

(2) Operated by cooperating agencies with financial and technical assistance from NRCS:

Los Lunas, New Mexico (New Mexico State University)
Bismarck, North Dakota (North Dakota Association of Soil Conservation Districts)
Meeker, Colorado (White River and Douglas Creek Soil Conservation Districts with partial funding from NRCS)

(3) Operated by cooperating agencies with technical assistance from NRCS:

Palmer, Alaska (State of Alaska)
Kingsville, Texas (Caesar Kleberg Wildlife Research Institute, Texas Agricultural and Industrial University, and South Texas Association of Conservation Districts)

Nacogdoches, Texas (Stephen F. Austin University and the East Texas Association of Conservation Districts)

PART 614—APPEAL PROCEDURES

Subpart A—General Provisions

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614.1 Purpose and scope.
614.2 Definitions.
614.3 Applicability.
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Subpart B—Appeals of Technical Determinations Related to the Conservation Title (Title XII) of the Food Security Act of 1985, as Amended

614.100 Applicability.
614.101 Notice of preliminary technical determinations.
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Subpart C—Appeals of Decision Related to Conservation Programs (non-Title XII)

614.200 Applicability.
614.201 Notice of final decisions.
614.202 Time frames for filing requests for informal hearings.
614.203 Mediation of adverse final decisions.
614.204 Appeals of adverse final decisions.

AUTHORITY: 5 U.S.C. 301, sections 226 and 275 of Pub. L. 103–354 (7 U.S.C. 6932 and 6995); 16 U.S.C. 3843(a).

SOURCE: 60 FR 67313, Dec. 29, 1995, unless otherwise noted.

Subpart A—General Provisions

§614.1 Purpose and scope.

This part sets forth the informal procedures under which a landowner or program participant may appeal adverse technical determinations or decisions made by officials of the Natural Resources Conservation Service (NRCS) or its successor agency.

§614.2 Definitions.

Adverse technical determination or decision includes, in addition to the definition of adverse decision in 7 CFR part 11, an NRCS technical determination or decision that affects the legal substantive status of the land, though it may not necessarily be adverse.

Chief means the Chief of NRCS. For the purposes of this part, the term ''Chief'' includes an official of NRCS national headquarters designated by the Chief to act for the Chief in making decisions under this part.

Conservation district means any district or unit of State or local government formed under State law or territorial law for the express purpose of developing and carrying out a local soil and water conservation program. Such district or unit of government may be referred to as a conservation district, soil conservation district, soil and water conservation district, natural resource district, land conservation committee, or a similar name.

County committee means a Farm Service Agency (FSA) county or area committee established in accordance with section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)).

Decision means a conclusion reached by an NRCS official based on applicable regulations and program instructions which relates to eligibility for program benefits, including a technical determination used as a basis for the decision.

Designated conservationist means the NRCS official, usually the district conservationist, whom the State Conservationist designates to be responsible for the program or compliance requirement to which this part is applicable.

Mediation means a process in which a neutral third party, the mediator, meets with the disputing parties (e.g., the landowner or program participant and the agency), facilitates discussions, and works with the parties to resolve their disputes, narrow areas of disagreement, and improve communications and relationships. A mediator has no authority to render a decision or determination.

Preliminary technical determination means the initial written technical determination provided to a client which will become final after 30 days unless the client takes action in accordance with §614.101 to stay the preliminary technical determination from becoming final.

State Conservationist means the NRCS official in charge of NRCS operations

within a State, as set forth in part 600 of this chapter.

Technical determination means a conclusion concerning the status and condition of the natural resources and cultural practices based on science and best professional judgment of natural resource professionals concerning the soils, water, air, plants, and animals.

Refer to 7 CFR 11.1 for other definitions applicable to appeals of adverse technical determinations and decisions covered by this part.

§ 614.3 Applicability.

(a) Appeals of adverse technical determinations and adverse decisions covered by this part are also governed by National Appeals Division (NAD) regulations at 7 CFR part 11.

(b) Decisions which are subject to this part include any decision under one or more NRCS programs; and technical determinations or decisions that affect the status of the land even though they may not affect the landowner's or program participant's eligibility for USDA program benefits.

(c) The failure of an official of NRCS to issue a technical determination or decision is subject to this part.

(d) Complaints involving discrimination in program delivery will be handled under the existing USDA civil rights rules and regulations.

(e) Appeals on contractual issues that are subject to the jurisdiction of the Agriculture Board of Contract Appeals are not appealable under the procedures within this part.

§ 614.4 Reservation of authority.

Nothing contained in the regulations of this part shall preclude the Secretary of Agriculture or the Chief from determining at any time any question arising under the programs to which the regulations of this part apply, or from reversing or modifying in writing, with sufficient reason given therefore, any technical determination or decision made by an NRCS official.

§ 614.5 Decisions not subject to appeal.

The following are examples of decisions which are not appealable:

(a) General program requirements that apply to all participants;

(b) Science-based formulas and criteria;

(c) Procedural decisions relating to administration of the programs; and

(d) Denials of assistance due to lack of funds or authority.

Subpart B—Appeals of Technical Determinations Related to the Conservation Title (Title XII) of the Food Security Act of 1985, as Amended

§ 614.100 Applicability.

The provisions of this subpart set forth the procedures under which a landowner or program participant may seek mediation of a preliminary technical determination or appeal from technical determinations made by NRCS officials on or after January 16, 1996 regarding technical determinations within the following programs:

(1) Highly Erodible Land Conservation;

(2) Wetland Conservation, including wetland technical determinations made by NRCS officials not related to a request for USDA program benefits;

(3) Conservation Reserve Program;

(4) Wetlands Reserve Program;

(5) Agricultural Water Quality Incentives Program; and

(6) Environmental Easement Program.

§ 614.101 Notice of preliminary technical determinations.

(a) All preliminary technical determinations related to programs provided for in § 614.100 shall be in writing and shall inform the landowner or program participant of the following:

(1) The preliminary technical determination will become final after 30 days if the landowner or program participant does not arrange with the designated conservationist for either or both of the following options:

(i) A field visit to the site to gather additional information and to discuss the facts concerning the preliminary technical determination, together with, at the option of the conservation district, a district representative; and

(ii) Mediation.

(2) Once the technical determination is final, the landowner or program participant may appeal the technical determination to the FSA county or area committee pursuant to 7 CFR part 780. Landowners or program participants wishing to appeal must exhaust any available appeal procedures through the FSA county committee prior to appealing to NAD. Judicial review is available only as specified in 7 CFR part 11.

(b) The document containing the preliminary technical determination shall be mailed or hand delivered to the landowner or program participant.

§614.102 Mediation of preliminary technical determinations.

(a)(1) Any dispute with respect to a preliminary technical determination related to the programs provided in §614.100 shall, at the request of the landowner or program participant, be mediated:

(i) Through certified individuals in those States where a State mediation program certified by the United States Department of Agriculture (USDA) has been established. Conservation district officials in certified State Mediation Program States may become certified by the State and utilized for mediation, if they choose to participate.

(ii) In States with no certified mediation program in effect, through mediation by a qualified representative of a local conservation district, if a local conservation district chooses to participate. Upon mutual agreement of the parties, other individuals may serve as mediators.

(2) Upon receiving a request for mediation, NRCS shall notify other USDA and Federal agencies, as appropriate.

(b) The parties shall have not more than 30 days to reach an agreement following a mediation session. The mediator shall notify the designated conservationist in writing at the end of this period whether the parties reached an agreement. Any agreement reached during, or as a result of, the mediation process shall conform to the statutory, regulatory, and manual provisions governing the program.

§614.103 Final determinations.

(a) Preliminary technical determinations shall become final:

(1) 30 days after receipt by the landowner or program participant of the notice of a preliminary technical determination issued pursuant to §614.101, unless a field visit or mediation is requested;

(2) After the earlier of 30 days after the field visit provided for under §614.101(a) or receipt by the landowner or program participant of a final determination from the designated conservationist; or

(3) 30 days after a mediation session if a mutual agreement has not been reached by the parties.

(b) The final technical determination shall set forth the decision, the basis for the decision, including all factors, technical criteria, and facts relied upon in making the decision, and shall inform the landowner or program participant of the procedure for requesting and pursuing further review.

§614.104 Appeals of technical determinations.

(a) Technical determinations related to the programs in §614.100 may only be appealed, pursuant to the provisions of 7 CFR part 780, to the FSA county committee with jurisdiction.

(b) In cases where a field visit has not already been completed in accordance with §614.101(a), a field visit shall be completed by the designated conservationist before the FSA county committee considers the appeal.

(c) If the FSA county committee hearing the appeal requests review of the technical determination by the applicable State Conservationist prior to issuing their decision, the State Conservationist may:

(1) Designate an appropriate NRCS official to gather any additional information necessary for review of the technical determination;

(2) Obtain additional oral and documentary evidence from any party with personal or expert knowledge about the facts under review; and

(3) Conduct a field visit to review and obtain additional information and to

discuss the facts concerning the technical determination. The State Conservationist shall provide the applicable FSA county committee with a written technical determination, including all factors, technical criteria, and facts relied upon in making the technical determination.

(d) Any landowner or program participant who is adversely affected by a decision of the FSA county committee may appeal to NAD in accordance with 7 CFR part 11.

Subpart C—Appeals of Decisions Related to Conservation Programs (non-Title XII)

§ 614.200 Applicability.

The provisions of this subpart set forth the procedures under which a landowner or program participant may seek an informal hearing on adverse decisions made by NRCS officials (exclusive of those decisions that are appealable to the USDA Board of Contract Appeals) after January 16, 1996 in the following program areas:

(1) Great Plains Conservation Program;

(2) Rural Abandoned Mine Program;

(3) Emergency Watershed Projects;

(4) Rural Clean Water Program;

(5) Colorado River Basin Salinity Control Program;

(6) Forestry Incentive Program;

(7) Water Bank Program;

(8) Flood Prevention and Watershed Protection Programs;

(9) Any other program which subsequently incorporates these procedures through reference to this subpart within the program regulations.

§ 614.201 Notice of final decisions.

(a) All final decisions related to programs provided for in § 614.200 that are made by the designated conservationist shall be in writing and shall inform the landowner or program participant of their right to request any or all of the following:

(1) An informal hearing before NRCS;

(2) Mediation; or

(3) A hearing before NAD in accordance with 7 CFR part 11.

(b) The document containing the decision shall be mailed or hand delivered to the landowner or program participant.

§ 614.202 Time frames for filing requests for informal hearings.

(a) A request for an informal hearing before NRCS shall be filed within 30 days after written notice of the final decision, which is the subject of the request, is mailed or otherwise made available to the landowner or program participant. A request for an informal hearing shall be considered ''filed'' when personally delivered in writing to the appropriate reviewing authority or when the properly addressed request, postage paid, is postmarked.

(b) A request for appeal may be accepted and acted upon even though it is not filed within the time prescribed in paragraph (a) of this section if, in the judgment of the reviewing authority with whom such request is filed, the circumstances warrant such action.

§ 614.203 Mediation of adverse final decisions.

(a) Any dispute with respect to an adverse final decision related to the programs provided in § 614.200 shall, at the request of the landowner or program, be mediated:

(1) Through certified individual in those States where a State Mediation Program has been established. Conservation district officials in certified State Mediation Program States may become certified by the State and utilized for mediation, if they choose to participate.

(2) In States where no certified mediation program is in effect, through mediation by a qualified representative of a local conservation district, if a local conservation district chooses to participate. Upon mutual agreement of the parties, other individuals may serve as mediators.

(b)(1) The parties shall have not more than 30 days to reach an agreement following a mediation session. The mediator shall notify the designated conservationist in writing at the end of this period whether the parties reached an agreement.

(2) Any agreement reached during, or as a result of, the mediation process

shall conform to the statutory, regulatory, and manual provisions governing the program.

(3) If the parties fail to reach an agreement within the specified period, the designated conservationist shall have up to 30 days after the conclusion of mediation to issue a final decision.

§ 614.204 Appeals of adverse final decisions.

(a) Any landowner or program participant, who is adversely affected by a decision made by a designated conservationist related to the programs in § 614.200, may appeal the decision to the State Conservationist in the applicable State for an informal hearing or to NAD in accordance with 7 CFR part 11.

(b) The State Conservationist may designate a NRCS official to gather information and conduct the informal hearing before making a decision.

(c) Any landowner or program participant who is adversely affected by a decision of the State Conservationist may appeal to NAD in accordance with 7 CFR part 11.

SUBCHAPTER C—WATER RESOURCES

PART 621—RIVER BASIN INVESTIGATIONS AND SURVEYS

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AUTHORITY: Sec. 6 (Pub. L. 83–566) 68 Stat. 666 (16 U.S.C. 1006).

SOURCE: 48 FR 18788, Apr. 26, 1983, unless otherwise noted.

Subpart A—General

§ 621.1 Purpose.

This part describes policies, requirements, and procedures governing the Department of Agriculture's (USDA's) investigations and surveys of watersheds of rivers and other waterways as a basis for developing coordinated programs. These activities are undertaken in cooperation with other Federal, State, and local agencies. The delegation of authority to the Natural Resources Conservation Service (NRCS) to provide national leadership for the conservation, development, and productive use of the Nation's soil, water, and related resources, including the activities treated in this part is found at § 2.62 of this title.

§ 621.2 Scope.

USDA river basin activities include:

(a) Cooperative river basin surveys in coordination with Federal, State, and local agencies;

(b) Floodplain management assistance in coordination with the responsible State agency and involved local governments;

(c) Joint investigations and reports with the Department of the Army under Pub. L. 87–639, 76 Statute 438 (16 U.S.C. 1009); and

(d) Interagency coordination of water resources activities.

Subpart B—USDA Cooperative Studies

§ 621.10 Description.

Cooperative river basin studies provide USDA planning assistance to Federal, State, and local governments. The purpose of these studies is to assist in appraising water and related land resources; defining and determining the extent of the problems; and formulating alternative plans, including land treatment, nonstructural or structural measures, or combinations thereof, that would solve existing problems or meet existing and projected needs. These studies concentrate on specific objectives identified by the requesting agencies and citizen groups that are consistent with USDA authorities and responsibilities and current NRCS priorities. The objectives ordinarily include the formulation of a plan but may require only inventories of available resources and associated problems to be used by other agencies in plan

formulation. USDA assistance is provided through field advisory committees composed of representatives of the Economic Research Service, Forest Service, and NRCS. The NRCS representative chairs the field advisory committee.

§621.11 Who may obtain assistance.

Assistance is available to conservation districts, communities. county governments, regional planning boards, other planning groups, and State and Federal agencies. Local groups express their desires for a cooperative study to the governor or appropriate State agency.

§621.12 How to request assistance.

For a cooperative study a governor, or a Federal, State, or local government agency must submit a written request and a Proposal to Study (PTS) through the NRCS State Conservationist to the Chief. Assistance in preparing the proposal may be obtained by contacting the State Conservationist. The State Conservationist sends the request and proposal with comments to the Chief for consideration. The proposal should:

(a) Describe the basin or study area, including a map of the study area;

(b) Explain the need for the study;

(c) Explain the need for USDA participation;

(d) State the responsibility and authority of the requesting agency in the study;

(e) Estimate the extent of participation of other Federal and State agencies;

(f) Discuss views and priorities of affected soil conservation districts regarding the proposed study;

(g) Briefly describe the intended management organization of the study;

(h) Specifically describe the expected results of the study;

(i) Identify primary users of the study results and the manner in which the results will be used;

(j) State the relationship of the study to ongoing and completed river basin studies;

(k) State that procedures for informing clearinghouses and for eliciting public participation will be followed;

(l) Estimate the duration and scope of the study; and

(m) Estimate the study costs by year and agency.

§621.13 Conditions for approval.

The Chief may authorize requested cooperative studies recommended by the State Conservationist. Priority for starting cooperative studies is based on the date of application, the readiness of the requesting agency to begin participation, the importance and significance of problems to be studied, the monetary or in-kind contributions toward the study, the sequence of ongoing and future studies, the type of study, the duration of study, the cost of study, the potential for implementation and other factors affecting the effectiveness and efficiency of the study. The number and location of cooperative studies started each year are governed by the availability of USDA funds and personnel.

§621.14 Recipient responsibility.

Leadership in arrangements for other needed Federal, State, and local agency participation is responsibility of the requesting agency. Consistent with national objectives and NRCS policy and procedures, the requesting agency has leadership responsibility for developing specific study objectives, providing the necessary study organization, and ensuring public participation in the planning process.

Subpart C—Floodplain Management Assistance

§621.20 Description.

Floodplain management studies provide needed information and assistance to local and State entities so that they can implement programs for reducing existing and future flood damages in rural and urban communities. Assistance is targeted to communities where flood damage is a serious concern and local governments are sincerely interested in taking action to reduce damage.

§621.21 Who may obtain assistance.

Assistance is available to conservation districts, communities, county

governments, regional planning boards, other planning groups, and State and Federal agencies.

§ 621.22 How to request assistance.

(a) A conservation district, local community or other jurisdiction may request floodplain management assistance for a local area for which they are responsible, by letter to the governor or the agency of State government responsible for floodplain management activities. Assistance in making application may be obtained by contacting any NRCS office.

(b) The governor or his designee may request floodplain management assistance for the State by submitting a written request to the State Conservationist.

§ 621.23 Conditions for approval.

(a) USDA floodplain management studies are authorized by the Director of the Basin and Area Planning Division. Priority for starting floodplain management studies is based on the same factors as for USDA Cooperative Studies as described in § 621.13.

(b) A study for an individual community may be started upon completion of a plan of work in which the Director of the Basin and Area Planning Division concurs and for which funds are available. Preparation of the plan of work is the responsibility of and must be approved by the applicant, the responsible State agency, and the State Conservationist. The plan sets forth the responsibilities of the applicant, the State, and USDA in carrying out the study and interpreting and using the data in a local floodplain management program. The State agency responsible for floodplain management activities may establish priorities on which to base the sequence of approval of floodplain management studies within its State. The number of studies started each Federal fiscal year is governed by the availability of funds and personnel and the amount of State and local assistance available.

(c) States and communities are encouraged to make monetary or in-kind contributions toward the floodplain management study. The State and local share may reflect in-kind contributions in lieu of fund transfers.

§ 621.24 NRCS responsibility.

NRCS is responsible for providing leadership for scheduling and implementing the technical phases of the studies and preparing the reports. NRCS assists in interpreting the study results.

§ 621.25 Recipient responsibility.

The State agency is responsible for developing State priorities for floodplain management studies and coordinating this work with related activities in the State. The cooperating local government entity is responsible for obtaining permission for carrying out field surveys. The State and local participants assist in distributing and interpreting the report and providing public information and educational services.

Subpart D—Joint Investigations and Reports With the Department of the Army

§ 621.30 Description.

(a) As provided by Pub. L. 87–639, joint investigations and reports by USDA and the Department of the Army may be authorized by resolutions adopted by the Committee on Environment and Public Works of the U.S. Senate or the Committee on Public Works and Transportation of the U.S. House of Representatives for any watershed area in the 50 States, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands if the nature of the watershed area problems dictates need for a joint effort by the two Departments.

(b) Authorized joint investigations and reports are made to determine works of improvement needed in the study area for flood prevention; for the conservation, development, use, and disposal of water; for flood control; for the conservation and proper use of land; and for allied purposes. The joint report to Congress may include a water and related land resources plan recommended for implementation. Such an implementation plan must be accompanied by an environmental impact statement (EIS) and must be in sufficient detail to permit its implementation.

(c) As mutually agreed by USDA and the Department of the Army Corps of Engineers, the report and EIS are forwarded to Congress through appropriate channels after technical, public, and interagency reviews in accordance with NRCS policy as described in §622.34, or in accordance with the Corps of Engineers' policy concerning technical and public review. Implementation of these plans is contingent on congressional action.

§621.31 Who may request assistance.

Any organization, group, or State or local government may request assistance.

§621.32 How to request assistance.

Applicants for a joint investigation and report should request their congressional representative(s) to initiate appropriate action under Pub. L. 87–639.

§621.33 Conditions for approval.

A joint investigation and report is authorized by a resolution of the Committee on Environment and Public Works of the U.S. Senate or the Committee on Public Works and Transportation of the U.S. House of Representatives. Studies are initiated when funds for them are appropriated by the Congress.

§621.34 Recipient responsibility.

Participating local and State governments work with USDA and the Department of the Army representatives in developing objectives, collecting data, analyzing problems, planning and formulating proposals, and considering financial plans. Active public participation is solicited in the planning process through means such as questionnaires, public meetings, citizen advisory boards, and technical committees.

Subpart E—Interagency Coordination

§621.40 Participation in Federal interagency policy activities at the national level.

(a) Policy development in water and related land resources is coordinated at the Federal level through the Cabinet Council on Natural Resources and Environment. NRCS provides staff support and representation in these activities as requested.

(b) Within the Department, all interested USDA agencies participate in water policy development through the USDA Committee on Natural Resources and Environment and the Water Issues Work Group.

(c) NRCS provides appropriate staff support when requested for committees, work groups, and task forces established for interagency coordination of water resources related activities of Federal agencies.

§621.41 Participation in Federal-State policy and planning activities at the regional level.

(a) NRCS has a responsibility to represent the Department when needed to assist regional water planning entities and interagency committees which coordinate water resources planning activities.

(b) For the Arkansas-White-Red Basin Interagency Committee (AWRBIAC) and the Pacific Southwest Interagency Committee (PSIAC), the USDA member periodically serves as chairperson and provides an executive secretary. For the Southeast Basin Interagency Committee (SEBIAC), NRCS periodically provides an executive secretary for the chairperson, who is a State government official.

(c) Under the leadership of NRCS, other USDA agencies, principally the Forest Service and Economic Research Service, also participate.

§621.42 Federal-State compacts.

NRCS is designated to represent USDA in assisting the U.S. Commissioners of the Delaware River Basin Commission and the Susquehanna River Basin Commission. In carrying out this responsibility, NRCS provides a liaison officer to work with the U.S. Commissioners on policy level matters, as well as providing the USDA representatives on the Federal field committees to assist the Commissioners.

§621.43 Interstate compacts and commissions.

As assigned, an NRCS State Conservationist is the USDA point of contact for governing bodies of interstate compacts and commissions concerned

with the conservation, development, and proper use of water, soil, and related resources.

§ 621.44 Special studies.

As designated, NRCS represents USDA on special study groups such as for the Colorado River Basin Salinity Control Program Studies.

§ 621.45 Flood insurance studies.

As requested by the Federal Emergency Management Agency (FEMA), and within the limits of available resources, NRCS carries out flood insurance studies of various types under the National Flood Insurance Program (Pub. L. 90–448, 82 Statute, 574 (42 U.S.C. 4012)), as amended. In this activity, NRCS performs detailed technical studies to determine the extent and frequency of flooding. The flood insurance program is administered by FEMA. NRCS is reimbursed by that agency for actual costs incurred in carrying out the studies. Local entities desiring flood insurance coverage should contact the responsible State agency or FEMA and apply in accordance with procedures of that agency.

PART 622—WATERSHED PROJECTS

Subpart A—General

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622.2 Scope.
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AUTHORITY: Pub. L. 83–566, 68 Stat. 666 as amended (16 U.S.C. 1001, *et seq.*); Pub. L. 78–534, 58 Stat. 889, 33 U.S.C. 701b–1.

SOURCE: 49 FR 6078, Feb. 17, 1984, unless otherwise noted.

Subpart A—General

§ 622.1 Purpose.

This part sets forth the general policies for planning and carrying out watershed projects under Pub. L. 83–566, 68 Stat. 666 (16 U.S.C. 1001 *et seq.*) and flood prevention projects under Pub. L. 78–534, 58 Stat. 889 (33 U.S.C. 701b–1).

§ 622.2 Scope.

(a) To assist sponsors in preparing and carrying out watershed plans, the Natural Resources Conservation Service (NRCS) shall conduct investigations and surveys, with the cooperation and assistance of other Federal agencies, to:

(1) Determine the extent of watershed problems and needs, and

(2) Set forth viable alternative solutions consistent with local, regional, and national objectives, including an alternative solution which makes the greatest net contribution to national economic development.

(b) Alternatives will consist of either land treatment, nonstructural or structural measures, or combinations thereof that will help accomplish one or more of the authorized project purposes.

(c) Authorized project purposes are watershed protection, conservation and proper utilization of land, flood prevention, agricultural water management including irrigation and drainage, public recreation, public fish and wildlife, municipal and industrial water supply, hydropower, water quality management, ground water supply, agricultural pollution control, and other water management.

(d) After a final plan for works of improvement is agreed upon between NRCS and the sponsors and the approval processes are completed, NRCS will provide technical and financial assistance to install the project, subject to the availability of funds and the budgeting and fiscal policies of the President.

§622.3 Relationship to the Pub. L. 78–534 Program.

(a) *General.* The purposes and objectives of the programs under Pub. L. 83–566 and Pub. L. 78–534 are the same in most cases. Planning criteria, economic justification, local sponsorship, agency participation, financial assistance, eligible measures, operation and maintenance arrangements for the Pub. L. 78–534 program are consistent with those of the Pub. L. 83–566 program. The differences with the Pub. L. 78–534 program are outlined below.

(b) *Initiation.* Flood prevention projects are individually authorized by Federal legislation. The state conservationist and the sponsors agree on a plan of action and notify interested parties to solicit their participation. The sponsors keep the public informed and solicit their views and comments.

(c) *Subwatershed plans.* These plans are administratively approved by the state conservationist. If the plan involves purposes other than flood prevention, clearance must be obtained from the Office of Management and Budget before approval. Financial assistance available differs only in that program funds may be used for the purchase of land rights for single-purpose flood prevention structures and installing land treatment on Federal lands.

(d) *Installation.* NRCS shall award and administer contracts for the installation of project measures unless the sponsors agree to perform the work. Project agreements between the sponsors and NRCS are not required if the work consists of flood prevention structures built and funded by NRCS.

§622.4 Relationship to other agencies.

NRCS will coordinate responsibilities with other water and land resource development agencies on projects that may come under the jurisdictions of various authorities. This will include any land management agencies which may have land which would be affected by project measures. Coordination with the U.S. Department of the Interior's Fish and Wildlife Service will be in accordance with section 12 of Pub. L. 83–566 (as amended).

§622.5 Guidelines.

Guidelines for carrying out programs authorized under Pub. L. 83–566 and Pub. L. 78–534 are contained in miscellaneous instructions, manuals, and handbooks issued by the Natural Resources Conservation Service, Regulations for Implementing NEPA (40 CFR Parts 1500–1508) issued by the Council on Environmental Quality, and in Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies issued by the Water Resources Council. Watershed projects are to be planned and carried out in a way that will conform to conditions mandated by the above and other applicable laws, Executive orders, and codified rules.

§622.6 Equal opportunity.

The Pub. L. 83–566 and Pub. L. 78–534 programs will be conducted in compliance with all requirements respecting nondiscrimination as contained in the Civil Rights Act of 1964, as amended, and in the regulations of the Secretary of Agriculture (7 CFR Part 15), which provide that no person in the United States shall, on the grounds of race, color, national origin, sex, age, handicap, or religion be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted or assisted by the Department of Agriculture.

§622.7 Notification under Executive Order 12372.

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs'' and 7 CFR Part 3015, Subpart V, ''Intergovernmental Review of the Department of Agriculture Programs and Activities.'' State processes or directly affected State, areawide, regional and local officials and entities have 60 days for comment starting from the date of submission of the application to the State Single Point of Contact.

Subpart B—Qualifications

§622.10 Sponsors.

(a) Watershed projects are sponsored by one or more local organizations

qualifying as sponsors. All watershed plans shall be sponsored by entities legally organized under State law or by any Indian tribe or tribal organization having the authority to carry out, operate and maintain works of improvement. Those plans that incorporate the use of nonstructural or structural measures shall be sponsored by organizations that, individually or collectively, have:

(1) The power of eminent domain,

(2) The authority to levy taxes or use other adequate funding sources, including state, regional, or local appropriations, to finance their share of the project cost and all operation and maintenance costs.

(b) To receive Federal assistance for project installation, sponsors must commit themselves to use their powers and authority to carry out and maintain the project as planned.

§ 622.11 Eligible watershed projects.

(a) To be eligible for Federal assistance, a watershed project must:

(1) Meet the definition of a watershed area as defined in NRCS's National Watersheds Manual.

(2) Not exceed 250,000 acres in size.

(3) Not include any single structure that provides more than 12,500 acre-feet of floodwater detention capacity nor more than 25,000 acre-feet of total capacity.

(4) Have significant land or water management problems that can be solved or alleviated by measures for watershed protection, flood prevention, drainage, irrigation, recreation, fish and wildlife, municipal or industrial water supply, or other water management.

(5) Produce substantial benefits to the general public, to communities, and to groups of landowners.

(6) Cannot be installed by individual or collective landowners under alternative cost-sharing assistance.

(7) Have strong local citizen and sponsor support through agreement to obtain land rights, contribute the local cost of construction, and carry out operation and maintenance.

(b) Works and improvement that may be included in a watershed project are those that:

(1) Contribute to reducing floodwater, erosion, and sediment damages.

(2) Further the conservation, development, utilization, and disposal of water and the conservation and proper utilization of land.

(3) Have the greatest net national economic benefits consistent with protecting the Nation's environment (for structural water resource projects) relative to alternative works, unless an exception is granted by the Secretary.

Subpart C—Application Procedure

§ 622.20 Application.

Sponsors shall follow State developed procedures (based on Executive Order 12372) for coordination of proposed Federal financial assistance and also USDA's 7 CFR part 3015 in applying for Pub. L. 83–566 assistance. Standard forms for Federal assistance or other approved forms may be obtained from NRCS State, area, or field offices. These forms should be submitted to the Single Point of Contact in accordance with the State developed procedures.

§ 622.21 State agency approval.

The governor or designated State agency will approve or disapprove the application. If disapproved, no further action is required of NRCS. If approved or not disapproved within 45 days, the application shall be sent to the NRCS state conservationist. After the state conservationist has determined that the application is legally valid, he will notify the sponsor of receipt of the application. If found not legally valid, the state conservationist will return it to the originator with an opinion.

Subpart D—Planning

§ 622.30 General.

(a) Watershed projects are to be planned and carried out in a way that will (1) minimize all adverse impacts, and (2) mitigate unavoidable losses to the maximum practicable degree. Projects must comply with the requirements of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852) (42 U.S.C. 4321 et seq.).

(b) Fish and Wildlife enhancement measures proposed by Federal or State

fish and wildlife agencies will be included if they are technically and economically feasible and are acceptable to the sponsors and the NRCS. If additional sponsors are needed to carry out the recommended fish and wildlife measures, NRCS will assist fish and wildlife agencies in attempting to obtain such sponsors.

(c) All planning efforts by NRCS and the sponsors must include well publicized public meetings to obtain public input and views on the project.

§622.31 Basic planning efforts.

Upon receipt of an application, the NRCS will make any necessary field studies and develop a report to justify the need for planning effort. Once planning is authorized by the Chief of NRCS, a watershed plan-environmental impact statement (plan-EIS) or a watershed plan-environmental assessment (plan-EA) will be prepared by NRCS to request funding. This effort must be coordinated with other State and Federal agencies.

§622.32 Reviews and approvals.

(a) The watershed plan-environmental impact statement (or assessment) will be subject to internal technical reviews, sponsor and other local party review, interagency review by other Federal, state, and concerned groups, and a final review as stated in NRCS's National Watersheds Manual.

(b) After thorough review by NRCS and other agencies, the NRCS and the sponsors shall accept the plan-EIS or plan-EA by signing the watershed agreement. The watershed plan must be approved by the Committees of Congress or the Chief of NRCS. Funding for installation can then be granted by the Chief of NRCS.

PART 623—EMERGENCY WETLANDS RESERVE PROGRAM

Sec.

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AUTHORITY: 16 U.S.C. 3837–3837f; Pub. L. 103–75, Chapter 1, 107 Stat. 739, 742.

SOURCE: 58 FR 62497, Nov. 29, 1993, unless otherwise noted.

§623.1 Purpose and scope.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Emergency Wetlands Reserve Program (EWRP). Under the EWRP, NRCS will make offers to purchase wetland conservation easements from persons owning croplands that were damaged by the 1993 Midwest floods if those lands have the potential for restoration to wetland conditions and if the owner voluntarily agrees to restore and maintain those conditions. The easements are to be purchased to promote the restoration and maintenance of wetland characteristics, such as hydrologic conditions of inundation or saturation of the soil and hydrophytic vegetation. The functions and values of the wetlands for wildlife habitat, water quality improvement, flood water retention, floodway enhancement, ground water recharge, open space, aesthetic values, and environmental education will thus be promoted. The wetland conservation easements will permanently prohibit use of the affected land as cropland. Additionally, the easement shall require permanent maintenance of the wetland conditions, except in the case of natural disaster.

(b) The EWRP is available only in the following States: Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. Certain cropland areas within these States have been determined to have been inundated by the Midwest floods of 1993. As more fully defined and described in

this part, eligible land may include farmed wetlands or prior converted wetlands (wetlands converted prior to December 23, 1985), together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the potential wetland values merit inclusion in the program with reasonable costs.

§ 623.2 Definitions.

The following definitions shall be applicable for the purposes of this part:

(a) *Agricultural commodity*—means any crop planted and produced by annual tilling of the soil, or on an annual basis by one trip planters, or alfalfa and other multiyear grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be ''considered planted to an agricultural commodity'' during a crop year if, as determined by ASCS, as action of the Secretary prevented land from being planted to the commodity during the crop year.

(b) *Applicant*—means a person who submits to NRCS an application to participate in the EWRP.

(c) *Commodity Credit Corporation*—a wholly owned government corporation within the U.S. Department of Agriculture.

(d) *Conservation District* (CD)—means a subdivision of a State or local government organized pursuant to applicable State law to promote soil and water conservation practices.

(e) *Conservation Reserve Program*—means the program under which long-term payments and cost-share assistance is provided to individuals to establish permanent vegetative cover on cropland that is highly erodible or environmentally sensitive.

(f) *Prior converted wetland*—means wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) prior to December 23, 1985, for the purpose, or that has the effect, of making the production of agricultural commodities possible if such production would not have been possible but for such action.

(g) *Cost-share payment*—means the payment made by NRCS to assist program participants in establishing the practices required in a WRPO.

(h) *Chief*—means the Chief of the Natural Resources Conservation Service, or the Chief's designee.

(i) *Easement*—means the real property interest acquired by NRCS under this part for wetland restoration and maintenance and which is properly filed with the appropriate local or State government official.

(j) *Easement area*—means the land to which the approved wetland restoration practices and wetland conservation restrictions are to be applied.

(k) *Fair market value (FMV)*—means the price that a willing seller would accept and a willing buyer would pay in an open, informed transaction.

(l) *Farmed wetland*—means wetland that was drained, dredged, filled, or otherwise manipulated prior to December 23, 1985 to the extent that the production of agricultural commodities was made possible, but which continues to meet wetland criteria [refer to 7 CFR 12.32(a)(3) for descriptions of farmed wetlands].

(m) *Floodwater control systems*—means dikes, levees, or other similar structural measures for the protection of cropland from flooding.

(n) *FWS*—means the Fish and Wildlife Service of the United States Department of the Interior.

(o) *Local NRCS office*—means the office of the Natural Resources Conservation Service serving the county or combination of counties in which the landowner's farm or ranch is located.

(p) *Participant*—means a person(s) owning land subject to a perfected easement purchased by the Natural Resources Conservation Service under this part.

(q) *Offer*—means the total payment NRCS will make to a landowner to purchase an easement.

(r) *Permanent easement*—means an easement in perpetuity.

(s) *Substantially altered lands*—means lands which have not been and are not now wetlands but could likely develop wetland characteristics in the future,

as a result of the Midwest floods of 1993.

(t) *Practice*—means the wetland and easement area development restoration measures agreed to in the WRPO to accomplish the desired program objectives.

(u) *Technical assistance*—means the assistance provided to land owners to facilitate implementation of the WRPO.

(v) *Wetland*—means land that (1) has a predominance of hydric soils; (2) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) does support a prevalence of such vegetation under normal circumstances.

§623.3 Eligible person.

To be eligible to participate in the EWRP, a person must be the owner of eligible land for which enrollment is sought and must have been the owner of such land for at least the preceding 12 months prior to the time the enrollment offer is declared by NRCS, as provided in this part. The person shall provide to NRCS adequate proof of ownership of the land. NRCS may waive the 12 month ownership requirement if:

(a) The land was acquired by will or succession as a result of the death of the previous owner; or

(b) Adequate assurances have been presented that the new owner of such land did not acquire such land for the purpose of placing it in the EWRP.

§623.4 Eligible land.

(a) Except as otherwise provided in this section, land is eligible for enrollment in the EWRP only if NRCS determines that the land:

(1) Was inundated by the Midwest floods of 1993;

(2) If restored to productive condition, would have a fair market value that is less than the estimated costs of restoring the land to productive condition and repairing related floodwater control systems;

(3) Is likely to have its wetland value restored with minimal costs; and

(4) Is wetland farmed under natural conditions, a farmed wetland or prior converted wetland, or substantially altered lands which are cropland; or

(5) Is wetland that has been restored on the land under a CRP contract, or under a Federal or State wetland restoration program with an easement for a period of less than 30 years.

(b) To be eligible for enrollment in the EWRP, land must also:

(1) Be determined by ASCS to have been annually planted or considered planted to an agricultural commodity in at least 1 of the 5 previous crop years; or

(2) Be land under a CRP contract, in which case, the land need only to have been planted to an agricultural commodity during 2 of the 1981 through 1985 crop years.

(c) Other lands may be considered eligible if the inclusion of such lands in the EWRP easement would significantly add to the functions and values of the wetlands to be restored under this part, as determined by NRCS.

(d) The criteria and procedures contained in 7 CFR part 12 will be used to identify wetlands, converted wetlands, and farmed wetlands.

§623.5 Ineligible land.

Notwithstanding any other provisions of this part, the following land is not eligible for enrollment in the EWRP:

(a) Land that contains either timber stands or trees established in connection with a CRP contract;

(b) Lands owned or acquired by an agency of the Federal Government;

(c) Land already subject to a deed restriction prohibiting the production of agricultural commodities or the alternation of existing wetland hydrologic conditions;

(d) Land located between the preflood mainstem levees and the river; or

(e) Land that was restored to wetland conditions, as required under Part 12 of this title, to mitigate the conversion of wetland to cropland use.

§623.6 Transfer of lands from the CRP to the EWRP.

Land that is subject to an existing CRP contract administered under 7 CFR parts 704 and 1410 may be transferred into the EWRP only if:

(a) The land and landowner(s) meet the requirements of this part; and

(b) The application for transfer into the EWRP is approved by Commodity Credit Corporation (CCC), if found to be in the interest of the program. If such transfer is requested by the owner and approved by CCC, the CRP contract for the property will be terminated or otherwise modified subject to such terms and conditions as are mutually agreed by the landowner, CCC, and NRCS.

§ 623.7 Terms of the easement.

Landowners will grant to NRCS an easement which shall run with the land and be in favor of NRCS and its assigns or delegates. The easement shall require the land to be monitored as specified by the WRPO to promote the purposes of this part, including but not limited to maintenance of the restored wetland for entire length of the easement. Such easement shall: (a) be a permanent reserve interest easement; (b) require that the maintenance of the land be in accordance with the terms of the easement and with the terms of the WRPO and shall be the responsibility of the owners of the property and their successors of any kind, including, but not limited to, the owners' heirs and assigns; (c) grant to NRCS a right of access in favor of NRCS and its delegates, assigns and successors of any kind, to the portion of the property which is subject to the provisions of the easement. Maintenance of such access shall be the responsibility of the owner and their successors of any kind; (d) reserve to NRCS the right to permit such compatible uses of the easement area as may be identified in the WRPO; (e) reserve to the landowner those compatible uses identified in the WRPO that are permitted to be pursued by the landowner; (f) be signed by each person with an interest of any kind in the land covered by the easement; (g) permanently prohibit use of the easement area for cropland, except to harvest an agricultural commodity planted before the easement is perfected; and (h) require permanent maintenance of the wetland conditions, except in the case of natural disaster.

§ 623.8 Easement value.

NRCS offers for easements will be based on the fair market value, as determined by the NRCS State Conservationist, of the land covered by the easements. Fair market value will be based on post-flood conditions as if reclaimed. Land easement values will be determined by the State Conservationist in consultation with a technical committee. A technical committee shall included representatives of: ASCS, Extension Service, and FWS. Additionally, the State Conservationist may collect information from other sources as he deems necessary. Coordination between States will be provided by the Chief, NRCS.

§ 623.9 Easement priority.

The State Conservationist, in consultation with the FWS and with input from a technical committee and other interested Federal agencies, will establish a ranking process to establish the priority of parcels offered into the EWRP. This process will rank the floodway enhancement and environmental benefits per dollar of government expenditure on restoration and easement purchase. The factors for determining the priority for selection will consider the following:

(a) Protection and enhancement of habitat for migratory birds and wildlife, including the contribution the restoration may make to the recovery of threatened and endangered species,

(b) Floodway expansion,

(c) Proximity to other protected wetlands,

(d) Level of hydrology restored,

(e) Wetland function or values,

(f) Likelihood of successful restoration of wetland values,

(g) Cost of restoration and easement purchase, and

(h) Other factors as determined appropriate by NRCS.

§ 623.10 Application to participate.

(a) A person seeking to enroll land in the EWRP must apply for enrollment on an approved NRCS form. The application to participate must be filed with the local NRCS field office during an announced period for such submissions.

(b) A person submitting an application to participate shall not be obligated to accept an NRCS offer to purchase an easement if one is forthcoming.

(c) An application to participate must be signed by all owners of the property or their duly authorized representative(s).

§623.11 Obligations of the landowner.

(a) All owners of land who accept an EWRP offer from NRCS shall:

(1) Comply with the terms of the easement.

(2) Comply with all terms and conditions of the WRPO for the full life of the easement.

(3) Ensure that the easement granted to NRCS is superior to the interest of all other parties who may have an interest in the easement area, except as authorized by NRCS. Such action shall include, but not be limited to, obtaining a written statement of consent to such a superior easement from those holding a security interest or any other encumbrance or the land covered by the easement. Additionally, the landowner shall perfect the easement with superior NRCS interest in accordance with State law.

(4) Agree to the permanent retirement of the aggregate total of crop acreage bases, and allotment and mandatory quota on the farm or ranch in order to maintain the base allotment on quota acres at or below the number of acres of cropland after the easement has been perfected.

(5) Not allow grazing or commercial use of the land covered by an easement except as provided for in the WRPO, or harvesting of any agricultural commodity produced on the land subject to the EWRP easement.

(6) Comply with Federal or State noxious week laws in the manner specified in the WRPO.

(7) Control other identified weed and pest species, in the manner specified in the WRPO.

(8) Be responsible for repairs, improvements, and inspections of the WRPO practices as necessary to maintain existing public drainage systems when the land is restored to the condition required by the terms of the easement, the contract, and the easement.

(9) Be permitted to control public access, in accordance with the WRPO, on the land enrolled in the program.

(10) Implement any additional provisions that are required by NRCS in consultation with FWS in the contract, WRPO, or easement, in order to, as determined by NRCS, facilitate the administration of the EWRP.

(11) Not alter the vegetation, except to harvest already planted crops or forage, or hydrology on such acres subsequent to perfection of the easement by the landowner, except as provided for in the easement or WRPO.

(12) Be responsible for the long-term management of the easement in accordance with the terms of the easement and related agreements including the WRPO. Owners may enter into agreements with Federal or State agencies or private organizations to assist in the management of the easement area. No NRCS funds will be provided to these agencies or organizations for management expenses. Responsibility for management of the easement shall in all cases remain with the owner and the owner's successors of any kind regardless of whether arrangements are made for third-party management.

(13) Agree that each person with an interest in the land covered by an easement under EWRP shall be jointly and severally responsible for compliance with the WRPO, the easement, the provisions of this part, and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the WRPO, the easement, or provisions of this part.

(14) Refrain from taking any action on the easement area unless specifically authorized in the reserve interest easement or the WRPO; and

(15) Secure any necessary local, State and Federal permits prior to commencing restoration of the designated area.

(b) In addition, program participants and their successors of any kind may:

(1) Not alter wildlife habitat and other natural land features of the enrolled land unless authorized by the WRPO.

(2) Apply pesticides or fertilizers on enrolled land or mow such land, only as provided for in the WRPO.

(3) Not engage in any activities on other land on the farm on which the easement exists that will, as determined by NRCS; (i) alter the flow of surface or subsurface water into or out of the easement area except as specified in the WRPO; or (ii) be otherwise inconsistent with the terms of the easement.

(c) The activities of any person on the property shall be considered for purposes of this section to be the actions of the program participant. However, if the NRCS determines that the activities of the person were beyond the control of the program participants, NRCS may adjust the remedies provided for in this part to the extent determined consistent with program goals. Obligations created by the easement shall run with the land and shall bind all persons having an interest in the property at any time whether such interest is created by death of the owner, sale, assignment, or otherwise.

§ 623.12 Payments to landowners by NRCS.

(a) NRCS will share the cost with landowners of rehabilitating the enrolled land in the EWRP as provided in the WRPO. The amount of the cost-share assistance shall be specified in the contract. Eligible costs for such cost-share assistance by NRCS shall only include those costs which NRCS determines are appropriate and shall be subject to the following restrictions:

(1) The State Conservationist will establish cost-share rates of between 75 to 100 percent of the historical cost of establishing or installing the practices specified in the WRPO; or pay the average cost of establishing the practices specified in the WRPO, based on the historical cost of establishing the practices in the State;

(2) Cost-share payments may be made only upon a determination that an approved practice or an identifiable unit of the practice has been completed in compliance with NRCS approved standards and specifications; and

(3) Cost-share payments may not be made for the maintenance of the practice except as specifically permitted in writing by the State Conservationist.

(b) Notwithstanding paragraph (a)(3) of this section, cost share payments may be authorized for the replacement or restoration of practices for which cost share assistance has been previously allowed under the EWRP, but only if:

(1) Replacement or restoration of the practice is needed to meet the objectives for which the easement was established; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(c)(1) NRCS shall pay the amount agreed upon by NRCS and the landowner for the purchase of the easement in a lump-sum amount after the easement is perfected in compliance with State law, except in the case of paragraph (c)(2) of this section.

(2) For all easements, NRCS shall pay no more than 75 percent of the total easement price pending completion of the practices to restore the wetlands as provided under the WRPO. The remaining amount shall be paid when NRCS determines the restoration is complete.

(d) After an easement is perfected, NRCS will reimburse landowners for fair and reasonable expenses incurred for title searches, filing expenses, and related costs, as determined by NRCS.

§ 623.13 Wetlands reserve plan of operations.

(a) After NRCS has accepted the applicant for enrollment in the program, a WRPO will be developed by the landowner and NRCS, in consultation with FWS.

(b) The WRPO shall:

(1) Include an aerial photo displaying the land offered for enrollment;

(2) Specify the manner in which the eligible land shall be restored, operated, and maintained to accomplish the goal of the program, including, but not limited to: (i) measures to control noxious weeds and insect pests in order to comply with applicable Federal, or State noxious weed and pest control laws; and (ii) measures to control other specified species of weeds, insects or pests;

(3) Specify compatible land uses for personal enjoyment for which the landowner may be compensated. These compatible land uses shall be reserved to the landowner in the easement. Such uses may include, among others:

(1) recreational use, hunting and fishing; (ii) manage timber production including harvesting; and (iii) managed haying or grazing consistent with the goals of the program;

(4) Set out cost estimates of the practices required by the WRPO, the offer for the easement, and other reimbursement costs;

(5) Identify access routes to be maintained for wetland restoration activities and future management and easement monitoring in connection with the land to be enrolled;

(6) Make provisions deemed necessary for maintaining public drainage systems if present on lands subject to the WRPO;

(7) Contain scheduled implementation dates for restoration practices;

(8) Contain other provisions or limitations as NRCS, in consultation with the FWS, determines to be necessary.

(c) NRCS in consultation with FWS will collect from State or Federal agencies whatever additional information is deemed necessary for the development of the WRPO with the landowner.

(d) The WRPO must be signed by NRCS, FWS, Conservation District (CD), and the landowner(s). However, if agreement between NRCS and FWS, or CD at the local level is not reached within 20 calendar days, the WRPO shall be developed by the State Conservationist of NRCS in consultation with FWS or CD.

(e) The WRPO may require that a temporary vegetative or water cover be established on the property if immediate establishment of a permanent cover is not practicable or otherwise desirable.

(f) The terms of an approved WRPO shall not relieve the program participant of any obligation or term imposed or provided for in the contract, the easement, or this part.

(g) WRPO, where appropriate, will provide for the development of a tree planting plan with the assistance of the FS or State forestry agency.

(h) The WRPO, where appropriate, will provide for the development by NRCS of detailed plans for weed control, structural measures and their operation, vegetation establishment and management, and other measures as needed.

(i) Revisions of the WRPO to enhance or protect the value for which the easement was established may be made at any time at the request of either NRCS, FWS, the owner and upon the concurrence of all three parties.

§623.14 Easement modifications.

After the easement has been perfected, no change will be made in the easement without a written request by the participant and the written consent of the Chief. Approval may be granted to achieve the goals of EWRP or facilitate the practical administration and management of the easement area or the program and the approval will not adversely affect the functions and values for which the easement was established. A modified easement shall be perfected in accordance with State law and NRCS superior interest shall be reserved by the landowner in accordance with §§623.7 and 623.11(a)(3).

§623.15 Transfer of land.

(a) If a new owner purchases or obtains the right and interest in, or right to occupancy of, the land subject to a EWRP easement, such new owner shall be subject to the terms and conditions of the easement. The participant who is the signatory to the easement shall be entitled to receive all remaining payments, if any, for the purchase of the easement. Eligible cost-share payments shall be made to the participants. with respect to costs actually incurred.

(b) Upon the transfer of the property subject to an EWRP easement, any remaining cost-share payments shall be paid to the new owner or purchaser only if the new owner or purchaser becomes a party to the WRPO within 60 days of the perfection of the deed transferring title to the new owner. Such payments shall be paid in the manner agreed to by the participant and the buyer. The new owner or purchaser shall be responsible for assuring completion of all measures and practices required by the contract and the WRPO.

(c) Any transfer of the property prior to the perfection of the easement shall void any NRCS offer or WRPO unless

the new owner agrees to accept the offer within 60 days of the perfection of the deed transferring the land to the new owner.

§ 623.16 Monitoring and enforcement of easement terms and conditions.

(a) NRCS or its representative shall be permitted to inspect each easement area at any and all times determined necessary by NRCS to ensure that:

(1) Structural and vegetative restoration work are properly maintained;

(2) The wetlands and adjacent upland habitat of the easement area is being managed as required in the WRPO and the terms of the easement; and

(3) Uses of the area are consistent with the terms and conditions of the easement and the WRPO.

(b) If an owner or other interested party is unwilling to voluntarily correct, in a timely manner, deficiencies in compliance with the terms of the WRPO, the EWRP easement, or any related agreements, NRCS may at the expense of any person who is subject to the EWRP easement correct such deficiency. Such NRCS action shall be in addition to other remedies available to NRCS.

(c) Monitoring and enforcement responsibilities may be delegated by NRCS at any time to other Federal or State agencies. Landowners may transfer management responsibilities only to Federal, State, or local agencies or private organizations that have been approved by NRCS in advance as having the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities.

§ 623.17 Violations and remedies.

(a) If a violation of the terms and conditions of the contract, the WRPO, or the recorded EWRP easement occurs, the easement shall remain in force and NRCS may:

(1) Require the owner to fully restore the easement area to fulfill the terms and conditions of the easement and WRPO; and

(2) Require the owner, who received payments from NRCS for any purpose under this part, to refund all or part of such payments received together with interest, as determined appropriate by NRCS.

(b) If an owner fails to carry out the terms and conditions of an easement, appropriate legal action may be initiated. The owner of the property shall reimburse NRCS for all costs incurred including, but not limited to, legal fees.

§ 623.18 Access to land.

In order to determine eligibility and compliance with respect to this part, representatives of the Department, or designee thereof, shall have the right of access to:

(a) Land which is the subject of an application made in accordance with this part,

(b) Land which is subject to an easement made in accordance with this part, and

(c) Records of the participant showing status of all ownership interest in lands subject to this part.

§ 623.19 Assignments.

Any participant entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 623.20 Appeals.

A participant in the EWRP may obtain a review of any administrative determination concerning land eligibility, development of a WRPO, or any adverse determination under this part in accordance with the administrative appeal regulations provided in part 614 of this title.

[60 FR 67316, Dec. 29, 1995]

§ 623.21 Scheme and device.

(a) If it is determined by NRCS that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by NRCS, and the contract with the landowner may be terminated. In such a case, NRCS may also continue to hold the easement interest acquired under this part.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other

person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) An owner of land subject to this part who succeeds to the responsibilities under this part shall report in writing to NRCS any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest includes a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

§623.22 Filing of false claims.

If it is determined by NRCS that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for any payment under this part. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable WRPO. Any amounts paid under these circumstances shall be refunded, together with interest as determined by NRCS, and any amounts otherwise due such participant shall be withheld.

PART 624—EMERGENCY WATERSHED PROTECTION

Sec.
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AUTHORITY: Sec. 216, Pub. L. 81–516, 33 U.S.C. 701b–1; and sec. 403, Pub. L. 95–334, 16 U.S.C. 2203, 5 U.S.C. 301.

SOURCE: 46 FR 56577, Nov. 17, 1981, unless otherwise noted.

§624.1 Purpose.

This part sets forth the requirements and procedures for Federal assistance administered by the Natural Resources Conservation Service (NRCS) under section 216, Pub. L. 81–516 and section 403 of Title IV of the Agricultural Credit Act of 1978, Pub. L. 95–334.

§624.2 Objective.

The objective of the Emergency Watershed Protection (EWP) program is to assist in relieving imminent hazards to life and property from floods and the products of erosion created by natural disasters that cause a sudden impairment of a watershed.

§624.3 Scope.

(a) Authorized EWP technical and financial assistance may be made available when an emergency exists. Emergency water shed protection consists of emergency measures for runoff retardation and soil erosion prevention as needed to reduce hazards to life and property from floods, drought, and the products of erosion on any watershed imparied by a natural disaster.

(b) Technical assistance includes engineering and other technical expertise necessary for planning and installing emergency measures. Emergency watershed protection is authorized in the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

§624.4 Administration.

NRCS shall provide overall administrative directive and guidance for EWP. NRCS will transfer funds to the Forest Service (FS) of the U.S. Department of Agriculture (USDA) at the national level for work to be installed by FS or its cooperators. Under general program criteria and procedures established by NRCS, FS is responsible for administering EWP measures on National Forests and National Grasslands. FS is also responsible for emergency measures on all forested lands or rangelands within the National Forests, on adjacent rangelands that are administered under formal agreement with FS, and on other forest lands. On

these lands, emergency work is done by either NRCS or FS as mutually agreed. In carrying out their responsibilities, FS and NRCS work cooperatively with other Federal, State, and local government agencies.

§ 624.5 Eligible emergencies, recipients, and assistance.

(a) *Conditions of eligibility*. Emergency watershed protection assistance is made available when the following conditions of eligibility are determined to exist by the state conservationist. Procedures for providing emergency assistance vary according to whether the watershed emergency constitutes an exigency or a nonexigency situation. Emergency measures for both types of situations are those undertaken to remove or reduce hazards created by the disaster to safeguard life and property from flooding, drought, or the products of erosion.

(1) *Watershed emergency*. A watershed emergency exists when a natural occurrence causes a sudden impairment of a watershed that creates an imminent threat to life or property. To be eligible for assistance, the imminent threat to life or property must significantly exceed that which existed before the impairment.

(i) *Natural occurrence* includes but is not limited to floods, fires, windstorms, earthquakes, volcanic actions, and drought.

(ii) A *watershed impairment* exists when the ability of a watershed to carry out its natural functions is reduced to the extent of creating an imminent threat to life or property.

(iii) A *sudden watershed impairment* results from a single natural occurrence or a short-term combination of occurrences. Watershed impairments resulting from long-term combinations or series of natural or other occurrences are not considered sudden watershed impairments.

(iv) *Exigency and nonexigency situations.* Watershed emergencies are classified as either exigency or nonexigency situations.

(A) An *exigency* exists when the near-term probability of damage to life or property is high enough to demand immediate Federal action. An exigency continues to exist as long as the probability of damage continues at a high enough level.

(B) A *nonexigency* situation exists when the near-term probability of damage to life or property is high enought to constitute an emergency but not sufficiently high to be considered an exigency. A nonexigency situation continues to exist as long as the probability of damage remains high enough to be considered an emergency.

(v) *Changes in emergency situations.* Changes in the near-term probability of threat to life or property will be reflected by changes in the classification of emergencies. As the near-term probability that the threats will be realized is reduced because of emergency assistance or other factors, exigency and nonexigency situations will be appropriately reclassified. Similarly, as occurrences increase the probability of threats to life or property, situations previously considered nonemergencies will be appropriately reclassified as nonexigencies and previous nonexigency emergency situations will be appropriately reclassified as exigencies.

(vi) *Drought emergencies.* Assistance is available in drought emergencies when the eligibility criteria specified in this rule are met and the Agricultural Stabilization and Conservation Service (ASCS) determines that a drought emergency exists under regulations promulgated to carry out sections 401 and 402 of the Agriculture Credit Act of 1978 (Pub. L. 95–334).

(b) *Eligible recipients.* Include those public or private landowners, land managers, land users, or others who—

(1) Have a legal interest in or responsibility for the values threatened by a watershed emergency; and

(2) Have exhausted or have insufficient funds or other resources available to provide adequate relief from the applicable hazards. Interested persons other than Federal agencies must be represented by a project sponsor. Project sponsors must:

(i) Be a State or political subdivision of a State or a qualified Indian tribe or tribal organization;

(ii) Have legal authority and agree to use such authority to obtain needed landrights, water rights, and permits; and

(iii) Agree to provide for the operation and maintenance of completed emergency measures.

(c) *Eligible assistance.* (1) In an exigency—

(i) Federal emergency funds may bear up to 100 percent of the construction costs of emergency measures.

(ii) Funds must be obligated within 10 days after receipt of the emergency funds or after the date of the disaster event when conditions permit beginning construction activities, whichever is later.

(iii) Emergency work must be completed within 30 days after funds are obligated.

The NRCS Chief retains discretion to grant extensions for good cause. Documentation must support requests for extensions. Extensions may extend an additional 10 days for the obligation of funds and an additional 30 days for the completion of work.

(2) In a nonexigency—

(i) Federal emergency funds may bear up to 80 percent of the construction costs for emergency measures.

(ii) Funds must be obligated and construction completed within 220 consecutive calendar days after the date of receipt of funds. Extensions are permitted at the discretion of the NRCS Chief if unforeseen or uncontrollable events cause delays. A request for such an extension must be documented.

(3) Sponsors may provide their share of construction costs in the form of cash; inkind services such as labor, equipment, etc.; or a combination of cash and inkind services. Cost sharing is waived for measures to be installed on Federal lands such as national forests or national grasslands.

[46 FR 56577, Nov. 17, 1981, as amended at 48 FR 4448, Feb. 1, 1983]

§624.6 Eligible measures.

(a) *Eligibility*. To be eligible for assistance a measure must—

(1) Retard runoff, prevent flooding, or prevent soil erosion;

(2) Reduce threats to life or property resulting from a watershed emergency;

(3) Be economically and environmentally defensible and sound from an engineering standpoint;

(4) Be limited to the minimum that will reduce applicable threats to a level not to exceed that which existed before the impairment of the watershed;

(5) Yield beneficial effects to more than one individual except in an exigency; and

(6) Conform to rules and regulations published by NRCS for complying with Executive Order 11990, Protection of Wetlands, and Executive Order 11988, Floodplain Management.

(b) *Documentation*. (1) When an exigency does not exist, the economic rationale of proposed measures must be submitted in appropriate detail with the request for funds. Generally, the expected value of imminent damages (amount of damages multiplied by the near-term probability of their occurrence) must exceed the cost of emergency measures. Information provided in the request for emergency funds to support economic defensibility of the measures must include but is not limited to—

(i) Number and extent of values at risk because of the watershed impairment;

(ii) Estimated damages to the values at risk if the threat is realized;

(iii) Events that must occur for the threat to be realized and the estimated probability of their occurrence both individually and collectively; and

(iv) Estimates of the nature, extent, and cost of emergency measures to be constructed to relieve the threat.

(2) In nonexigency situations, the state conservationist shall also submit adequate information to substantiate the environmental defensibility the emergency measures proposed for installation. This must include but is not limited to—

(i) Thorough descriptions of beneficial and adverse effects on environmental resources including fish and wildlife habitat;

(ii) Descriptions of water quality and water conservation impacts as appropriate; and

(iii) Analysis of effects on downstream water rights.

The Chief shall issue instructions as are necessary to determine the economic and environmental defensibility of measures proposed for installation consistent with this rule.

(c) *Implementation*. (1) When planning emergency measures, emphasis should

be placed on measures that are the least expensive and most environmentally sound. The measures are to be accomplished by using the least damaging construction techniques and equipment that will retain as much of the existing characteristics of the channel and riparian habitat as possible. Emergency measure construction practices may include but are not limited to such things as seasonal construction, minimum clearing, reshaping soil, limiting excavation to one bank (on alternating sides where appropriate), and prompt revegetation of disturbed areas.

(2) Measures needed to offset adverse impacts should be planned for installation concurrent with installation of the emergency measures. If they cannot be installed then, plans should be included to ensure their installation within 30 days. Cost sharing for these measures is at the same rate as for the original emergency construction.

(3) An EWP team consisting of NRCS personnel from the National Office and the technical service center shall determine the eligibility of all permanent, enduring, or long-life measures or practices proposed for construction. The team shall determine the need for funds before any commitments are made.

(4) Where lands under jurisdiction of FS are involved, the team will be assisted by FS representatives of the National Office and area or regional offices. The team shall also be available, at the request of the state conservationists, regional foresters, and area directors, to help determine the eligibility of other EWP measures or practices and to assist with administrative details.

[46 FR 56577, Nov. 17, 1981, as amended at 48 FR 4448, Feb. 1, 1983]

§ 624.7 Limitations on use of emergency funds.

Emergency watershed protection funds may not be used to:

(a) Perform operation or maintenance (periodic work that is necessary to maintain the efficiency and effectiveness of a measure to perform as originally designed and installed).

(b) Solve watershed problems that existed before the disaster.

(c) Repair, rebuild, or maintain private or public transportation facilities, public utilities, or similar facilities.

(d) Perform work on features of projects installed under the authority of Pub. L. 83–566, Pub. L. 78–534, Resource Conservation and Development, or measures installed by other Federal agencies. Exceptions may be made at the discretion of the Chief of NRCS.

(e) Construct works that would adversely affect downstream water rights.

(f) Make improvements to public or private property not essential to the reduction of threats caused by watershed improvement.

(g) Perform any work not determined to be economically and environmentally defensible under the provisions of this rule.

[46 FR 56577, Nov. 17, 1981, as amended at 48 FR 4448, Feb. 1, 1983]

§ 624.8 Environment.

Environmental aspects of emergency work are to be given careful consideration. A program environmental impact statement (EIS) for EWP work has been developed in compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 83 Stat. 852 (42 U.S.C. 4321 et seq.)). An environmental evaluation is to be prepared for all nonexigency situations. State conservationists shall notify concerned area and field offices of the Fish and Wildlife Service, the Environmental Protection Agency, and, through existing coordination mechanisms of State clearinghouses, the State fish and game and other appropriate agencies of anticipated EWP work. They shall invite the assistance of these agencies in preparing the environmental evaluation and in planning and implementing the emergency work. Archeological, historical, or other special expertise needed is to be solicited from appropriate agencies and groups. Environmental and other considerations are to be integrated into emergency work by using an interagency and interdisciplinary planning approach.

[48 FR 4448, Feb. 1, 1983]

§624.9 Application.

Sponsors may apply to any NRCS office for EWP assistance. NRCS shall help sponsors prepare their applications. The NRCS offices are defined in part 600 of this chapter. Information supplied should include the nature, location, and scope of the problems and the assistance needed.

§624.10 Investigation and request for funds.

(a) On receipt of an application for EWP, the State conservationist and regional forester or area director, where appropriate, shall immediately investigate the emergency situation to determine if EWP is applicable. In carrying out EWP work, State conservationists shall take into consideration two broad types or degrees of emergency situations:

(1) An imminent situation of unusual urgency—and exigency—and (2) an emergency requiring action but of less urgency than an imminent situation. (See §624.5)

(b) Prompt remedial action to eliminate an imminent threat to loss of life is to be provided when an exigency exists. The State conservationist shall notify Project Development and Maintenance and indicate the nature of the emergency and the estimated amount of funds needed. If funds are made available, the state conservationist may authorize actions necessary to remedy the emergency. The state conservationist shall confirm the situation in a memorandum to the Chief that explains the nature of the emergency, the location of the emergency, the kind of remedial work and funds needed, sponsors, description of potential damage, etc. In these situations, the memorandum from the State conservationist with its brief information constitutes the request for funds.

(c) If an exigency does not exist but the impairment justifies emergency assistance, the state conservationist shall submit a request for funds to the Chief within 60 days after the disaster event. Neither NRCS nor FS may commit funds until notified by the National Office of the availability of funds.

SUBCHAPTER D—LONG TERM CONTRACTING

PART 630—LONG TERM CONTRACTING

AUTHORITY: Pub. L. 75–430, 49 Stat. 1151 (16 U.S.C. 590d); Pub. L. 84–1021, 70 Stat. 1115 (16 U.S.C. 590p(b); Pub. L. 91–118, 83 Stat. 194 (16 U.S.C. 590d).

§ 630.1 Purpose.

The purpose of this subchapter is to provide for programs to extend cost sharing and technical assistance through long term contracts to landowners and others for making land use changes and to install measures to conserve, develop, and utilize the soil, water, and related natural resources on their lands.

[40 FR 53370, Nov. 18, 1975]

PART 631—GREAT PLAINS CONSERVATION PROGRAM

Subpart A—General Provisions

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AUTHORITY: 16 U.S.C. 590p(b).

SOURCE: 49 FR 11142, Mar. 27, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 631.1 Purpose.

(a) The Great Plains Conservation Program (GPCP) is a special program targeted to the total conservation treatment of farm or ranch units with the most severe soil and water resources problems. The purpose of the program is to assist farm, ranch and other land users to make changes in their cropping systems and land uses which are needed to conserve, develop, protect, and utilize the soil and water resources of their lands. This purpose is achieved by controlling erosion, conserving water, and adjusting land use to mitigate climatic, soil, topographic, flood, saline and other natural hazards.

(b) Program participation is voluntary and is carried out by applying a conservation plan encompassing an entire operating unit. A conservation plan is developed with the land user in consultation with the local conservation district and is used to establish a GPCP contract. This contract provides for cost sharing between the land user and the Secretary of Agriculture for applying needed land use adjustments and conservation treatment within a specified time schedule. The program is supplemental to, not a substitution for, other programs in the Great Plains area.

§ 631.2 Definitions.

The terms defined shall have the following meaning in this part and in all contracts, forms, documents, instructions, and procedures in connection therewith, unless the contract or subject matter requires otherwise.

Applicant. A land user who has requested in writing to participate in the GPCP.

Area conservationist. The NRCS employee who is the supervisor with primary responsibility for quality control. This person serves as contracting officer if designated by the state conservationist.

Chief. The Chief of the Natural Resources Conservation Service (NRCS), USDA.

Conservation district (CD). A conservation district, soil conservation district, soil and water conservation district, natural resource district, or similar legally constituted body with which the Secretary of Agriculture cooperates pursuant to the Soil Conservation and Domestic Allotment Act. The members of governing bodies of these organizations may be known as supervisors, directors, or commissioners.

Conservation plan. A written record of the land user's decisions regarding planned land use and treatment, including estimates of extent and cost. The timing of applications for each practice and/or identifiable unit is scheduled in the conservation plan.

Conservation practice. A specific treatment which is planned and applied according to NRCS standards and specifications as a part of a resource management system for land, water, and related resources.

Contract. A legal document that binds both the participants and the federal government to carry out the terms and conditions of the conservation plan. The contract forms the basis for GPCP sharing the costs of implementing the conservation plan.

Contracting officer. The NRCS employee authorized to sign GPCP contracts on behalf of NRCS.

County program committee. A group of Federal, State, and local officials selected by the designated conservationist. The committee provides ideas to the designated conservationist regarding program development and interagency program coordination.

Designated county. A county within a Great Plains state that the Chief has designated for participation.

Designated conservationist. A district conservationist or other NRCS employee who the state conservationist has designated to be responsible for administration of the GPCP in a designated county.

District conservationist. The NRCS employee assigned to direct and supervise NRCS activities in one or more conservation districts.

Great Plains area. The area comprising those counties within the Great Plains states designated for GPCP participation.

Great Plains states. Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Identifiable unit. A discernibly distinct component of a conservation practice.

Land user. An individual, partnership, firm, joint-stock company, corporation, association, trust, estate, or other nonpublic legal entity having control of a unit of land. This definition includes two or more persons having a joint or common interest.

Life span. The period of time specified in the contract and/or operation and maintenance agreement during which the resource management systems of component practices are to be maintained and used for the intended purpose. Most practices will have a useful life beyond the specified life span.

Operation and maintenance agreement. A document signed by both the participant and the contracting officer outlining the operation and maintenance requirements for applied conservation treatment.

Operating unit. A parcel or parcels of land, whether contiguous or noncontiguous, constituting a single management unit for agricultural purposes.

Other land. Nonagricultural land on which erosion must be controlled to protect agricultural land and which can be covered by contract.

Participant. A land user who is a party to a GPCP contract.

Resource management system. A combination of conservation practices identified by the land or water use that, if installed, will protect or improve the soil or water resource base.

Specifications. Minimum guantity or quality requirements established by NRCS to meet the standard for a specific conservation practice.

State conservationist. The NRCS employee authorized to direct and supervise NRCS activities within the state.

State program committee. A group of Federal, state, and local officials selected by the state conservationist. The committee provides ideas to the state conservationist regarding program development, coordination, general policies, and operating procedures of GPCP in the state.

Technical assistance. Guidance provided to land users regarding the use and treatment of soil, water, plant, animal, and related resources. This assistance may include conservation plan formulation, application, and maintenance and is usually confined to those activities which the recipient could not reasonably be expected to do without specialized assistance.

Technical guide. A document containing detailed information on the conservation of soil, water, plant, animal, and related resources applicable specifically to the area for which it is prepared.

§ 631.3 Administration.

(a) NRCS is responsible for the administration of the Great Plains Conservation Program (GPCP).

(b) The program shall be carried out in close cooperation with interested Federal, state, and local government units and organizations. The program in designated counties shall be coordinated with the long-range program of conservation districts operating in such counties and with other USDA activities.

(c) Applicants who have USDA-Farmers Home Administration (FmHA) loans must furnish to NRCS satisfactory evidence that the conservation plan used as a basis for the GPCP contract is compatible with assistance provided by FmHA. Such evidence may consist of written acknowledgement by the authorized FmHA official that the GPCP conservation plan is compatible with the farm management plan prepared for FmHA program purposes.

§ 631.4 Program applicability.

The program is applicable only to designated counties within the Great Plains states. County designation is a responsibility of the NRCS Chief.

§ 631.5 Land user eligibility.

Any land user in a designated county may file an application for participation in the GPCP with the NRCS field office. A land user who develops an acceptable conservation plan in cooperation with NRCS and the conservation district that is in compliance with the terms and conditions of the program is eligible to sign a contract.

§ 631.6 Land eligible for the program.

The program is applicable to: (a) Privately owned land, (b) nonfederally owned public land under private control for the contract period and included in the participant's operating unit, and (c) federally owned land, if installation of conservation practices would directly benefit nearby or adjoining privately owned land of persons who maintain and use the Federal land.

§ 631.7 Conservation treatment eligible for cost sharing.

(a) The state conservationist, in consultation with the state program committee, shall select the resource management systems, conservation practices, or identifiable units eligible for GPCP cost sharing in the state.

(b) The designated conservationist, in consultation with the county program committee, shall select from the state list the eligible conservation systems, practices, or identifiable units eligible for GPCP cost sharing in the county.

§ 631.8 Cost-share rates.

(a) The Federal rate may not exceed 80 percent.

(b) The maximum Federal rate (percentage) within each state for each practice or identifiable unit shall be established by the state conservationist.

(c) The maximum rate (percentage) for each county is established by the designated conservationist not to exceed the state rate (percentage).

(d) The rate (percentage) established by a state conservationist or a designated conservationist shall not exceed the amount necessary and appropriate to apply conservation treatment.

§ 631.9 Conservation plan.

(a) An applicant is responsible for developing a conservation plan, in cooperation with the conservation district, that protects the resource base in a manner acceptable to NRCS. This plan will be used as a basis for developing a contract. Conservation treatment is to be planned and implemented as a resource management system.

(b) The applicant decides how the land will be used and selects the resource management systems that will achieve the applicant's objectives and

provide protection of soil, water, and related resources acceptable to NRCS. Eligible practices may be included in the conservation plan to enhance fish and wildlife and recreation resources, promote the economic use of land, and reduce or control agriculture-related pollution.

(c) Technical assistance will be provided by NRCS, as needed by the land user. NRCS may utilize the services of private, local, state, and other Federal agencies in discharging its responsibilities for technical assistance.

(d) Participants are responsible for accomplishing the conservation plan and may use all available sources of assistance, including other USDA programs that are consistent with the conservation plan.

(e) All conservation practices scheduled in the conservation plan are to be carried out in accordance with the applicable NRCS technical guide.

Subpart B—Contracts

§631.10 Contracts.

(a) To participate in the program, an applicant must enter into a contract agreeing to implement a conservation plan. All persons who control or share control of the operating unit for the proposed contract period must sign the contract or one person with power-of-attorney may sign the contract for all persons. The applicant must provide the contracting officer with satisfactory evidence of control of the operating unit for the life of the proposed contract.

(b) Contracts may be entered into not later than September 30, 1991. The contract shall be for a period needed to establish the conservation treatment scheduled in the conservation plan and must extend at least 3 years but not more than 10 years.

(c) Contracts may be transferred or modified by mutual consent. The transferee assumes full responsibility for the contract including operation and maintenance of all land treatment installed under the contract. Also included are payments made under the contract to the participant or preceding participants before and after the transfer.

(d) Contracts may be terminated by mutual consent or by NRCS for cause.

§631.11 Conservation practice maintenance.

(a) Each participant is obligated to maintain the resource management systems or conservation practices applied under the contract for the duration of the contract. Practices installed before execution of the contract are to be maintained as specified in the contract.

(b) If the life span of the practices or resource management systems extends beyond the period of the contract, state conservationists may make the operation and maintenance of those practices or systems a condition of the contract. The length of such operation and maintenance shall extend for the expected life span.

§631.12 Cost-share payments.

(a) Federal cost sharing shall be adjusted so that the combined cost share by Federal and state government or subdivision of a state shall not exceed 100 percent of the cost.

(b) Cost-share payments for completing resource management systems or a practice or an identifiable unit according to specifications will be made by NRCS as specified in the contract or as adjusted according to §631.12(a).

§631.13 Disputes and appeals for matters other than contract violations.

Applicants or participants may appeal decisions regarding matters other than contract disputes under this part in accordance with part 614 of this title.

[60 FR 67316, Dec. 29, 1995]

§631.14 Contract violations.

Contract violations, determinations and appeals will be handled in accordance with the terms of the contract and attachments thereto. Violations involving fraud are to be handled in accordance with current USDA regulations.

Subpart C—Miscellaneous

§ 631.20 Setoffs.

(a) If any participant to whom compensation is payable under the program is indebted to U.S. Department of Agriculture (USDA), or any agency thereof, or is indebted to any other agency of the United States, and such indebtedness is listed on the county claim control record maintained in the office of the county ASC committee, the compensation due the participant shall be set off against the indebtedness. Indebtedness owing to USDA, or any agency thereof, shall be given first consideration. Setoffs made pursuant to this section shall not deprive the participant of any right to contest the justness of the indebtedness involved either by administrative appeal or by legal action.

(b) Participants who are indebted to this program for any reason will be placed on the USDA claim control record promptly by the state conservationist after the participant has been given opportunity to pay the debt.

§ 631.21 Compliance with regulatory measures.

Participants who carry out conservation practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary for the implementation and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants shall save the United States harmless from any infringements upon the rights of others or from any failure to comply with applicable laws or regulations.

§ 631.22 Access to operating unit.

Any authorized NRCS representative shall have the right to enter an operating unit for the purpose of ascertaining the accuracy of any representations made in a contract or leading up to a contract, and as to the performance of the terms and conditions of the contract. Access shall include the right to measure acreages, render technical assistance, and inspect any work undertaken under the contract.

§ 631.23 State conservationist's authority.

The state conservationist may take the initiative to revise or require revision of any determination made by the contracting officer or the district conservationist in connection with the program, except that the state conservationist may not revise any executed contract other than as may specifically be authorized herein.

PART 632—RURAL ABANDONED MINE PROGRAM

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AUTHORITY: Sec. 406, Pub. L. 95–87; 91 Stat. 460 (30 U.S.C. 1236).

SOURCE: 43 FR 44749, Sept. 28, 1978, unless otherwise noted.

Subpart A—General

§632.1 Purpose and scope.

(a) The purpose of this part is to set forth the Natural Resources Conservation Service (NRCS) rules and regulations to carry out the Rural Abandoned Mine Program under section 406, Pub. L. 95–87; 91 Stat. 460 (30 U.S.C. 1236).

(b) The Rural Abandoned Mine Program:

(1) Through the NRCS delivery system, assists land users to voluntarily develop reclamation plans and apply conservation treatment for the reclamation, conservation, and development of eligible coal-mined lands and water, and

(2) Provides cost sharing through long-term contracts according to an approved reclamation plan, to land users for establishing land use and conservation treatment on these lands.

§632.2 Objectives.

(a) The objectives of the program are to protect people and the environment from the adverse effects of past coal-mining practices and to promote the development of the soil and water resources of unreclaimed mined lands by:

(1) Stabilizing mined lands.

(2) Controlling erosion and sediment on mined areas and areas affected by mining.

(3) Reclaiming lands and water for useful purposes.

(4) Enhancing water quality or quantity where it has been disturbed by past coal-mining practices.

§632.3 Responsibilities.

(a) The Rural Abandoned Mine Program is administered by the U.S. Department of Agriculture (USDA) through NRCS in accordance with the delegation of responsibility contained in §601.1(h) of this chapter.

(1) The Chief of NRCS is responsible for national program management and administration and for coordinating program operations with the Office of Surface Mining (OSM), U.S. Department of the Interior.

(2) State conservationists (Responsible Federal Officials) are responsible for program operations within a State including program coordination with the State reclamation agency and the representatives of OSM.

(b) The primary public contacts for program assistance are the district conservationists located in local NRCS field offices.

(c) NRCS is assisted by other USDA agencies in accordance with existing authorities and agreements in carrying out the program.

(d) NRCS is to coordinate Rural Abandoned Mine Program activities with NRCS programs and the other reclamation programs authorized by Pub. L. 95–87 that are carried out by the Office of Surface Mining of the U.S. Department of the Interior, State reclamation agencies, and Indian tribes. Coordination includes program development, development of reclamation standards, preparation of special reports, requests for funding, and related actions required to achieve coordination between programs.

(e) NRCS is to consult with State and local reclamation committees to obtain recommendations on program operation, evaluation of applications for reclamation assistance, and public participation. The NRCS State Conservationist is to use existing reclamation committees or encourage the organization of a new State committee for this purpose. The State Conservationist is to serve as a member when the committee is functioning for the purposes of this program. Representatives of the Office of Surface Mining, State reclamation agency, State water quality agency, State conservation agency, and other agencies or groups are to be invited to participate as members. Individual citizens may participate through the State committee. Local committees, if needed, are to be organized on a multicounty, county, conservation district, or other appropriate area with a local membership structure similar to the State committee. The district conservationist is to be a member of a local reclamation committee organized to provide program guidance.

[43 FR 44749, Sept. 28, 1978, as amended at 45 FR 65181, Oct. 2, 1980]

§ 632.4 Definitions.

Abandoned mined lands. Unreclaimed coal-mined lands that existed before August 3, 1977, and for which there is no continuing reclamation responsibility on the part of a mine operator, permittee, or agent under State or Federal law or on the part of the State as a result of a bond forfeiture. See § 632.13.

Average costs. The calculated cost, determined by recent actual costs and current cost estimates, considered necessary for a land user to carry out a conservation practice or an identifiable unit of a conservation practice.

Conservation district. A legal subdivision of State government responsible for developing and carrying out programs of soil and water conservation with which the Secretary of Agriculture cooperates under the Soil Conservation and Domestic Allotment Act of 1935.

Conservation treatment. Specific conservation or reclamation practices applied to the land according to current standards and specifications in NRCS technical guides.

Contract. A binding agreement between NRCS and the land user that includes the reclamation plan and provides for cost sharing the conservation treatment.

Contracting officer. The NRCS official authorized to enter into and administer contracts for the Rural Abandoned Mine Program.

Cost. The monetary amount actually paid or obligated to be paid by the land user for equipment use, materials, and services for carrying out a conservation practice or identifiable unit. If the land user uses his own resources, it includes the computed value of his labor, equipment use, and materials.

Cost-share payments. Payments made to or on behalf of land users at established rates as specified in contracts for carrying out a conservation practice or an identifiable unit of such practices according to the contract.

Financial burden. The land user's cost of reclamation that cannot be expected to be recovered within the contract period and that would probably prevent participation in the program. The land user must sign a statement to substantiate financial burden.

Identifiable unit. A component of a conservation practice that can be clearly identified as a step in carrying out the conservation practice.

Inadequately reclaimed. Lands or water that are mined for coal or are affected by mining conducted before August 3, 1977, which continue in their present condition to substantially degrade the quality of the environment, prevent or damage beneficial use of land or water resources, or endanger the health or safety of the public.

Landrights. An interest acquired by fee simple title, easements, and rights-of-way to occupy or use land, buildings, structures, or other improvements.

Land user. Any person, partnership, firm, company, corporation, association, trust, estate, other entity, or agent that owns or has management control of the surface rights of the land during the contract period or owns water rights on eligible lands. Also included are State or local public entities that own or control eligible land and water.

Main benefits. The principal values or benefits that can be identified and/or quantified as a result of reclamation. Main offsite benefits are those values that accrue to surrounding land users or the public in general as a result of the reclamation. Main onsite benefits are those that accrue to the participant. Examples of principal values or benefits include but are not limited to human lives and property protected, reduction of erosion or sediment damage, elimination of public safety or health hazards, improvement of water quality, improved visual quality, improved fish or wildlife habitat, or restoration of beneficial uses of reclaimed areas.

Reclamation committee. A committee on a local or State level consisting of representatives of Federal and State agencies and other organizations or individuals that have responsibilities or interest in abandoned mine reclamation. The committee provides guidance to NRCS on the operation of the Rural Abandoned Mine Program.

Reclamation plan. A conservation and development plan as referred to in Pub. L. 95–87, consisting of a written record of land user decisions on proposed use,

conservation treatment, and maintenance of eligible lands and water that will protect, enhance, and maintain the resource base. A reclamation plan contains pertinent soils data, a planned land use map or drawing, a record of use and treatment decisions including a schedule of conservation treatment, and other resource data as appropriate.

Specified maximum costs. The maximum amount of cost-share money that is to be paid to a land user for carrying out a conservation practice or an identifiable unit of a conservation practice.

Standards and specifications. Requirements that establish the acceptable quality level for planning, designing, and installing a conservation practice so it achieves its intended purpose. NRCS standards and specifications are contained in the NRCS field office technical guides and are designed to be sound and practicable under local conditions. Technical guides are on file in local NRCS field offices.

Water rights. Any interest acquired in, priority established for, or permission obtained for the use of water.

[43 FR 44749, Sept. 28, 1978; 45 FR 65181, Oct. 2, 1980]

Subpart B—Qualifications

§632.10 Applicability.

This program applies to any county or other designated area within a State that had abandoned or inadequately reclaimed coal-mined lands within its borders before August 3, 1977.

§632.11 Availability of funds.

(a) The provisions of the program are subject to the annual appropriation by Congress of funds from the Abandoned Mine Reclamation Fund and the transfer of as much as 20 percent of these funds from the Office to Surface Mining to NRCS for program operation.

(b) Allotments of Rural Abandoned Mine Program funds to state conservationists are to reflect the national program needs, the geographic areas from which the funds were derived, the funding priority assigned to applications for program assistance, including benefits expected to be derived, and the practicability and feasibility of the reclamation work proposed.

§632.12 Funding priorities.

(a) All eligible applications within a State are to be assigned a funding priority and subpriority. Assignment of a priority and subpriority establishes the order in which the proposed reclamation work will be selected and evaluated for funding. (See §632.20(b) for additional selection criteria.) Applications for individual, joint, or special projects (See §632.18) for areas of different priorities or subpriorities are to be assigned the highest applicable priority or subpriority. The funding priorities are as follows:

(1) *Priority 1.* Protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal-mining practices. Extreme danger means a condition that could be expected to cause substantial physical harm to persons, property, or the environment and to which persons or improvements on real property are exposed.

(2) *Priority 2.* Protection of public health, safety, and general welfare from the adverse effects of coal-mining practices that do not constitute an extreme danger.

(3) *Priority 3.* Restoration of the land and water resources and the environment where previously degraded by the adverse effects of coal-mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity. First consideration in this priority is to be the reduction of offsite damage affecting the public. Second consideration is to be given to restoring to beneficial uses for the main benefit of the land user.

(b) Eligible and feasible applications for program assistance within each priority category (§632.12(a)) are to be funded in the following order:

(1) Individual persons or public entities who owned the eligible area before May 2, 1977, and who neither consented to nor exercised control over the mining operation.

(2) Individual persons who would actively use the area, if reclaimed, for agricultural or silvicultural purposes.

(3) All other participants.

[43 FR 44749, Sept. 28, 1978; 45 FR 65181, Oct. 2, 1980]

§ 632.13 Eligible lands and water.

Lands and water eligible for reclamation are those that were mined for coal or were affected by coal-mining processes and were abandoned or inadequately reclaimed before August 3, 1977. These lands and water are not eligible if:

(a) There is continuing reclamation responsibility on the part of a mine operator, permittee, or agent under State or Federal law or on the part of the State as a result of bond forfeiture. However, if the amount of the bond forfeiture was insufficient to reclaim the area covered by the bond, the area will be considered eligible.

(b) They are under Federal ownership and control.

(c) The surface rights are under easement or lease to be remined for coal or other minerals.

§ 632.14 Eligible land users.

Landowners holding surface land and water rights, residents, tenants, or their agents who own or have management control of eligible land and/or water are eligible to participate in the program. Residents or tenants who do not own the land must have control of the land for the period of the proposed contract and have the written consent of the landowner. Land users may participate by operating as persons, partnerships, associations, corporations, estates, trusts, or non-Federal public entities, and by acting individually or jointly with other eligible land users. However, joint participation with other eligible land users is required if the primary purpose of reclamation is enhancement of water quality or quantity.

§ 632.15 Eligible uses and treatment of reclaimed lands.

(a) Reclaimed lands and water may be used for cropland, hayland, pasture land, rangeland, woodland, wildlife land, natural areas, noncommercial recreation land, and the supporting uses associated with these land uses. Other land uses proposed by public entities for public use and benefit such as open space, conservation uses, natural areas, and recreation sites may be approved by the NRCS State conservationist in accordance with the priorities stated in § 632.12. However, development of public sites, such as the installation of recreation facilities, is not eligible for cost sharing.

(b) Reclaimed land use is determined by the objectives of the land user, compatibility of the land use with surrounding land use, and the practicability and feasibility of restoring the soil and water resources to support the use selected.

(c) The maximum acreage of eligible lands and water that may be offered for contract under one ownership is 320 acres for the life of the program.

(d) Conservation treatment eligible for Federal cost sharing includes the combination of practices needed and feasible to achieve:

(1) Protection of life, property, and elimination of public health and safety hazards, including land stabilization.

(2) Restoration of the environment where degraded by past mining, including water quality, visual quality, recreation resources, fish and wildlife habitat, and erosion and sediment control.

(3) A site that can be developed for a beneficial use as specified in § 632.15(a). Examples of eligible treatment that may be cost shared include but are not limited to: Land shaping and grading, critical area planting or other plantings for stabilization, improving visual quality, wildlife food and cover, diversions or terraces, waterways or lined ditches, grade stabilization structures, sediment basins, and special practices for sealing shafts and tunnels, correcting subsidence problems, or other unusual situations. Practices not eligible for cost sharing are those that are solely applied to develop a reclamation site (including sites developed by public entities for public use), increase the production of crops, or for the recurring maintenance of applied reclamation.

(e) Applied conservation treatment is to meet the applicable Federal and State standards for the reclamation and conservation treatment of abandoned or inadequately reclaimed coal-mined lands and water. Where needed, these standards are incorporated in local NRCS technical guides as the

NRCS standards and specifications applicable to the program. Special practices as specified in §632.15(d) are to be developed in cooperation with appropriate State or Federal agencies having the expertise or responsibility for the practices.

(f) NRCS State conservationists, in consultation with the State reclamation committee, are to:

(1) Develop a list of practices that are eligible for cost sharing, and

(2) Maintain, as applicable, lists of average costs of applying conservation treatment to eligible lands and waters.

§632.16 Methods of applying planned land use and treatment.

(a) Land users may arrange to apply the planned land uses and conservation treatment specified in the contract by one or more of the following methods:

(1) By performing the required treatment with his own labor and equipment.

(2) By hiring a qualified contractor to install the required treatment.

(3) By requesting NRCS to award and administer a contract to perform the required treatment in accordance with 41 CFR chapters I and IV.

(b) State conservationists are to develop criteria specifying the conditions for which NRCS will award and administer a contract. Criteria will consider: Type of equipment required, type and amount of conservation treatment required, costs of the required reclamation, needs of the land user, and the applicable cost-share rate. If the Federal share is less than 100 percent, a land user must put up his estimated share of the cost before NRCS awards the contract.

§632.17 Cost-share rates.

(a) Cost-share rates paid by the Federal Government are to be established and issued as instructions by the NRCS Administrator in accordance with the following criteria:

(1) For 120 acres or less, the cost-share rate is to provide up to 80 percent of the costs of land use and conservation treatment depending on the income-producing potential of the land after reclamation. However, this rate may be increased to a level required to obtain participation if the main benefits of reclamation are offsite (in the public interest) and there is a declaration of financial burden by the participant.

(2) The rate on acreage in excess of 120 acres up to 320 acres maximum is to be reduced by up to 0.5 percent per acre. This reduced rate applies to the entire acreage offered for contract.

§632.18 Special projects.

(a) The NRCS State conservationist may approve the following types of special projects subject to the eligibility requirements, funding priorities, and cost-share rates as stated in §§632.12, 632.13, 632.14, 632.15, and 632.17:

(1) Field trials or demonstration projects recommended by the State reclamation committee.

(2) Projects to enhance water quality and quantity where past coal-mining practices disturbed local water supplies and where joint action by a group of eligible land users in cooperation with Federal and State agencies is needed to restore the water resource.

§632.19 Crop history and allotments.

(a) Most crop history and allotments on eligible lands were discontinued at the time of mining. However, if eligible lands are classified as cropland at the time the contract is signed, the cropland crop history and allotment, if any, may be:

(1) Preserved for a period not to exceed twice the length of the contract as provided in 7 CFR part 719, or

(2) Voluntarily surrendered by the land user.

Subpart C—Participation

§632.20 Application for assistance.

(a) Land users must submit an application for program assistance through the local conservation district or NRCS field office. NRCS is to announce dates for receiving applications through local media. Applications are to be reviewed by the conservation district and/or local reclamation committee, which is to verify eligibility and recommend funding priorities to the NRCS district conservationist. The NRCS district conservationist is to assign funding priorities according to the recommendations unless he determines

that applications are incomplete, ineligible, or unfeasible. Low priority applications that cannot be serviced within specific time periods established by the State conservationist are to be returned to the applicant with an appropriate explanation. These applicants may reapply at a later date if they are still interested.

(b) Eligible applicants are serviced within each subpriority according to the following criteria:

(1) The specific type, amount, and relative importance of benefits to be derived. (Public benefits and offsite environmental improvement will take precedence over onsite benefits.)

(2) Feasibility and practicability of reclaiming for the proposed uses.

(3) Land user's ability to proceed.

(4) Date of the application.

§ 632.21 Reclamation plan.

(a) *Responsibility*. Land users are responsible for developing a reclamation plan that will serve as a basis for a contract. Normally, a land user will need the technical services of NRCS and the conservation district or another professional to develop an acceptable plan.

(b) *Objectives and priorities.* The reclamation plan is to provide for the appropriate program objectives and priorities as stated in §§ 632.2 and 632.12 and meet the definition of a reclamation plan as defined in § 632.4.

(c) *Review*. (1) In areas served by conservation districts, reclamation plans are to be reviewed and signed by the district board to insure that planned land use and treatment is compatible with surrounding land uses and that proposed assistance is consistent with the district plan of work and priorities. In areas not served by conservation districts, the land use compatibility review may be performed by the local reclamation committee.

(2) If reclamation plans include lands within or adjacent to Federal lands, the plan is to be reviewed with the appropriate Federal land management agency to insure that the planned land use is compatible with that of the surrounding area.

(3) Land users are responsible for insuring that the proposed land use and treatment is compatible with local land use ordinances.

(d) *Approval.* Proposed land use, conservation treatment, and sequence of application contained in the plan are to be agreed to by both NRCS and the land user. The district conservationist is to sign the reclamation plan to indicate technical approval.

§ 632.22 Contracts.

(a) *Cost-sharing contracts.* A land user who has an approved reclamation plan may enter into a contract with NRCS to receive Federal cost-share assistance. All land users are to sign the contract. A land user is required to furnish evidence of management control, such as a long-term lease, recorded deed, or land contract, and must have the written consent of the landowner. The NRCS contracting officer is to sign the contract after determining that all documents meet program requirements.

(b) *Effect of contract.* A land user who signs a contract is obligated to apply or arrange for the application of the land use and conservation treatment as scheduled in the reclamation plan according to approved standards and specifications. A land user may request NRCS to award and administer a contract to apply the conservation treatment as scheduled in the reclamation plan in accordance with § 632.16(a)(3).

(c) *Permits, landrights, and water rights.* The land user is responsible for obtaining the permits, surface landrights, and water rights that may be required to perform the planned work. NRCS is to assist land users in identifying the specific permit, landright, or water right required.

(d) *Operation and maintenance.* During the contract period the land user is responsible for the operation and maintenance of applied conservation treatment. Operation and maintenance requirements are to be included in the contract.

(e) *Period of contract.* The contract period is to be no less than 5 nor more than 10 years. A contract is to extend for at least 3 years after the application of the last cost-shared conservation treatment to insure adequate establishment of vegetation and other treatment. Exceptions to the 3-year

provision may be granted by the state conservationist for unusual circumstances.

(f) *Transfer of contract.* (1) If during the contract period all or part of the right and interest in the land is transferred by sale or other action, the contract is terminated on the land unit that was transferred and the land user:

(i) Forfeits all right to any future cost-share payments on the transferred land unit, and

(ii) Must refund cost-share payments that have been made on the transferred land unit not to exceed the difference between the estimated value of the land at the time of entering into the contract and at the time of transfer, unless the new land user becomes a party to the contract as provided in paragraph (f)(2) of this section.

(2) If the new land user becomes a party to the contract:

(i) He is to assume all obligations of the previous land user on the transferred land unit.

(ii) The contract with the new land user is to remain in effect with the original terms and conditions.

(iii) The contract is to be modified in writing to show the changes caused by the transfer. If the modification is not acceptable to the contracting officer, the provisions of paragraphs (f)(1) (i) and (ii) of this section apply.

(3) The transfer of all or part of a land unit by a land user does not affect the rights and obligations of other land users who have signed the contract.

(g) *Modification of contract.* (1) A contract previously entered into with a land user may be modified only with the approval of the State conservationist or as authorized under established policies. No contract may be modified unless it is determined that the modification is desirable to carry out the program.

(2) Contracts may be modified to add, delete, substitute, or reapply conservation treatment if:

(i) Applied conservation treatment failed to achieve the desired results through no fault of the land user,

(ii) Applied treatment deteriorated because of conditions beyond the control of the land user, or

(iii) Other treatment is substituted that will achieve the desired results.

(h) *Joint contract.* A land user may enter a contract jointly with other land users subject to the 320 acres maximum limitation per landowner. However, joint participation is permitted only if it will result in better land use and treatment than individual participation or if it is required by §§632.14 and 632.18(a)(2).

(i) *Termination of contract.* Contracts may be terminated by mutual consent of the signatories only if the State conservationist determines that the termination is authorized under established policies and is in the public interest. In this case, the State conservationist is to determine the amount of refund.

§632.23 Access to land unit and records.

Any authorized NRCS employee or agent is to have the right of access to land under application or contract and the right to examine any program records to ascertain the accuracy of any representations made in the application or contract. This includes the right to furnish technical assistance and to inspect work done under the contract.

Subpart D—Cost-Share Procedures

§632.30 Applicability.

This subpart contains procedures for making cost-share payments to a land user when land use and conservation treatment is applied as specified in §632.16(a)(1) or (2).

§632.31 Cost-share payment.

(a) *Amount of cost-share payment.* Cost-share payments are to be made at rates specified in the contract. The cost-share payment is to be determined by one of the following methods:

(1) Average cost.

(2) Actual cost but not more than the average cost.

(3) Specified maximum cost. If the average cost or the specified maximum cost at the time of starting the installation of a conservation practice or identifiable unit is less than the cost specified in the contract, payment is to be made at the lower rate. If the cost at the start of installation is higher, payment may be made at the higher

rate. A contract modification is necessary if NRCS determines that the higher cost is a significant increase in the total cost-share obligation. If costs are significant, cost-share payment is not to be made until the modification reflecting the increase is approved. If the higher costs are not significant, cost-share payments may be made if funds are available.

(b) *Time of payment.* Cost-share payments are to be made to the land user after a practice or an identifiable unit has been satisfactorily applied. The land user is to submit claims for payment to the district conservationist no later than September 30 of the year after application. Late claims require approval of the State conservationist before payment can be made. A claim is to show the proportion of each land user's contribution to the applied practice or identifiable unit.

(c) *Approval.* The district conservationist must certify that a practice or identifiable unit has been satisfactorily applied before NRCS can make cost-share payments.

(d) *Ineligible claim.* A land user is not eligible to receive cost-share payments for a practice or an identifiable unit that was not carried out under program requirements.

(e) *Authorization for payment.* (1) Materials or services needed to carry out contracts are to be obtained by land users. Contracts may provide for part or all of the cost-share payment for a practice or identifiable unit to be made directly to suppliers of materials or services. The materials or services must be delivered or performed before payment is made.

(2) The contracting officer is to authorize payment for materials or services not exceeding:

(i) The cost share of the material or service used, or

(ii) The total cost share of the practices or identifiable unit if requested by the land user.

(3) The land user who purchases materials or services to carry out a contract is responsible for them until the district conservationist determines that the material or service was used for the intended purpose. If a material or service cost-shared by NRCS is used for a purpose other than to carry out the contract, the land user is indebted to the United States for the cost of the misused material or service. This indebtedness is to be repaid to NRCS as a refund or withheld from cost-share payments otherwise due the land user under the contract.

(4) NRCS has the right to inspect materials or services and to take samples for testing. Inspections by NRCS will not be necessary if NRCS considers State inspection regulations adequate.

(5) Materials or services must meet the quality standards as specified. NRCS may make exceptions for materials or services that do not meet the standards only if they will satisfactorily serve the intended purpose. NRCS is to deduct from the cost-share payment the difference between the price of the materials or services specified and the actual value of the different materials or services.

(f) *Division of cost-share payments.* Federal cost-share payments made directly to suppliers of materials or services are credited to the land user who was issued the authorization. The remainder of the cost share is credited to the land user who carried out the remainder of the practice or identifiable unit. If more than one land user contributed to carrying out a practice or identifiable unit, the cost-share payment is to be divided proportionately according to the contribution made by each of the land users. Furnishing a landright or water right is not a contribution for cost-share payment purposes.

(g) *Other aid.* Non-Federal public entities may furnish all or part of the land user's portion of the cost of applying a practice or identifiable unit with no reduction in the Federal cost share.

(h) *Assignments and claims.* Land users may not assign cost-share payments except as provided under the authority of 31 U.S.C. 203, as amended by 41 U.S.C. 15. Federal cost-share payments due any land user are not subject to claims for advances except as provided in this section.

Subpart E—Appeals and Violations

§632.40 Appeals.

Land users may appeal decisions under this part in accordance with part 614 of this title.

[60 FR 67316, Dec. 29, 1995]

§632.41 Violations.

(a) *Actions causing violation.* The following actions constitute violation of a contract by a land user:

(1) Knowingly or negligently damaging or causing conservation treatment to be impaired.

(2) Adopting land use or treatment that tends to defeat the program purposes during the period of the contract.

(3) Failing to comply with the terms of the contract.

(4) Filing a false claim.

(5) Misusing an authorization.

(b) *Effect of violation*—(1) *Contract to be terminated.* (i) By signing a contract, the land user agrees to forfeit all rights to further cost-share payments under a contract and to refund cost-share payments received not to exceed the difference between the estimated value of the land at time of entering into the contract and the value at time of termination, if the contracting officer, with approval of the State conservationist, determines that:

(A) There was a violation of the contract during the time the land user had control of the land, and

(B) The violation was of a nature as to warrant termination of the contract.

(ii) The land user is to be obligated to refund cost-share payments and cost shares paid under authorizations not to exceed the difference between the estimated value of the land at time of entering into the contract and the value at time of termination.

(2) *Contract not terminated.* (i) By signing a contract, the land user agrees to refund cost-share payments received under the contract or to accept payment adjustment if the contracting officer, with the approval of the State conservationist, determines that:

(A) There was a violation of the contract during the time the land user had control of the land, and

(B) The nature of the violation does not warrant termination of the contract.

(ii) Payment adjustments may include decreasing the rate of a cost share, deleting a cost-share commitment from the contract, or withholding cost-share payments earned but not paid. The land user who signs the contract may be obligated to refund cost-share payments and cost shares paid under authorizations.

§632.42 Violation procedures.

(a) *Scope.* This section prescribes the regulations dealing with contract violations. The Chief reserves the right to revise or supplement any of the provisions of this section at any time if the action does not adversely affect the land user, or if the land user has been officially notified before this action is taken. No cost-share payment shall be made pending the decision on whether a contract violation has occurred.

(b) *Determination by contracting officer.* On notification that a contract violation may have occurred, the contracting officer is to:

(1) Determine, with the approval of the State conservationist, that a violation did not occur or that the violation was of such a nature that no penalty of forfeiture, refund, or payment adjustment is necessary. No notice is issued to the land user, and no further action is to be taken; or

(2) Determine that a violation did occur, but the land user agrees to accept the penalty. If the land user agrees in writing to accept a penalty of forfeiture, refund, payment adjustment or termination, no further action is to be taken. The land user's agreement to accept the penalty must be approved by the contracting officer and State conservationist.

(c) *Notice of possible violation.* (1) When the State conservationist is notified that a contract violation may have occurred that may warrant a penalty of forfeiture, refund, payment adjustment, or termination, he is to notify, in writing, each land user who signed the agreement of the alleged violation. This notice may be personally delivered or sent by certified or registered mail. A land user is considered to have

received the notice at the time of personal receipt acknowledged in writing, at the time of the delivery of a certified or registered letter, or at the time of the return of a certified or registered letter where delivery was refused.

(2) The notice setting forth the nature of the alleged violation is to give the land user an opportunity to appear at a hearing before a hearing officer designated by the State conservationist. The land user's request for a hearing is to be submitted in writing and must be received in the NRCS field office within 30 days after receipt of the notice. The land user is to be notified in writing by the hearing officer of the time, date, and place for the hearing. The land user is to have no right to a hearing if he does not file a written request for a hearing, or if he or his representative does not appear at the appointed time, unless the hearing officer, at his discretion, permits an appearance. A request for a hearing filed by a land user is considered to be a request by all land users who signed the contract.

(d) *Hearing.* A public hearing is to be conducted to obtain the facts about the alleged violation. The hearing officer is to limit the hearing to relevant facts and evidence and is not to be bound by the strict rules of evidence as required in courts of law. Witnesses may be sworn in at the discretion of the hearing officer.

(1) The land user or his representative is to be given full opportunity to present oral or documentary evidence about the alleged violation. Likewise, the United States may submit statements and evidence. Individuals not otherwise represented at the hearing may be permitted, at the discretion of the hearing officer, to give information of evidence. The hearing officer, at his discretion, may permit witnesses to be cross-examined.

(2) The hearing officer is to make a record of the hearing so that the testimony can be summarized. A summary of the testimony may be made if both the land user and the State conservationist agree. A transcript of the hearing is to be made if requested by either the State conservationist or the land user within 10 days of the hearing. If a transcript is requested by the land user, the land user may be assessed the cost of a copy of the transcript.

(3) The hearing officer is to close the hearing after a reasonable period of time if the land user or his representative is not present at the scheduled time. The hearing officer may, at his discretion, accept information and evidence submitted by others present for the hearing.

(4) The hearing officer is to furnish the State conservationist with a written report setting forth his findings, conclusions, and recommendations. The report is to include the summary of testimony or transcript made of the hearing and any other information that would aid the State conservationist in reaching his decision.

(e) *Decision by State conservationist.* The State conservationist is to make a decision after considering the hearing officer's report, including recommendations of the conservation district board if any, and any other information available to him, including, if applicable, the amount of the forfeiture, refund, or payment adjustment. The decision is to state whether the violation is of such a nature as to warrant termination of the contract. The State conservationist is to notify, in writing, each land user who signed the contract of his decision. The State conservationist may authorize or require the reopening of any hearing before a hearing officer for any reason at any time before his decision.

(f) *Appeal to Chief.* Any land user affected by a decision of the State conservationist has the right of appeal to the Chief. The appeal and any briefs or statements must be received in the Office of the Chief within 30 days after the land user has received notice of the State conservationist's decision. The State conservationist is to file a brief or statement in the Office of the Chief within 20 days after the land user's brief or statement is received there. The appeal is to be limited to the records and the issues made before the State conservationist. The Chief's decision is final. The decision is to be determined by the record before him and the issues presented in the appeal, and the land user is to be notified in writing.

(1) If the decision provides for termination of the contract, it is to state that the contract is terminated, that all rights to further cost-share payments under the contract are forfeited, and that cost-share payments received under the contract are to be refunded, but the refund is not to exceed the difference between the estimated value of the land at time of entering into the contract and the value at time of termination. The decision is to state the amount of refund and method of payment.

(2) If the decision does not provide for termination of the contract, the land user may be required to make a refund of cost-share payments or to accept payment adjustments. The decision is to state the amount of refunds of cost-share payments or payment adjustments. In determining amounts of refund or payment adjustments, the following are to be considered:

(i) The extent of the violation.

(ii) Whether the violation was deliberate or the result of negligence or was caused by circumstances beyond the control of the land user.

(iii) The effect on the program if no refund or payment adjustment is required.

(iv) The extent to which the land user benefited by the violation.

(v) The effect of the violation on the contract as a whole.

(vi) Other considerations including the appropriateness and reasonableness of the refund or payment adjustment.

[43 FR 44749, Sept. 28, 1978; 45 FR 65181, Oct. 2, 1980]

Subpart F—Environment

§632.50 Environmental evaluation.

(a) Environmental evaluation is an integral part of planning used by NRCS in developing each reclamation plan under this program. Planning includes site inventory and analysis, evaluation of reasonable alternatives, and identification of significant environmental impacts. Major points in planning when NRCS or the land user can make decisions concerning further action are:

(1) After an evaluation of the application for program assistance to verify eligibility, land user objectives, and priorities for funding.

(2) After a site-specific inventory and analysis to evaluate feasible treatment alternatives, costs, and environmental impacts.

(3) After development of an acceptable reclamation plan as a basis for contract.

(4) Before the signing of a mutually acceptable contract for financial cost-share assistance.

(b) The scope and complexity of the assessment is to be consistent with the scope and complexity of the proposed reclamation.

(c) An interdisciplinary team, consisting of NRCS and/or other cooperating agency personnel as needed, is used in making the assessment.

(d) The Responsible Federal Official (RFO) is to use the environmental evaluation to make a decision concerning the need to prepare an environmental impact statement (EIS) in accordance with §632.52.

[43 FR 44749, Sept. 28, 1978; 45 FR 65181, Oct. 2, 1980]

§632.51 Accord with environmental laws and orders.

(a) A final program EIS is available in compliance with section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). This statement discloses the cumulative program impacts that significantly affect the quality of the human environment.

(b) The program is to be conducted in accordance with other laws and Executive orders concerning environmental protection.

(c) Channelization of streams is prohibited under this program. Channelization as used herein means the overall widening, deepening, realining, or constructing a nonvegetative protective lining over all or part of the perimeter of a perennial stream channel as described in NRCS Channel Modification Guidelines, Part B, Items 4, 5, 6, and 7, as published in the FEDERAL REGISTER on March 1, 1978 (43 FR 8278).

§ 632.52 Identifying typical classes of action.

(a) The RFO will analyze the environmental assessment of the proposed action to determine which of the following classes of action applies. This determination will be recorded and will be available to the public on request.

(1) *Actions not requiring a site-specific EIS.* All proposed actions and their impacts that are determined to be adequately discussed in the program EIS or determined not to be major Federal actions will not require a site-specific EIS. However, if the assessment reveals that these proposed actions will have significant adverse effects on the quality of the human environment, the RFO will:

(i) Modify the action to eliminate or mitigate the significant adverse impacts, or

(ii) Withdraw further Federal assistance if significant adverse impacts cannot be eliminated or mitigated.

(2) *Actions requiring a site-specific EIS.* A site-specific EIS is required for proposed actions if their impacts are not adequately discussed in the program EIS, and the proposal is determined to be a major Federal action significantly affecting the quality of the human environment in accordance with § 650.7(b) of this chapter. When a decision is made to prepare an EIS, a Notice of Intent will be published in the FEDERAL REGISTER. The content and format of the EIS is to be consistent with the format of the program EIS and use scoping and tiering techniques to focus on the significant environmental issues.

(3) *Actions excluded from the EIS requirements.* Those actions taken to prevent loss of life or property under the extreme danger provisions of priority 1 as described in § 632.12. These actions are determined by a limited environmental assessment that reasonably identifies the possible loss of life or property.

PART 633—[RESERVED]

PART 634—RURAL CLEAN WATER PROGRAM

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634.50 Program and project monitoring and evaluation.

AUTHORITY: Sec. 35, Pub. L. 95–217, 91 Stat. 1579 (33 U.S.C. 1288).

SOURCE: 43 FR 50855, Nov. 1, 1978, unless otherwise noted.

Subpart A—General

§634.1 Purpose and scope.

(a) The purpose of this part is for the U.S. Department of Agriculture (USDA), with the concurrence of the U.S. Environmental Protection Agency (EPA), to set forth regulations to carry out a Rural Clean Water Program (RCWP) under section 35, Pub. L. 95–217; 91 Stat. 1579; 33 U.S.C. 1288.

(b) The Rural Clean Water Program provides financial and technical assistance to private landowners and operators (participants) having control of rural land. The assistance is provided through long-term contracts (5 to 10 years) to install best management practices (BMP's) in project areas which have critical water quality problems resulting from agricultural activities. The proposed project area must be within a high priority area in an approved agricultural portion of a 208 water quality management plan. Participation in RCWP is voluntary.

(c) The program is a new USDA program and an extension of existing water-quality management programs of EPA.

§634.2 Objective.

The RCWP is designed to reduce agricultural nonpoint source pollutants to improve water quality in rural areas to meet water quality standards or water quality goals. The objective is to be achieved in the most cost-effective manner possible in keeping with the provision of adequate supplies of food and fiber and a quality environment.

§634.3 Administration.

At the national level, the Secretary of Agriculture, with the concurrence of the Administrator, EPA, administers RCWP. The Secretary of Agiculture has delegated responsibility for administration of the program (43 FR 8252) to the Administrator, Natural Resources Conservation Service (NRCS). NRCS will be assisted by other USDA agencies in accordance with existing authorities.

(a) A National Rural Clean Water Coordinating Committee (NRCWCC), chaired by the Administrator, NRCS, is to assist in carrying out the Rural Clean Water Program.

(b) At the State level, a State Rural Clean Water Coordinating Committee (SRCWCC) is to assist the State Conservationist, NRCS, in administering the program. The State Conservationist will chair the SRCWCC.

(c) To assure coordination at the project level, a local Rural Clean Water Coordinating Committee is to be established at the time the application is developed. An existing local committee may be used, where practicable, to perform the functions of this committee.

(d) The Administrator, NRCS, through the State Conservationists, NRCS, is to enter into agreements, where practicable, with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area. That portion of program administration to be conducted by these agencies will be defined in the project application and grant agreement. Where this is not practicable, USDA will administer the program in a project area. In those instances where USDA retains administration of the program in a project area, NRCS will enter into agreements for the transfer of funds to the Agricultural Stabilization and Conservation Service (ASCS) for the administration of part of the program.

§634.4 Responsibilities.

(a) *Environmental Protection Agency (EPA) will—*

(1) Approve 208 water quality management plans,

(2) Participate in the National and State Rural Clean Water Coordinating Committees,

(3) Review and concur in project applications approved for funding in accordance with §634.14,

(4) Advise the Secretary of Agriculture of practices which tend to defeat the purposes of contracts with rural landowners or operators in accordance with section 208(j)(1)(iv) of the act,

(5) Assist USDA in evaluating the effectiveness of the program in improving water quality, and

(6) Concur in the selection of project areas and the criteria for comprehensive, joint USDA–EPA water quality

monitoring, evaluation, and analysis in accordance with § 634.50.

(b) *U.S. Department of Agriculture (USDA) will—*

(1) With the concurrence of EPA, administer a program to enter into contracts to install and maintain best management practices to control agricultural nonpoint source pollution for improved water quality,

(2) Act through NRCS and such other USDA agencies as the Secretary may designate,

(3) Provide technical assistance and share the cost of carrying out best management practices that are set forth in the contracts,

(4) Where practicable, enter into agreements with soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area,

(5) Administer the program where it is not practicable for soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer all or part of the program for a project area,

(6) Together with local soil conservation districts, determine the priorities for assistance to individual participants to assure that the most critical water quality problems are addressed,

(7) Assist in evaluating the overall effectiveness of the program in improving water quality, and

(8) Within the framework of the 208 planning process, make additional investigations or plans, where necessary, to supplement information contained in the approved agricultural portion of 208 water quality management plans for the purpose of selecting among projects to be funded.

(c) *Natural Resources Conservation Service (NRCS) will—*

(1) Provide RCWP leadership,

(2) Retain major technical responsibility for RCWP, and provide leadership to assure the adequacy of standards and specifications for use by all administering agencies,

(3) Manage budgeting, accounting, and reporting,

(4) Chair NRCWCC and assure that RCWP applications are distributed to the NRCWCC, including EPA, for review,

(5) For the Secretary of Agriculture, with the concurrence of the Administrator, EPA, approve RCWP projects for funding,

(6) For the Secretary of Agriculture, select and enter into agreements with either soil conservation districts, State soil and water conservation agencies, or State water quality agencies, where practicable, to adminster all or part of the program,

(7) Enter into fund transfer agreements to transfer funds to ASCS in those instances where the administration of contracts is retained by USDA,

(8) Enter into agreements with other USDA agencies, as appropriate, for support which they are to provide,

(9) Chair SRCWCC,

(10) For the Secretary of Agriculture, in coordination with NRCWCC, determine the maximum Federal contribution to the total cost of the project,

(11) Provide technical assistance through soil conservation districts or arrange for other Federal, State, local agencies, or private individuals or firms to provide technical assistance as appropriate,

(12) Provide technical assistance to soil conservation districts and County Agricultural Stabilization and Conservation (ASC) Committees to assist them in determining priorities of assistance among individual participants,

(13) Develop appropriate technical and administrative training programs,

(14) Provide leadership for USDA for comprehensive joint USDA–EPA water quality monitoring, evaluation, and analysis in selected project areas,

(15) Provide leadership for USDA in evaluating the effectiveness of the program in improving water quality,

(16) Carry out the function of soil conservation districts for approving water quality plans where no soil conservation district exists, and

(17) Through the State Conservationist, after considering recommendations of the SRCWCC, reach agreement with the Governor on the recommended administering agency to be included in the project application.

(d) *The Agricultural Stabilization and Conservation Service (ASCS) will—*

(1) Participate on the National, State, and local coordinating committees.

(2) Provide guidance to State and County ASC Committees and coordinate the Agricultural Conservation Program (ACP) and the Forestry Incentives Program (FIP) with RCWP,

(3) Where the administration of contracts is retained by USDA, enter into agreements with NRCS for the transfer of funds to be allocated to County ASC Committees,

(4) Consolidate reports of the annual cost-share disbursements made by the State ASC Committee, and report these disbursements to NRCS,

(5) Furnish data on land use, crop history, and cost-shared conservation measures,

(6) Review plans and contracts to assure coordination with other farm programs, and

(e) *The Forest Service (FS) will—*

(1) Retain technical responsibility for forestry,

(2) Provide technical assistance through the State forestry agency (State Forester as appropriate) for planning, applying, and maintaining forestry best management practices, and

(3) Participate on the National, and as appropriate, State, and local coordinating committees.

(f) *The Science and Education Administration (SEA) will—*

(1) Develop, implement, and coordinate educational programs for agricultural nonpoint source water pollution control,

(2) Participate on the National, and as appropriate, State, and local coordinating committees, and

(3) Provide technical assistance for appropriate BMP's.

(g) *The Economics, Statistics, and Cooperatives Service (ESCS) will:* (1) Participate on the National coordinating committee and, as appropriate, particpate in State, and local coordinating committee activities,

(2) Assist in the economic evaluation of best management practices and RCWP projects,

(3) Make data available from existing and planned ESCS surveys relating to water quality and related matters,

(4) Assist in RCWP evaluation by making available the ESCS land and water resource economic modeling systems, and

(5) Conduct socioeconomic research, within ESCS authorities and funds, on relevant policy and program issues pertinent to RCWP.

(h) *The Farmers Home Administration (FmHA) will—*

(1) Participate on the National, and as appropriate, State and local coordinating committees, and

(2) Provide assistance and coordinate their farm loan and grant programs with RCWP.

(i) The NRCWCC is chaired by the Administrator, NRCS. Other members of the National Committee are the Administrators of ASCS, FmHA, and ESCS; the Chief of FS; the Director of SEA; and the Assistant Administrator for Water and Waste Management, EPA. Non-Federal agencies such as conservation districts, State soil and water conservation agencies, State water quality agencies, and other organizations are invited to attend as observers. The duties of the Committee are to:

(1) Coordinate individual agency programs with the Rural Clean Water Program,

(2) Recommend to the Administrator, NRCS, the project applications to be funded,

(3) Advise the Administrator, NRCS, on the maximum Federal contribution to the total cost of the project,

(4) Assist the Administrator, NRCS, in mediating agency differences at the State level,

(5) Periodically advise the Secretary and Assistant Secretary for Conservation, Research and Education of program and policy issues, and

(6) Recommend project areas and criteria for comprehensive, joint USDA/EPA water quality monitoring, evaluation, and analyses.

(j) The SRCWCC is chaired by the State Conservationist, NRCS. Other members of the State committee are the State 208 water quality agency, a designated representative of the areawide agencies, the State soil and water conservation agency, a designated representative of soil and water conservation districts, other

State and local agencies or individuals as the Governor deems appropriate, and representatives of the agency members of the NRCWCC. The duties of the committee are to insure that a process exists:

(1) To consult with the Governor or his designee on the Governor's determination of priority project areas,

(2) To assure coordination of activities at the project level by assisting in determining the composition and responsibilities of the local rural clean water coordinating committee,

(3) To prepare the RCWP applications for the Governor to submit to the State Conservationist, NRCS, based on priorities established by the Governor,

(4) To incorporate adequate public participation, including public meeting(s), and appropriate environmental assessment in the preparation of RCWP applications,

(5) To monitor and evaluate the RCWP in the State and to assist USDA and EPA in their comprehensive, joint water quality monitoring and evaluation of selected project areas in accordance with § 634.50,

(6) To develop procedures for coordination between conservation districts and county ASC committees and between RCWP and other water quality programs at the local level,

(7) To assist the State Conservationist, NRCS, in mediating agency differences at the local level,

(8) To initiate a written agreement setting forth any or all of the above activities when the Governor and the Secretary of Agriculture or his designee deem it appropriate, and

(9) To make recommendations to the State Conservationist, NRCS, concerning the selection of the administering agency to be included in the project application.

(k) The State soil and water conservation agency will, as appropriate:

(1) Assist in preparing and submitting applications for RCWP,

(2) Administer all or part of the RCWP for a project area,

(3) Carry out the responsibilities of soil conservation districts for determining priority for assistance among individual participants where no soil conservation district exists, and

(4) Participate on the State and local coordinating committees.

(l) The State 208 water quality agency will, as appropriate:

(1) Assist in preparing and submitting applications for rural clean water projects,

(2) Administer all or part of the RCWP for a project area,

(3) Participate on the State and local coordinating committees, and

(4) Assist in monitoring and evaluating the water quality effectiveness of projects.

(m) The soil conservation district will:

(1) As appropriate, assist in the preparation and submission of applications for rural clean water projects,

(2) As appropriate, administer all or part of the RCWP in a project area.

(3) As appropriate, participate on the local coordinating committees,

(4) Approve participants' water quality plans, and

(5) Together with the county ASC Committee, determine the priority for assistance among individual participants to assure that the most critical water quality problems are addressed.

(n) The county ASC committee will:

(1) Together with the soil conservation district, determine the priorty for assistance among individual participants to assure that the most critical water quality problems are addressed,

(2) Receive applications for assistance for individual participants where USDA retains administration of the program,

(3) Make cost-share payments to individual participants where USDA retains administration of the program, and

(4) As appropriate, participate on the local coordinating committees.

(o) The designated management agency(s) for the agricultural portion of a 208 plan for the project area will:

(1) Assist in preparing and submitting an application for a rural clean water project in an area for which they were designated,

(2) Submit a letter, as part of the project application, certifying that the BMP's proposed for cost sharing are consistent with the BMP's in the approved 208 plan,

(3) Submit a letter, including a schedule, giving assurance that an adequate level of participation in the project will be achieved within 5 years, and

(4) As appropriate, serve as the administering agency.

(p) The administering agency will:

(1) As appropriate, enter into a grant agreement or fund transfer agreement with the Natural Resources Conservation Service for:

(i) Receiving funds from the Natural Resources Conservation Service for administrative costs, cost sharing, and technical assistance, as appropriate, associated with carrying out the project,

(ii) Establishing detailed work schedules in accordance with the approved project application,

(iii) Establishing the maximum amount of administrative costs chargeable to the grant,

(iv) Establishing an adequate financial management system,

(v) Preparing a cost allocation plan,

(vi) Monitoring and reporting performance,

(vii) Reviewing applications for assistance from landowners or operators,

(viii) Certifying availability of funds, and

(ix) Complying with OMB Circular A–102 and other appropriate regulations,

(2) Enter into contracts with participants for the installation and maintenance of BMP's based on water quality plans developed by participants,

(3) Make cost-share payments to participants upon receipt of certification by NRCS,

(4) Issue modifications to participant RCWP contracts,

(5) Develop average cost rates for each practice applicable in the project area.

(6) Sample and inspect materials used in the installation of BMP's,

(7) Establish a contract violations and appeals and collections process,

(8) Provide for public involvement in the implementation of RCWP in a project area, and maintain a mailing list of interested individuals and organizations for informing the public about the activities contemplated and carried out in the project area, and

(9) Maintain records, provide necessary facilities, personnel, and legal counsel for carrying out these responsibilities.

(q) The Governor of each State will:

(1) In order to qualify for assistance under RCWP:

(i) Establish priorities for RCWP project areas in the State,

(ii) Coordinate the development of RCWP project applications with the SRCWCC and local agencies,

(iii) Submit, in order of priority, RCWP project applications to the Administrator, NRCS, through the State Conservationist, NRCS, and

(iv) Recommend an eligible State or local agency to serve as the administering agency of the project, or request USDA to be the administering agency.

(2) Where appropriate, with the State Conservationist, NRCS, set forth the activities of the SRCWCC in a written agreement,

(3) Assign additional State and local agencies or individuals to membership on the SRCWCC, as appropriate, and

(4) Reach agreement with the State Conservationist, NRCS, in selecting the administering agency.

§634.5 Definitions.

(a) *Adequate level of participation*. An adequate level of participation is reached when participants, having control of 75 percent of the identified critical area or source of the pollution problem in the project area, are under contract. Exceptions may be made where the approved agricultural portion of the 208 plan provides data and analyses which indicate that a greater or lesser percentage of the critical area or source treated is needed to attain water quality standards or water quality goals. Fifty (50) percent of the adequate level of participation is to be achieved within 3 years; the remainder within 5 years.

(b) *Administering agency*. A soil conservation district, State soil and water conservation agency, or State water quality agency that enters into an agreement with the State Conservationist, NRCS, to administer assigned responsibilities for RCWP projects; or ASCS, when USDA retains contract administration.

(c) *Administrative cost.* Grant and fund transfer costs, including allowable costs incurred by the Administering agency in contract administration. These costs, indirect and direct, include charges for personnel, travel, materials, and supplies. The costs are limited to a maximum of 5 percent of the Federal share for BMP cost.

(d) *Agreement.* A legal instrument reflecting the relationship between NRCS and the administering agency for performance of RCWP activities.

(e) *Agricultural nonpoint source pollution.* Pollution originating from existing nonpoint sources that are (a) agriculturally related, including runoff from animal waste disposal areas and from land used for livestock and crop production, or (b) silviculturally related pollution.

(f) *Agricultural portion of a 208 plan.* That portion of the 208 plan that deals with agriculture and those silvicultural activities related to farming and ranching enterprises.

(g) *Appeals board.* A group of three or more individuals, including a hearing officer, established by the administering agency with the concurrence of the State conservationist, NRCS, to review asserted contract violations, hear associated appeals, and report its findings, conclusions, decisions, and recommendations in State or locally administered projects.

(h) *Average cost.* The calculated cost, determined by recent actual local costs and current cost estimates, considered necessary for carrying out BMP's or an identifiable unit thereof.

(i) *Best Management Practice (BMP).* A single practice or a system of practices included in the approved RCWP application that reduces or prevents agricultural nonpoint source pollution to improve water quality.

(j) *BMP cost.* The amount of money actually paid or obligated to be paid by the participant for equipment use, materials, and services for carrying out BMP's or an identifiable unit of a BMP. If the participant uses his or her own resources, the cost includes the computed value of his or her own labor, equipment use, and materials.

(k) *Contract.* The legal document, that includes the water-quality plan and is executed by the participant and the administering agency. It details the agreement between parties for carrying out BMP's on the participant's land.

(l) *Cost-share level.* The percentage of the total cost of installing BMP's included in the participant's contract that is paid by the administering agency.

(m) *Critical areas or sources.* Those finite areas or sources of agricultural nonpoint source pollutants identified as having the most significant impact on the quality of the receiving waters.

(n) *Federal Management Circular FMC 74–4.* ''Cost Principles Applicable to Grants and Contracts with State and Local Governments.''

(o) *Financal burden.* The participant's contribution to the total cost of BMP's that would be inequitable or probably prevent participation in RCWP.

(p) *Identifiable unit.* A component of a BMP that can be clearly identified in carrying out BMP's in the water quality plan.

(q) *Letter of Credit—Treasury Regional Disbursing Officer System.* The system whereby the letters of credit are maintained and serviced by Treasury disbursing centers and Treasury regional disbursing officers.

(r) *Management agency.* The Federal, State, interstate, regional, or local agency designated by the Governor to carry out the approved agricultural portion of the 208 water-quality management plan.

(s) *OMB Circular A–34.* ''Instructions on Budget Execution.''

(t) *OMB Circular A–102 (Rev.)* Office of Management and Budget Uniform Administrative Requirements for Grants-in-Aid to State and local governments.

(u) *Offsite benefits.* Those favorable effects of BMP's that occur away from the land of the participant receiving RCWP assistance and accrue to the public as a result of improved water quality.

(v) *Participant.* A landowner or operator who applies for and receives assistance under RCWP.

(w) *Participants water quality plan.* The plan which identifies critical agricultural nonpoint source(s) of water quality problems and sets forth BMP's which contribute to meeting the water quality objectives of the project.

(x) *Privately owned rural land.* Those lands not held by Federal, State, or local governments which include cropland, pastureland, forest land, rangeland, and other associated lands.

(y) *RCWP projects.* The total system of BMP's, institutional arrangements, and technical, cost-sharing, and administrative assistance activities that are authorized in a RCWP project area.

(z) *Standards and specifications.* Requirements that establish the minimum acceptable quality level for planning, designing, installing, and maintaining BMP's.

(aa) *State.* Any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(bb) *Technical assistance cost.* Those direct and indirect costs associated with the preparation and review of participant water quality plans; design, layout and application of BMP's; and investigations associated with monitoring and evaluating progress toward meeting project objectives.

(cc) *Treasury Circular 1075 (Rev.).* Uniform Administrative Requirements for Grants-in-Aid to State and local governments.

Subpart B—Project Authorization and Funding

§634.10 Applicability.

RCWP is applicable in project areas that meet the criteria for eligibility contained in §634.12 and are authorized for funding by the Administrator, NRCS.

§634.11 Availability of funds.

(a) The provisions of the program are subject to the appropriation of funds by Congress to the U.S. Department of Agriculture.

(b) The allocation of funds to the administering agencies is to be made on the basis of the total funds needed to carry out the project.

(c) The obligation of Federal funds for RCWP contracts with participants is to be made on the basis of the total contract costs.

§634.12 Eligible project areas.

(a) Only those project areas which are included in an approved agricultural portion of a 208 water quality management plan, or revised portions thereof, and have identified agricultural nonpoint source water quality problems are eligible for authorization under RCWP. Those critical areas or sources of pollutants significantly contributing to the water quality problems are eligible for financial and technical assistance.

(b) The management agency designated by the Governor under section 208(c)(1) of the Act to implement the agricultural portion of the 208 plan must assure in writing in the project application that there will be an adequate level of participation by land owners or operators with critical areas or sources in a project area.

(c) An RCWP project area is a hydrologically related land area. Exceptions may be made for ease of administration, or to focus on concentrated critical areas. To be designated as an RCWP project area eligible for authorization, the area's water quality problems must be related to agricultural nonpoint source pollutants, including sediment animal waste, irrigation return flows, runoff, or leachate that contain high concentrations of nitrogen, phosphorus, dissolved solids, toxics (pesticides and heavy metals), or high pathogen levels. Generally, the project areas will be less than 200,000 acres.

§634.13 Project applications.

(a) The SRCWCC is to assure that a process exists to prepare the RCWP project applications for submission by the Governor in order of priority to the Administrator, NRCS, through the State Conservationst, NRCS. This process must include the opportunity for public participation, especially participation by potential RCWP participants. Applications will be submitted in conformance with OMB Circular A–95.

(b) The preparation and submission of applications are to be based on the priorities established by the Governor and data and information in the approved agricultural portion of the

State or areawide 208 water quality management plan.

(c) Applications shall contain the following components. Additional material may be added when, in the judgment of the applicant, it is needed to fully support the application and/or would enhance the probability of project authorization. Information provided under each component shall be in sufficient detail to permit the NRCWCC to evaluate the application using priority criteria in § 634.14.

(1) *Description of the project area,*

(2) *Severity of the water quality problem,*

(3) *Objectives and planned action,*

(4) *Schedule for carrying out the plan, and*

(5) *Estimated cost.* This component is to identify and show the basis for those costs associated with completing the project. The project application shall include an estimate of the total cost of the project, the Federal contribution, and the non-Federal contribution. The Federal contribution shall not exceed 50 percent unless the application, based on offsite benefits and financial burden, show that a higher level is appropriate.

(6) *Estimated water quality benefits and effects.*

(7) *Arrangements for project administration.* This component is to set out the applicant's plan for carrying out the program in the project area. The plan should:

(i) Identify the administering agency and document the capability of the agency to carry out the responsibilities described in § 634.4(p). In addition, information should be included to describe the administering agency staff, the location of that staff relative to the project area, and the experience of the agency in administering comparable grant programs.

(ii) Where appropriate, describe the specific arrangements that have been made, or that are anticipated, for local, State, and Federal agency participation such as technical assistance and other cost-sharing programs.

(8) *Attachments.* The following attachments are the minimum required with each application:

(i) A letter from the water-quality management agency designated by the Governor to carry out the approved agricultural portion of the 208 water quality management plan for the area or source certifying that the BMPs to be cost shared are consistent with the BMP's in the 208 plan,

(ii) A letter from the designated management agency which assures and sets out a strategy for reaching an adequate level of participation (§ 634.5(a)).

(iii) As appropriate, the preapplication for Federal assistance (OMB Circular A–102) from the identified administering agency, and

(iv) A listing of the prevailing cost-share levels of other programs in the project area.

§ 634.14 Review and approval of project applications.

(a) In reviewing applications and recommending priorities, the NRCWCC will consider the following:

(1) Severity of the water quality problem caused by agricultural and silvicultural related pollutants, including:

(i) State designated uses of the water affected,

(ii) Kinds, sources, and effects of pollutants, and

(iii) Miles of stream or acres of water bodies affected,

(2) Demonstration of public benefits from the project, including:

(i) Effects on human health,

(ii) Population benefited by improved water quality,

(iii) Effects on the natural environment, and

(iv) Additional beneficial uses of the waters that result from improvement of the water quality,

(3) Economic, and technical feasibility to control water quality problems within the life of the project, including:

(i) Cost effectiveness of BMP's,

(ii) Size of the area and BMP's needed, and

(iii) Cost per participant and cost per acre for solution of problem,

(4) State and local input in the project area, including:

(i) Funds for cost-sharing, technical, and administrative costs. States or local governments with their own cost-share programs may receive greater

consideration for the funding of RCWP projects,

(ii) Commitment of local leadership to promote the program, and

(5) The project area's contribution to meeting the national water quality goals.

(b) Based on the project applications, the NRCWCC is to recommend an upper limit of the Federal contribution to the total cost of the project.

(c) All project applications will be reviewed by EPA. Project applications approval for funding require written EPA concurrence, except that the Administrator, NRCS, may assume EPA's concurrence if EPA does not act within 45 days following receipt of the project application. EPA review of project applications will occur concurrently with review by the NRCWCC.

(d) The Administrator, NRCS, will approve projects for funding. The NRCWCC acting through the Chairman will announce the approval of the project. The State Conservationist, NRCS, through the SRCWCC, will also inform the other involved Federal, State, and local agencies of the approval.

§634.15 Agreements.

The State Conservationist, NRCS, upon receiving notice of an approved project, is to enter into a grant agreement with the administering agency, except in those cases where USDA is to administer the program. When USDA retains administration, the State Conservationist, NRCS, is to enter into a fund transfer agreement with the State Executive Director, ASCS.

(a) *Grant agreements.* Grant agreements detail the working arrangements and applicable operating regulations between NRCS and the administering agency. A written grant agreement identifying the parties involved, their responsibilities for carrying out the program, and the amount of program funds to be encumbered by NRCS is to be executed by the parties. This agreement is the fund obligating document. It also sets out the necessary working arrangements between parties for determining and allocating the administering agency's costs. All grants to administering agencies are to be in accordance with OMB Circular No. A–102, Department of the Treasury Circular No. 1075, and Federal Management Circular No. 74–4. State or local administering agency grants will be funded under Letter-of-Credit serviced by the U.S. Treasury Regional Disbursing Office, or by NRCS approved advance/reimbursement financing arrangements subject to the terms and conditions of the grant agreement.

(1) The grant agreement will provide for payment of cost-sharing for BMP (§634.5(j)) and administrative costs (§634.5(c)).

(2) The grant agreement may provide for payment of technical assistance costs when the administering agency has the capability, and the NRCS designates that agency to provide this assistance to RCWP participants.

(3) The administering agency is to monitor the performance of activities supported by RCWP grant funds to assure that time schedules and participant RCWP contract requirements are being met. Performance goals are to be measured against the terms of the grant agreement and program directives. When NRCS determines that onsite technical inspections, certified completion data, and financial status reports do not provide adequate grant evaluation data, the following information may be requested:

(i) A comparison of actual accomplishments with the objectives established for the plan,

(ii) Reasons why established objectives were not met, and

(iii) Objectives established for the next reporting period.

(4) Grant agreements may be amended by mutual agreement of the parties to the agreement. NRCS may unilaterally amend agreements when the sole consideration is a change in the cost and the Administrator, NRCS, based on NRCWCC recommendations, determines that such an adjustment is necessary to carry out the program efficiently and effectively.

(b) *Fund transfer agreements.* When it is impractical for NRCS to enter into agreements with local soil conservation districts, State soil and water conservation agencies, or State water quality agencies to administer the program in a project area, USDA will retain program administration. In this

case, the State Executive Director, ASCS, and the State Conservationist, NRCS, are to enter into an agreement for the transfer of funds to ASCS through county ASC committees for activities included in administrative cost (§ 634.5(c)) and BMP cost (§ 634.5(j)). The following general working arrangements are to apply:

(1) Administering contracts, making cost-share payment, and program reporting are to be provided by ASCS as the administering agency.

(2) NRCS, or its designee, with appropriate Federal or State agency support, will provide technical assistance to participants in preparing RCWP contracts and in carrying out their water-quality plans.

(c) *Agreements for services.* NRCS may enter into an agreement for services with a State or local agency. The designee must meet the requirements of OMB Circular No. A–102.

(d) *Contracts for services.* NRCS may enter into contracts for services with individuals or firms for providing technical assistance.

§ 634.16 Suspension of grants.

(a) *Suspension orders.* Work on a project or on a portion or phase of a project for which a grant has been awarded, may be suspended by order of the State Conservationist, NRCS. Suspension does not affect RCWP contracts existing at the time the suspension order is issued, or the administering agency's responsibility to make payments under such contracts unless specifically provided for in the suspend order. In no event will the participant's right to cost-share payment be diminished by action taken under this section.

(b) *Use of suspension orders.* Suspension may be required for good cause, such as default by the administering agency, failure to comply with the terms and conditions of the grant, realignment of programs, or advancements in the state of the art.

(c) *Contents of suspension orders.* Prior to issuance, suspension orders will be discussed with the administering agency and may be appropriately modified, in the light of such discussions. Suspension orders are to include:

(1) A clear description of the work to be suspended,

(2) Instructions as to the issuance of further orders by the administering agency for materials or services,

(3) Instructions as to the administering agency entering into new RCWP contracts in the project area,

(4) Instructions as to the administering agency servicing existing RCWP contracts in the project area, and

(5) Other instructions to the administering agency for minimizing Federal costs.

(d) *Issuance of suspension order.* Suspension orders are issued by the State Conservationist, NRCS, by letter to the administering agency (certified mail, return receipt requested). A suspension order may not exceed forty-five (45) calendar days.

(e) *Effect of suspension order.* (1) Upon receipt of a suspension order, the administering agency shall promptly comply with its terms and take all reasonable steps to minimize costs allocable to the work covered by the order during the period of work suspension. During the suspension period, NRCS shall either:

(i) Cancel the suspension order, in full or in part, and authorize resumption of work, or

(ii) Take action to terminate the work covered by such order as provided by § 634.17.

(2) If a suspension order is canceled, or the period of the order expires, the administering agency shall promptly resume the suspended work. An equitable adjustment shall be made in the grant period, the project period, or grant amount, or all of these, and the grant agreement may be amended:

(i) The suspension order results in an increase in the time, or cost properly allocable to, the performance of any part of the project; and

(ii) The administering agency asserts a written claim for such adjustment within thirty (30) days after the end of the period of work suspension. If no written claim is made, NRCS may unilaterally make such adjustments.

(iii) Reasonable costs resulting from the suspension order shall be allowed in arriving at any terminations settlement.

(3) Costs incurred by the administering agency after a suspension order is delivered that are not authorized by this section or specifically authorized in writing by the State Conservationist, NRCS, shall not be allowable costs.

§634.17 Termination of grant agreement.

(a) *Termination agreement or notice.* (1) The State Conservationist, NRCS, may, based on evidence of failure to comply with the terms of the grant agreement, issue a notice of intent to terminate the grant agreement. The notice of intent to terminate has the force and effect of extending or modifying the conditions of the suspend order. Any modification of the conditions of the suspend order shall be shown in the notice and discussed with the administering agency. The State Conservationist shall give not less than ten (10) days written notice to the administering agency (certified mail, return receipt requested) of intent to terminate the grant in whole or in part.

(2) After the administering agency has been afforded an opportunity for consultation, the State Conservationist, NRCS, may request authorization from the Administrator, NRCS, to terminate the grant in whole or in part. If the Administrator, NRCS, concurs in the termination action, the proposed termination notice will be forwarded to the Administrator, EPA, for concurrence.

(3) After the Administrators, NRCS and EPA, have been informed of any expressed views of the administering agency and concurred in the proposed termination, the State Conservationist, NRCS, may, in writing (certified mail, return receipt requested), terminate the grant in whole or in part.

(4) Termination of all or part of the grant agreement may be carried out by either execution of a termination agreement by the State Conservationist, NRCS, or issuance of a grant termination notice by the State Conservationist, NRCS. The agreement or notice shall establish the effective date of termination of the grant, the basis for settlement of grant termination costs, and the amount and date of payment of any sums due either party.

(b) *Basis for termination.* A grant may be terminated by NRCS for good cause subject to negotiation and payment of appropriate termination settlement costs. Cause for termination by NRCS includes:

(1) Failure by the administering agency to make satisfactory progress toward achieving an adequate level of participation; or other evidence satisfactory to the NRCWCC, Administrator, EPA, and the Administrator, NRCS, that the administering agency has failed or is unable to perform in accordance with the provisions of the grant agreement; or

(2) Failure through no fault of the administering agency to achieve an adequate level of participation; or other evidence satisfactory to the NRCWCC, Administrator, EPA, and the Administrator, NRCS, that the planned actions approved in the project application cannot be achieved.

(c) *Effect of grant termination.* (1)(i) In those cases where cause for grant termination is based on the administering agency's failure or inability to perform (§634.17(b)(1)), upon termination, the administering agency must refund or credit to the United States that portion of the grant funds paid or owed to the administering agency and allocable to the terminated project work. Funds needed to meet unavoidable commitments may be retained. All other funds, including unexpended cost-sharing monies for existing RCWP contracts executed prior to the termination date, shall be refunded to the United States. The administering agency shall not make any new commitments or enter into any new RCWP contracts. The administering agency shall reduce the amount of other outstanding commitments insofar as possible and report to the State Conservationist, NRCS, the uncommitted balance of funds awarded under the grant. The allowability of termination costs will be determined in conformance with applicable Federal cost principles.

(ii) Upon termination of a grant agreement, existing RCWP contracts and their related obligations will immediately, and in no case later than 5 calendar days be transferred to the ASCS county office to assure continuity in payments to participants. The

State Conservationist, NRCS, will immediately initiate action under § 634.15 to establish a new administering agency for completion of the project.

(2) In those cases where cause for grant termination is based on failure to achieve the planned actions through no fault of the administering agency, the termination agreement and amended grant agreement are to permit the administering agency to fulfill the obligations of its existing RCWP contracts. The administering agency shall not make any new commitments or enter into any new RCWP contracts without NRCS approval.

§ 634.18 Termination of project.

(a) An RCWP project is terminated by the State Conservationist because an adequate level of participation cannot be achieved. Upon this determination, the State Conservationist shall publish in a newspaper of public record in the project area a notice of intent to terminate all or part of the grant agreement and the project (§ 634.7(c)), and an announcement of the time and place of a public hearing.

(b) No sooner than 15 days from the publication of the notice of intent to terminate all or part of the project and grant agreement, the State Conservationist will conduct a public hearing in the project area.

(c) If, based on the hearing record, the performance record of the administering agency, and the recommendations of the SRCWCC, the State Conservationist determines that the project will be terminated pursuant to § 634.17(c), the State Conservationist will enter into a grant termination agreement or issue a grant termination notice.

(d) The existing RCWP contracts will be transferred to the ASCS county office pursuant to § 634.17(c)(1)(ii).

(e) The State Conservationist will prepare a project close-out report summarizing the actions accomplished.

§ 634.19 Project completion and close-out.

(a) The maximum total life of a project shall be fifteen (15) years or less.

(b) The allowable contracting period may be increased if an adequate level of participation has been achieved and the designated management agency assures a significant increase in participation can be reached in a reasonable time.

(c) The grant or fund transfer agreement with an administering agency shall expire when the administering agency has fulfilled all of its obligations in the long-term RCWP contracts.

(d) When a project is completed, the administering agency is to provide the State Conservationist, NRCS, a close-out report which summarizes the actions accomplished.

Subpart C—Participant RCWP Contracts

§ 634.20 Eligible land.

RCWP is only applicable to privately owned land. Land owned by corporations whose ownership is public (i.e., their stock is publicly traded over the market) is eligible for program assistance only if the corporation can document that the installation of BMP's places an inappropriate financial burden on the corporation.

§ 634.21 Eligible participants.

(a) Any landowner or operator whose land or activities in a project area is contributing to the area's agricultural nonpoint source water quality problems and who has an approved water quality plan is eligible to enter into an RCWP contract.

(b) This program will be conducted in compliance with all nondiscrimination requirements as contained in the Civil Rights Act of 1964 and amendments thereto and the Regulations of the Secretary of Agriculture (7 CFR 15.1 through 15.12).

§ 634.22 Application for assistance.

(a) Landowners or operators must apply for RCWP assistance through the office of the administering agency or its designee(s) by completing the prescribed application form.

(b) The priority for assistance among landowners and operators in developing water quality plans is to be determined jointly, through an agreed-to process, by the county ASC committee and the

soil conservation district, with technical assistance from NRCS.

(c) Applications that are ineligible or technically infeasible are to be returned to the applicant with a letter stating the reasons for disapproval. Applications that are of a low priority will be retained and the applicant will be sent a notice that the application is being held for a period to be determined locally for future consideration.

§634.23 Water quality plan.

(a) The participant's water quality plan, developed with technical assistance by the NRCS or its designee, is to include appropriate BMP's identified in the approved agricultural portion of the 208 water quality management plan. Such BMP's must reduce the amount of pollutants that enter a stream or lake by:

(1) Methods, such as reducing the application rates or changing the application methods of potential pollutants, and

(2) Methods, such as practices or combinations of practices which prevent potential pollutants from leaving source areas or reduce the amount of potential pollutants that reach a stream or lake after leaving a source area.

(b) Participant's water quality plans shall as a minimum include BMP's for all critical areas or sources. The plans will include BMP's which are required but not cost-shared. Non-cost-shared BMP's, essential for the performance and maintenance of cost-shared BMP's shall be required as a condition of the RCWP contract.

(c) The participant is responsible for compliance with all other applicable Federal, State, and local laws that deal with the participant's nonpoint source water quality problems, such as the treatment, storage, and disposal of hazardous waste. BMP's required for compliance may be cost shared.

(d) It is recognized that the participants' water-quality plans upon which the RCWP contracts are to be based may include conservation measures other than those related to water quality improvement. These measures are not eligible for cost sharing under this program. The installation of such conservation measures will not be required as a condition of the RCWP contract and will not be shown in the time schedules for implementing BMP's.

(e) Time schedules for implementing BMP's are to be provided in the participant's water quality plan. The time schedule is to establish the length of the contract within the 5 to 10 year period established by law.

(f) The Natural Resources Conservation Service will certify as to the technical adequacy of the water-quality plan.

(g) The soil conservation districts are to review and approve all water-quality plans and modifications.

§634.24 Cost sharing.

(a) The portion of BMP cost (including labor) to be cost shared shall be that part which the Secretary determines is necessary and appropriate. The value of land upon which BMP's are applied, or the participant's water rights, cannot be considered a part of the participant's share of the cost.

(b) The administering agency, in consultation with the county ASC committee(s), soil conservation district(s), and designated management agency will annually set maximum individual BMP cost-share levels for the project area. However, the Federal share of the cost of the contract cannot exceed 50 percent unless a variance has been granted.

(c) Recommended variances exceeding the 50 percent level must be in the public interest and based on the following criteria:

(1) The main benefits to be derived from measures are related to improving offsite water quality, and

(2) The matching share requirements would place a burden on the landowner or operator which would probably prevent him or her from participating in the program.

(d) BMP's to be cost shared must have a positive effect on water quality by reducing the amount of agricultural nonpoint source pollutants that enter a stream or lake.

(e) Cost sharing is not to be made available for:

(1) Measures installed primarily for bringing additional land into crop production, including but not limited to land clearing and brush removal;

(2) Measures installed primarily for increasing production on existing cropland, including but not limited to bedding, field ditches, open drains, and tile drains;

(3) Measures having flood protection as the primary purpose, including but not limited to open channels, clearing and snagging, and obstruction removal;

(4) Structural measures authorized for installation under Pub. L. 83–566.

(f) The Federal cost-share level is not to be reduced by the contribution of a State or subdivision thereof. Total payments from Federal, State, and local sources for a BMP may not exceed the total cost of that BMP.

§ 634.25 Contracting.

(a) To participate in RCWP, a landowner or operator must enter into a contract in which he or she agrees to apply his or her water-quality plan. Any person who controls, or shares control, of the farm, ranch, or other land for the proposed contract period (5 to 10 years) must sign the contract.

(b) Cost-sharing payments cannot be provided for any measure that is initiated before the contract is approved by the administering agency.

(c) The participant must furnish satisfactory evidence of his or her control of the farm, ranch, or other land. The administering agency is to determine the acceptability of the evidence and maintain current ownership evidence in the contract file.

(d) RCWP contracts shall include the basic contract document, special provisions as needed, the participant's water-quality plan, schedule of operations, and any other data necessary.

(e) NRCS or its designee shall approve the technical adequacy of the RCWP contract and obtain the required signature of the participants. The NRCS or its designee will provide the contract to the administering agency for certification of fund availability and for execution.

(f) Participants shall install best management practices according to the specifications that are applicable at the time measures are installed.

(g) NRCS will provide technical assistance to participants for installing BMPs. The State Conservationist, NRCS, or its designee may enter into contracts with qualified soil conservation districts or others to provide technical assistance.

(h) The RCWP contract is to require BMPs to be operated and maintained by the participant at no cost to that administering agency.

(i) The contract period is to be not less than 5 and not more than 10 years. A contract is to extend for at least 1 year after the application of the last cost-shared BMPs. All contract items are to be accomplished prior to contract expiration.

(j) A land owner or operator may enter into a contract jointly (pooling ageement) with other land owners or operators to solve mutual water quality problems. Each participant must enter into an RCWP contract to treat water quality problems not covered by the joint arrangement.

(k) Participants may use all available sources of assistance to accomplish their water-quality objectives. They are responsible for:

(1) Accomplishing the water-quality plan;

(2) Keeping the administering agency informed of their current mailing address;

(3) Obtaining, having in hand, and maintaining any required permits and landrights necessary to perform the planned work;

(4) Applying or arranging for the application of BMPs, as scheduled in the plan, according to approved standards and specifications;

(5) The operation and maintenance of BMPs installed during the contract period; and

(6) Obtaining the authorities, rights, easements, or other approvals necessary to maintain BMPs in keeping with applicable laws and regulations.

(l) Unless otherwise approved by the Administrator, NRCS, and Administrator, EPA, the administering agency shall not enter into any new RCWP contracts after five (5) years of elapsed time from the date when RCWP funds are first made available to begin the project.

(m) Contracts may be terminated due to hardship by mutual agreement if the administering agency and the State Conservationist, NRCS, determine that

such action would be in the public interest.

§634.26 Contract modifications.

(a) The administering agency may modify contracts previously entered into if it is determined to be desirable to carry out the purposes of the program, facilitate the practical administration thereof, or to accomplish equitable treatment with respect to other conservation, land-use, or water-quality programs.

(b) Requirements of active contracts may be waived or modified by the administering agency only if such waiver or modification is specifically provided for in these regulations. NRCS concurrence in modifications is necessary when modifications involve a technical aspect of the participant's water-quality plan. A contract may be modified only if it is determined that such modifications are desirable to carry out purposes of the program or to facilitate the program's practical administration.

(c) Contracts may be modified to add, delete, substitute, or reinstall best management practices when:

(1) The installed measure failed to achieve the desired results through no fault of the participant,

(2) The installed measure deteriorated because of conditions beyond the control of the participant, or

(3) Another BMP is substituted that will achieve the desired results.

(d) Contract modifications are not required when items of work are accomplished prior to scheduled completion or within 1 year following the year of scheduled completion.

(e) If, during the contract period, all or part of the right and interest in the land is transferred by sale or other transfer action, the contract is terminated on the land unit that was transferred and the participant having control over such land:

(1) Forfeits all right to any future cost-share payments on the transferred land unit, and

(2) Must refund with interest all cost-share payments that have been made on the transferred land unit unless the new land owner or operator becomes a party to the contract, except that where it is determined by the administering agency, with the approval of the State conservationist, NRCS, that the established BMPs will provide water quality benefits for the design life of the BMP, the payment may be retained.

(f) If the new land owner or operator becomes a party to the contract:

(1) Payment which has been earned, but not made to the participant who applied the BMPs and had control prior to the transfer, can be made,

(2) Such land owner or operator is to assume all obligations of the previous participant on the transferred land unit,

(3) The contract with the new participant is to remain in effect with the original terms and conditions, and

(4) The contract is to be modified in writing to show the changes caused by the transfer. If the modification is not acceptable to the administering agency, the provisions of paragraphs (e) (1) and (2) of this section apply.

(g) The transfer of all or part of a land unit by a participant does not affect the rights and obligations of other participants who have signed the contract.

§634.27 Cost-share payment.

(a) *General.* Participants are to obtain or contract for materials or services as needed to install BMPs. Federal Cost-share payments are to be made by the administering agency upon certification by the District Conservationist, NRCS, or its designee, that the BMPs, or an identifiable unit thereof, have been properly carried out and meet the appropriate standards and specifications.

(b) *Payment maximum.* The maximum total Federal cost-share payment to a participant shall be limited to $50,000. Exceptions to this limit may be made by the administering agency with concurrence of the Administrator, NRCS, upon recommedation of the NRCWCC, where it determines that the main benefits to be derived are essential for meeting the water quality objectives in the project area.

(c) *Basis for cost-share payment.* (1) Cost-share payments are to be made by the administering agency at the cost-

share percentage and by one of the following methods designated by the administering agency and set out in the contract:

(i) Average cost, or

(ii) Actual cost not to exceed average cost.

(2) If the average cost at the time of starting the installation of a BMP or identifiable unit is less than the costs specified in the contract, payment is to be at the lower rate. If the costs at the start of installation are higher, payment may be made at the higher rate. A modification will be necessary if the higher cost results in a significant increase in the total cost-share obligation. Cost-share payment is not to be made until the modification reflecting the increase is approved.

(d) *Average cost development.* Average costs are to be developed by the administering agency for each project using cost data from the local area. These costs should be reviewed by the SRCWCC for consistency with average costs in other USDA programs. The average cost list is to be updated annually by the administering agency.

(e) *Application for payment.* Cost-share payments can be made by the administering agency after a participant has carried out a BMP or an identifiable unit of a BMP. Application for payment must be submitted to the administering agency, be certified by the NRCS or its designee, and be supported by such cost receipts as are required by the administering agency. It is the participant's responsibility to apply for payments.

(f) *Authorizations for payments to suppliers.* (1) The contract may authorize that part or all of the Federal cost share for a BMP or an identifiable unit be made directly to suppliers of materials or services. The materials or services must be delivered or performed before payment is made.

(2) Federal cost shares will not be in excess of the cost share attributable to the material or service used or not in excess of the cost share for all identifiable units as may be requested by the participant.

(g) *Material inspection and analysis.* When authorizations for payments to suppliers are specified, the administering agency, its representatives, or the Government reserve the right to inspect, sample, and analyze materials or services prior to their use.

(h) *Assignments, set-offs, and claims.* (1) A State or local administering agency may allow the assignment of payments to the extent provided by State law. When ASCS is designated as the administering agency, assignments by any participant who may be entitled to cost-share payment under the program are prohibited unless they are made in accordance with the provisions of section 203, Title 31, U.S.C., as amended, and section 15, Title 41, U.S.C., as amended.

(2) If any participant to whom compensation is payable under RCWP is indebted to the United States and such indebtedness is listed on the county register of indebtedness maintained by the County ASC committee, the compensation due the participant must be used (set-off) to reduce that idebtedness. Indebtedness to USDA is to be given first consideration. Deductions for setoffs involving a nonresident alien shall be made as provided by 26 U.S.C. 871. Setoffs made pursuant to this section are not to deprive the participant of any right to contest the justness of the indebtedness involved, either by administrative appeal or by legal action.

(3) Any cost-share payment due any participant shall be allowed without deduction of claims for advances except as provided for above and without regard to any claim or lien against any crop, or proceeds thereof, in favor of the participant or any other creditor.

(i) *Access to land unit and records.* Any authorized administering agency, or NRCS employees or agents, shall have the right of access at reasonable times to land under application or contract, and the right to examine any program records to ascertain the accuracy of any representations made in the application or contract. This is limited to the right to furnish technical assistance and to inspect work performed under the contract.

(j) *Suspension of payments.* No cost-share payments will be made pending a decision on whether or not a contract violation has occurred.

(k) *Ineligible payments.* The filing of requests for payment for BMP's not

carried out, or for BMP's carried out in such a manner that they do not meet contract specifications, constitutes a violation of the contract.

§634.28 Appeals not related to contract violations.

(a) The participant may, prior to execution of the contract, request that the administering agency review or reconsider criteria being used in developing his or her contract. Such review or reconsideration may include the eligibility of BMP's which had not been approved for application in the project area, cost-sharing levels for BMP's, priorities for developing water quality plans, and standards and specifications.

(1) If verbal agreement is not reached, the participant may make a written request within 30 days after receiving notice of the decision of his or her verbal request.

(2) The administering agency shall have 30 days in which to make a decision and notify the participant in writing.

(3) The decision of the administering agency shall be final.

(b) If, after the contract has been executed, the participant and the administering agency are unable to reach written agreement relative on matters which are not related to contract violations, the participant may request and receive a review by the appeals board. The administering agency will:

(1) Notify the participant, in writing, of the date the appeals board will consider the appeal.

(2) Within 30 days after receiving the administering agency's notice, the participant may file a request to appear and present oral and other evidence. If the participant does not request an appearance, the administering agency appeals board will decide the dispute on the evidence available to them, including statements or briefs of the authorized representatives of the soil conservation district and NRCS. The administering agency shall notify the participants of the appeals board's decision in writing. There shall be no further administrative appeal of this decision.

(c) *Filing of documents.* A document is considered filed when it is received in the office of the person or agency concerned.

§634.29 Violations.

(a) *Actions causing violations.* The following actions constitute violation of a contract by a participant:

(1) Knowingly or negligently damaging or causing BMP's to become impaired.

(2) Adopting a land use or practice during the contract period which tends to defeat the purposes of the program.

(3) Failing to comply with the terms of the contract.

(4) Filing a false claim.

(5) Misusing authorizations for payment.

(b) *Contract termination as a result of violations.* (1) By signing a contract, the participant agrees to forfeit all rights to further cost-sharing payments under a contract and to refund all cost-share payments received, with interest, if the administering agency, with the concurrence of the State Conservationist, NRCS, determines that:

(i) There was a violation of the contract during the time the participant had control of the land; and

(ii) The violation was of such a nature as to warrant termination of the contract.

(2) The participant shall be obligated to refund all cost-share payments and all cost shares paid under authorizations, with interest, at the rates established by the Secretary of the Treasury pursuant to Pub. L. 92–41, 85 Stat. 97.

(c) Payment adjustments and refunds resulting from violations. (1) By signing a contract, the participant agrees to refund cost-share payments received under the contract or to accept payment adjustments if the administering agency determines and the State Conservationist, NRCS, concurs that:

(i) There was a violation of the contract during the time the participant had control of the land; and

(ii) The nature of the violation does not warrant termination of the contract.

(2) Payment adjustments may include decreasing the rate of cost share, or deleting from the contract a cost-share commitment, or withholding cost-share payments earned but not paid. The participant who signs the

contract may be obligated to refund cost-share payments.

§ 634.30 Appeals in USDA administered projects.

The participant in a USDA-administered RCWP project may appeal decisions of the administering agency in accordance with part 614 of this title.

[60 FR 67316, Dec. 29, 1995]

§ 634.31 Appeals of contract violations.

(a) *Scope.* This section prescribes the regulations dealing with contract violations. The Administrator, NRCS, reserves the right to revise or supplement any of the provisions of this section at any time if the action does not adversely affect the participant, or if the participant has been officially notified before this action is taken.

(b) *Determination by administering agency.* Upon notification that a contract violation may have occurred, the administering agency:

(1) Determines that a violation did not occur or that the violation was of such a nature that no further action is to be taken; or

(2) Determines that a violation did occur and the participant agrees to accept a written penalty of forfeiture, refund, payment adjustment, or termination. If no agreement is reached, further action is to be taken.

(c) *Notice of possible violation.* (1) When the administering agency is notified that a contract violation may have occurred and the matter is not resolved under § 634.31(b)(1) it shall notify, in writing, each participant who signed the contract of the alleged violation. This notice setting forth the alleged violation may be personally delivered or sent by certified or registered mail. A participant is considered to have received the notice at the time of personal receipt acknowledged in writing, at the time of delivery of a certified or registered letter, or at the time of the return of a refused certified or registered letter.

(2) The notice shall give the participant an opportunity to appear at a hearing before an appeals board. The participant's request for a hearing shall be submitted in writing, and must be received by the appeals board within 30 days after receipt of the notice. The participant shall be notified in writing by the appeals board of the time, date, and place for the hearing. The participant shall have no right to a hearing if he does not file a written request for a hearing, or if he or his representative does not appear at the appointed time, unless the appeals board, at its discretion, permits an appearance. A request for a hearing filed by a participant shall be considered to be a request by all participants who signed the contract.

(d) *Hearing.* The appeals board shall conduct an open hearing to obtain the facts about the alleged violation. The appeals board shall limit the hearing to relevant facts and evidence, and shall not be bound by the strict rules of evidence. Witnesses may be sworn in at the discretion of the appeals board.

(1) The participant or his or her representative shall be given full opportunity to present oral or documentary evidence about the alleged violation. Likewise, the administering agency may submit statements and evidence. Individuals not otherwise represented at the hearing may, at the discretion of the appeals board, be permitted to give information or evidence. The appeals board, at its discretion, may permit witnesses to be cross-examined.

(2) The appeals board shall make a record of the hearing. A summary of the testimony may be made if both the participant and the appeals board agree. A transcript of the hearing shall be made if requested by either the appeals board or the participant within 10 days prior to the hearing. If a transcript is requested by the participant, the participant may be assessed the cost of a copy of the transcript.

(3) The appeals board shall, after a reasonable period of time, close the hearing if the participant or his or her representative is not present at the scheduled time. The appeals board may, at its discretion, accept information and evidence submitted by others present for the hearing.

(4) The appeals board shall furnish the administering agency and the State Conservationist, NRCS, with a written report setting forth their findings, conclusions, and recommendations. The report shall include the summary of testimony or transcript

made of the hearing and any other information which would aid the administering agency in reaching a decision.

(e) *Decision by the administering agency.* The administering agency shall make a decision within 30 days on the basis of the appeals board report, recommendations of soil conservation district board, if any, and any other information available, including if applicable, the amount of the forfeiture, refund, or payment adjustment. The decision shall state whether the violation is of such a nature as to warrant termination of the contract. The administering agency shall notify, in writing, each participant who signed the contract of its decision. The administering agency may authorize or require the reopening of any hearing before the appeals board for any reason at any time before their decision. The administering agency's decision shall be final.

(1) If the decision provides for termination of the contract, it shall state that the contract is terminated and that all rights to further cost-share payments under the contract are forfeited and that all cost-share payments received under the contract shall be refunded with interest. The decision is to state the amount of refund and method of payment.

(2) If the decision does not provide for termination of the contract, the participant may be required to make a refund of cost-share payments or to accept payment adjustments. The decision shall state the amount and justification for refunds of cost-share payments or payment adjustments.

Subpart D—Financial Management

§634.40 Financial management.

(a)(1) Finance and accounting will be in conformance with Office of Management & Budget Circular A–102, (Rev.); U.S. Department of Health, Education & Welfare Brochure OASC–10, Federal Management Circular FMC 74–4, ''Cost Principles Applicable to Grants and Contracts with State and Local Government''; Department of the Treasury, Department Circular No. 1075 (4th Rev.), ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and other Programs''; Office of Management & Budget Circular No. A–34, ''Instruction on Budget Execution''; U.S. Treasury Requirements Manual for Guidance of Departments and Agencies; and General Accounting Office Policy & Procedures Manual for Guidance of Federal Agencies.

(2) Administering agency RCWP grants will be funded under Letter-of-Credit serviced by the U.S. Treasury Regional Disbursing Office (RCO), subject to the terms and conditions of the grant agreement or by NRCS approved advance/reimbursement financing agreements.

(3) The State of local administering agency shall maintain a financial management system which provides accurate and complete disclosure of the financial status of the RCWP grant in accordance with prescribed reporting requirements.

(4) The State or local administering agency shall upon request make its financial management system records available to NRCS, USDA Office of Inspector General, and the General Accounting Office.

(5) Participation in comprehensive USDA/EPA joint water quality monitoring, evaluating, and analysis will be funded according to the plan approved in §634.50(a)(3).

(b)(1) The carrying out of RCWP will require both financial and performance reporting to the Natural Resources Conservation Service by participating USDA and State or local agencies.

(2) USDA participating agencies shall furnish NRCS with reports prescribed by the U.S. Treasury Department; Office of Management and Budget; Administrative Regulations of the U.S. Department of Agriculture; and other reports required by law, regulation, or agreement.

(3) State or local administering agencies shall furnish financial status reports to NRCS on a quarterly basis as required by the grant agreement. The administering agency is also to provide an audit report upon request. The audit report is to be prepared in sufficient detail to allow NRCS to determine that funds have been used in compliance with applicable laws, regulations, and the grant agreement.

Subpart E—Monitoring and Evaluation

§ 634.50 Program and project monitoring and evaluation.

(a) *Comprehensive USDA/EPA joint water quality monitoring, evaluation, and analysis.* (1) Representative RCWP project areas will be selected to evaluate the improvement in water quality in the project area and to make projections on a nationwide basis. Water-quality monitoring, evaluation, and analysis will be conducted to evaluate the overall cost and effectiveness of projects and BMPs to provide information on the impact of the program on improved water quality and for general RCWP program management.

(2) Monitoring, evaluation, and analysis is a joint USDA/EPA responsibility. Subject to appropriation of funds, the Administrator, NRCS, and EPA are jointly to select the project areas to be monitored and evaluated based on a list of project areas recommended by the NRCWCC.

(3) The Administrator, NRCS, and Administrator, EPA, are jointly to determine the criteria to be used for comprehensive water-quality monitoring, evaluation, and analysis in the selected project areas. A monitoring and evaluation plan is to be developed and agreed to by NRCS and EPA prior to initiating a project selected for monitoring and evaluation. The State water-quality agency and other Federal, State, and local agencies will be involved in the development of the plan for water-quality evaluation. The involvement of concerned agencies in implementing the plan will be determined at the time the plan is prepared.

(4) The project areas selected for detailed analysis are to be representative of agricultural and silvicultural nonpoint source pollution problems, categories of agriculture and silvicutural nonpoint source pollutants, agricultural enterprises, and BMPs used in the RCWP.

(5) Preference in the selection of project areas for comprehensive evaluation is to be given to those project areas for which long-term baseline information exists on land use, hydrologic data, and water quality.

(6) Monitoring and evaluation of selected project areas is to begin sufficiently in advance of the installation of BMPs to document, in a statistically satisfactory manner, existing land-use practices and baseline water-quality problems.

(7) The water quality monitoring and evaluation plan will provide sufficient basic information to adequately describe the land use, hydrologic water quality relationship. As a minimum, the plan will contain the following components:

(i) Chemical and physical water quality monitoring,

(ii) Biological monitoring,

(iii) Appropriate hydrologic data,

(iv) Soils properties and characteristics, topographic information,

(v) Land use and farm inventory.

(b) *Program and project evaluation.*

(1) There will be a continuing evaluation of the Rural Clean Water Program to measure its effectiveness and for each project for which cost-sharing funds are provided.

(2) Program and project evaluations will be conducted under the direction of the Assistant Secretary for Conservation, Research and Education, USDA, the Director of Economics, Policy Analysis, and Budget, USDA; and the Assistant Administrator for Water and Waste Management, EPA; or their representatives working through NRCWCC.

(3) Evaluative reports for the program and each project area will be submitted annually to the Secretary of Agriculture and the Administrator, EPA.

(c) *Funding.* (1) Research oriented activities will be from sources other than RCWP.

(2) Funding for program and project monitoring and evaluation will be provided through RCWP and other authorizations.

SUBCHAPTER E—[RESERVED]

SUBCHAPTER F—SUPPORT ACTIVITIES

PART 650—COMPLIANCE WITH NEPA

Subpart A—Procedures for NRCS-Assisted Programs

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Subpart A—Procedures for NRCS-Assisted Programs

AUTHORITY: 42 U.S.C. 4321 et seq.; Executive Order 11514 (Rev.); 16 U.S.C. 1001–1008; 7 U.S.C. 1010–1011; 16 U.S.C. 590 a–f, q.; 7 CFR 2.62, unless otherwise noted.

SOURCE: 44 FR 50579, Aug. 29, 1979, unless otherwise noted.

§650.1 Purpose.

(a) This rule prescribes procedures by which NRCS is to implement the provisions of NEPA. The Natural Resources Conservation Service recognizes NEPA as the national charter for protection, restoration, and enhancement of the human environment. NEPA establishes policy, sets goals (Section 101), and provides means (Section 102) for carrying out this policy.

(b) The procedures included in this rule supplement CEQ's NEPA regulations, 40 CFR parts 1500–1508. CEQ regulations that need no additional elaboration to address NRCS-assisted actions are not repeated in this rule, although the regulations are cited as references. The procedures include some overlap with CEQ regulations. This is done to highlight items of importance for NRCS. This does not supersede the existing body of NEPA regulations.

(c) These procedures provide that—

(1) Environmental information is to be available to citizens before decisions are made about actions that significantly affect the human environment;

(2) NRCS-assisted actions are to be supported to the extent possible by accurate scientific analyses that are technically acceptable to NRCS;

(3) NRCS-prepared NEPA documents are to be available for public scrutiny; and

(4) Documents are to concentrate on the issues that are timely and significant to the action in question rather than amassing needless detail.

(d) Procedures for implementing NEPA are designed to ensure that environmental consequences are considered in decisionmaking. They allow NRCS to assist individuals and nonfederal public entities to take actions that protect, enhance, and restore environmental quality.

(e) These procedures make possible the early identification of actions that have significant effects on the human environment to avoid delays in decisionmaking.

§650.2 Applicability.

This rule applies to all NRCS-assisted programs including the uninstalled parts of approved projects that are not covered by environmental documents prepared under previous rules for compliance with NEPA. It is effective on the date of publication of the final rule. NRCS is to consult with

CEQ in the manner prescribed by 40 CFR 1506.11 if it is necessary to take emergency actions.

§ 650.3 Policy.

(a) *NRCS mission*. The NRCS mission is to provide assistance that will allow use and management of ecological, cultural, natural, physical, social, and economic resources by striving for a balance between use, management, conservation, and preservation of the Nation's natural resource base. The NRCS mission is reemphasized and expanded to carry out the mandate of section 101(b) of NEPA, within other legislative constraints, in all its programs of Federal assistance. NRCS will continue to improve and coordinate its plans, functions, programs, and recommendations on resource use so that Americans, as stewards of the environment for succeeding generations—

(1) Can maintain safe, healthful, productive, and esthetically and culturally pleasing surroundings that support diversity of individual choices; and

(2) Are encouraged to attain the widest range of beneficial uses of soil, water, and related resources without degradation to the environment, risk to health or safety, or other undesirable and unintended consequences.

(b) *NRCS environmental policy*. NRCS is to administer Federal assistance within the following overall environmental policies:

(1) Provide assistance to Americans that will motivate them to maintain equilibrium among their ecological, cultural, natural, physical, social, and economic resources by striving for a balance between conserving and preserving the Nation's natural resource base.

(2) Provide technical and financial assistance through a systematic interdisciplinary approach to planning and decisionmaking to insure a balance between the natural, physical, and social sciences.

(3) Consider environmental quality equal to economic, social, and other factors in decisionmaking.

(4) Insure that plans satisfy identified needs and at the same time minimize adverse effects of planned actions on the human environment through interdisciplinary planning before providing technical and financial assistance.

(5) Counsel with highly qualified and experienced specialists from within and outside NRCS in many technical fields as needed.

(6) Encourage broad public participation in defining environmental quality objectives and needs.

(7) Identify and make provisions for detailed survey, recovery, protection, or preservation of unique cultural resources that otherwise may be irrevocably lost or destroyed by NRCS-assisted project actions, as required by Historic Preservation legislation and/or Executive Order.

(8) Encourage local sponsors to review with interested publics the operation and maintenance programs of completed projects to insure that environmental quality is not degraded.

(9) Advocate the retention of important farmlands and forestlands, prime rangeland, wetlands, or other lands designated by State or local governments. Whenever proposed conversions are caused or encouraged by actions or programs of a Federal agency, licensed by or require approval by a Federal agency, or are inconsistent with local or State government plans, provisions are to be sought to insure that such lands are not irreversibly converted to other uses unless other national interests override the importance of preservation or otherwise outweigh the environmental benefits derived from their protection. In addition, the preservation of farmland in general provides the benefits of open space, protection of scenery, wildlife habitat, and in some cases, recreation opportunities and controls on urban sprawl.

(10) Advocate actions that reduce the risk of flood loss; minimize effects of floods on human safety, health, and welfare; and restore and preserve the natural and beneficial functions and values of flood plains.

(11) Advocate and assist in the reclamation of abandoned surface-mined lands and in planning for the extraction of coal and other nonrenewable resources to facilitate restoration of the land to its prior productivity as mining is completed.

(12) Advocate the protection of valuable wetlands, threatened and endangered animal and plant species and their habitats, and designated ecosystems.

(13) Advocate the conservation of natural and manmade scenic resources to insure that NRCS-assisted programs or activities protect and enhance the visual quality of the landscape.

(14) Advocate and assist in actions to preserve and enhance the quality of the Nation's waters.

[44 FR 50579, Aug. 20, 1979; 44 FR 54981, Sept. 24, 1979]

§650.4 Definition of terms.

Definitions of the following terms or phrases appear in 40 CFR part 1508, CEQ regulations. These terms are important in the understanding and implementation of this rule. These definitions are not repeated in the interest of reducing duplication:

Categorical exclusion. (40 CFR 1508.4)
Cooperating agency. (40 CFR 1508.5)
Cumulative impact. (40 CFR 1508.7)
Environmental impact statement (EIS). (40 CFR 1508.11)
Human environment. (40 CFR 1508.14)
Lead agency. (40 CFR 1508.16)
Major Federal action. (40 CFR 1508.18)
Mitigation. (40 CFR 1508.20)
NEPA process. (40 CFR 1508.21)
Scope. (40 CFR 1508.25)
Scoping. (40 CFR 1501.7)
Tiering. (40 CFR 1508.28)

(a) *Channel realignment.* Channel realignment includes the construction of a new channel or a new alignment and may include the clearing, snagging, widening, and/or deepening of the existing channel. (Channel Modification Guidelines, 43 FR 8276).

(b) *Environmental assessment* (*EA*). (40 CFR 1508.9)

(1) An environmental assessment is a concise public document for which a Federal agency is responsible that—

(i) Briefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(ii) Aids an agency's compliance with the Act when no environmental impact statement is necessary.

(iii) Facilitates preparation of an environmental impact statement when one is necessary.

(2) An environmental assessment includes brief discussions of the need for the proposal, alternatives as required by section of the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted.

(c) *Environmental evaluation.* The environmental evaluation (EE) (formerly referred to by NRCS as an environmental assessment) is the part of planning that inventories and estimates the potential effects on the human environment of alternative solutions to resource problems. A wide range of environmental data together with social and economic information is considered in determining whether a proposed action is a major Federal action significantly affecting the human environment. The environmental evaluation for a program, regulation, or individual action is used to determine the need for an environmental assessment or an environmental impact statement. It also aids in the consideration of alternatives and in the identification of available resources.

(d) *Federally-assisted actions.* These actions are planned and carried out by individuals, groups, or local units of government largely on nonfederal land with technical and/or financial assistance provided by NRCS.

(e) *Interdisciplinary planning.* NRCS uses an interdisciplinary environmental evaluation and planning approach in which specialists and groups having different technical expertise act as a team to jointly evaluate existing and future environmental quality. The interdisciplinary group considers structure and function of natural resource systems, complexity of problems, and the economic, social, and environmental effects of alternative actions. Public participation is an essential part of effective interdisciplinary planning. Even if an NRCS employee provides direct assistance to an individual land user, the basic data used is a result of interdisciplinary development of guide and planning criteria.

(f) *Nonproject actions.* Nonproject actions consist of technical and/or financial assistance provided to an individual, group, or local unit of government by NRCS primarily through a cooperative agreement with a local conservation district, such as land treatment recommended in the Conservation Operations, Great Plains Conservation, Rural Abandoned Mine, and Rural Clean Water Programs. These actions may include consultations, advice, engineering, and other technical assistance that land users usually cannot accomplish by themselves. Nonproject technical and/or financial assistance may result in the land user installing field terraces, waterways, field leveling, onfarm drainage systems, farm ponds, pasture management, conservation tillage, critical area stablization and other conservation practices.

(g) *Notice of intent* (*NOI*) (*40 CFR 1508.22*). A notice of intent is a brief statement inviting public reaction to the decision by the responsible Federal official to prepare an EIS for a major Federal action. The notice of intent is to be published in the FEDERAL REGISTER, circulated to interested agencies, groups, individuals, and published in one or more newspapers serving the area of the proposed action.

(h) *Project actions.* A project action is a formally planned undertaking that is carried out within a specified area by sponsors for the benefit of the general public. Project sponsors are units of government having the legal authority and resources to install, operate, and/or maintain works of improvement.

(i) *Record of Decision.* (ROD) (40 CFR 1505.2). A record of decision is a concise written rationale by the RFO regarding implementation of a proposed action requiring an environmental impact statement. This was previously defined by NRCS as a Statement of Findings (SOF).

(j) *Responsible Federal official (RFO).* The NRCS Administrator is the responsible Federal official (RFO) for compliance with NEPA regarding proposed legislation, programs, legislative reports, regulations, and program EIS's. NRCS state conservationists (STC's) are the RFO's for compliance with the provisions of NEPA in other NRCS-assisted actions.

(k) *Significantly.* (40 CFR 1508.27) ''Significantly'' as used in NEPA requires considerations of both context and intensity:

(1) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, for a site-specific action, significance usually depends on the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(2) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action.

The following should be considered in evaluating intensity:

(i) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(ii) The degree to which the proposed action affects public health or safety.

(iii) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(iv) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(v) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(vi) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(vii) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(viii) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(ix) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973 as amended.

(x) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

(l) *Finding of no significant impact (FNSI).* (40 CFR 1508.13) ''Finding of No Significant Impact'' means a document by a Federal agency briefly presenting the reasons why an action not otherwise excluded (§1508.4) will not have a significant effect on the human environment, and an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

[44 FR 50579, Aug. 29, 1979; 44 FR 54981, Sept. 24, 1979]

§650.5 Environmental evaluation in planning.

(a) *General.* Environmental evaluation (EE) integrates environmental concerns throughout the planning, installation, and operation of NRCS-assisted projects. The EE applies to all assistance provided by NRCS, but planning intensity, public involvement, and documentation of actions vary according to the scope of the action. NRCS begins consideration of environmental concerns when information gathered during the environmental evaluation is used:

(1) To identify environmental concerns that may be affected, gather baseline data, and predict effects of alternative courses of actions;

(2) To provide data to applicants for use in establishing objectives commensurate with the scope and complexity of the proposed action;

(3) To assist in the development of alternative courses of action; (40 CFR 1502.14). In NRCS-assisted project actions, nonstructural, water conservation, and other alternatives that are in keeping with the Water Resources Council's Principles and Standards are considered, if appropriate.

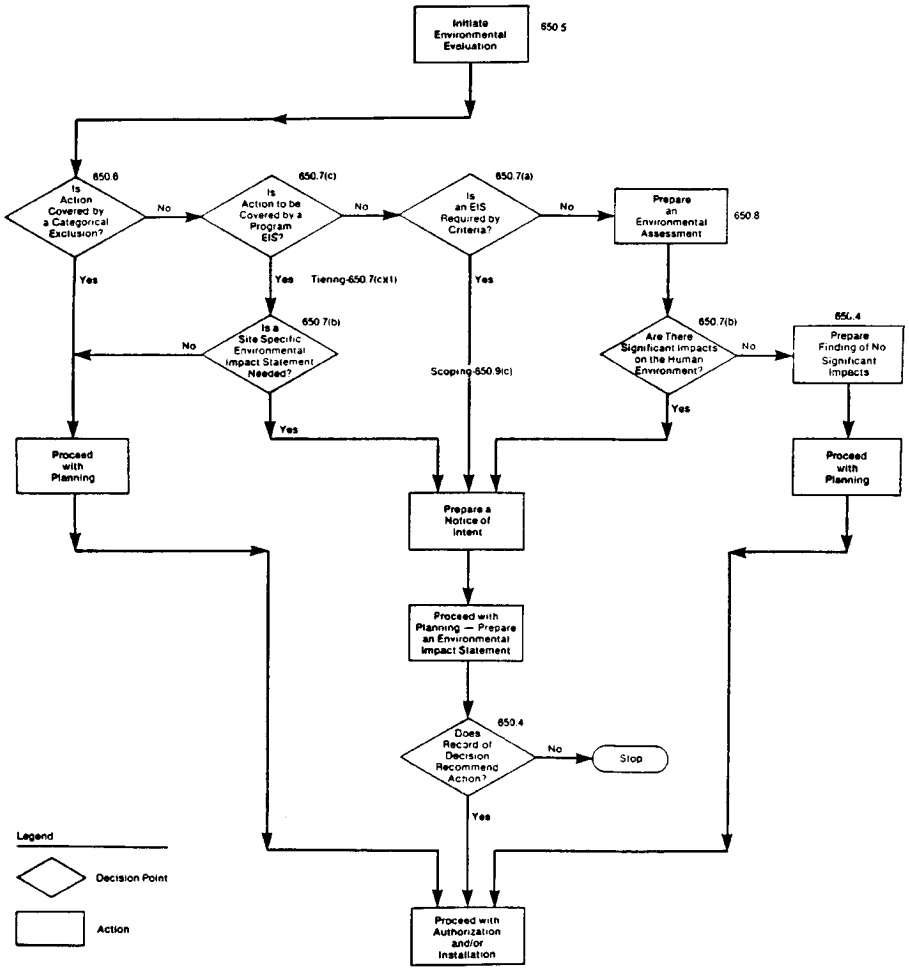
(4) To perform other related investigations and analyses as needed, including economic evaluation, engineering investigations, etc.

(5) To assist in the development of detailed plans for implementation and operation and maintenance.

(b) *Procedures.* NRCS's Guide for Environmental Assessment issued in March 1977 and published in the FEDERAL REGISTER on August 8, 1977, provides guidance for conducting an environmental evaluation. (42 FR 40123–40167).

(c) *Decision points.* Figure 1 illustrates the decision points for compliance with NEPA in NRCS decisionmaking.

NEPA in SCS Planning



§650.6 Categorical exclusions.

(a) Some NRCS programs or parts of programs do not normally create significant individual or cumulative impacts on the human environment. Therefore, an EA or EIS is not needed. These are data gathering and interpretation programs and include:

(1) Soil Survey—7 CFR part 611;

(2) Snow Survey and Water Supply Forecasts—7 CFR part 612;

(3) Plant Materials for Conservation—7 CFR part 613;

(4) Inventory and Monitoring—Catalog of Federal Domestic Assistance—10.908; and

(5) River Basin Studies under section 6 of Pub. L. 83–566 as amended—7 CFR part 621.

(b) The environmental evaluation performed by the RFO when any new action under these programs is planned is to identify extraordinary circumstances that might lead to significant individual or cumulative impacts. Actions that have potential for significant impacts on the human environment are not categorically excluded.

§650.7 When to prepare an EIS.

The following are categories of NRCS action used to determine whether or not an EIS is to be prepared.

(a) *An EIS is required for:*

(1) Projects that include stream channel realignment or work to modify channel capacity by deepening or widening where significant aquatic or wildlife habitat exists. The EE will determine if the channel supports significant aquatic or wildlife habitat;

(2) Projects requiring Congressional action;

(3) Broad Federal assistance programs administered by NRCS when the environmental evaluation indicates there may be significant cumulative impacts on the human environment (§650.7(e)); and

(4) Other major Federal actions that are determined after environmental evaluation to affect significantly the quality of the human environment (§650.7(b)). If it is difficult to determine whether there is a significant impact on the human environment, it may be necessary to complete the EE and prepare an EA in order to decide if an EIS is required.

(b) The RFO is to determine the need for an EIS for each action, program, or regulation. An environmental evaluation, using a systematic interdisciplinary analysis and evaluation of data and information responding to the five provisions of Section 102(2)(C) of NEPA, will assist the RFO in deciding if the action requires the preparation of an EIS. In analyzing and evaluating environmental concerns, the RFO will answer the following questions:

(1) *Environmental impact.* Will the proposed action significantly affect the quality of the human environment (40 CFR 1508.14)? For example, will it significantly alter or destroy valuable wetlands, important farmlands, cultural resources, or threatened and endangered species? Will it affect social values, water quality, fish and wildlife habitats, or wilderness and scenic areas?

(2) *Adverse environmental effects that cannot be avoided.* What are the important environmental amenities that would be lost if the proposed action were implemented?

(3) *Alternatives.* Are there alternatives that would achieve the planning objectives but avoid adverse environmental effects?

(4) *Short-term uses versus long-term productivity.* Will the proposed actions, in combination with other actions, sacrifice the enhancement of significant long-term productivity as a tradeoff for short-term uses?

(5) *Commitment of resources.* Will the proposed action irreversibly and irretrievably commit the use of resources such as important farmlands, wetlands, and fish and wildlife habitat?

(c) Criteria for determining the need for a program EIS:

(1) A program EIS is required if the environmental evaluation reveals that actions carried out under the program have individually insignificant but cumulatively significant environmental impacts.

(2) A project EIS, in lieu of a program EIS, is required if the environmental evaluation reveals that actions carried out under the program will have both individually and cumulatively significant environmental impacts. (7 CFR Parts 620 through 623 and 640 through 643).

(d) The RFO, through the process of tiering, is to determine if a site-specific EA or EIS is required for an individually significant action that is included in a program EIS.

§ 650.8 When to prepare an environmental assessment (EA).

An environmental assessment (EA) is to be prepared for:

(a) Land and water resource projects that are not included in § 650.7(a) (1) through (4) for which State and local units of government receive Federal technical and financial assistance from NRCS (7 CFR parts 620 through 623; and 640 through 643); and

(b) Other actions not included in a program EIS nor categorically excluded that the EE reveals may be a major Federal action significantly affecting the quality of the human environment.

§ 650.9 NEPA and interagency planning.

(a) *Lead agency*. (1) NRCS is to be the lead agency for actions under programs it administers. If the actions affect more than one State, the NRCS Administrator is to designate one NRCS state conservationist as the RFO.

(2) NRCS normally takes the role of lead agency in actions that share program responsibilities among USDA agencies if NRCS provides the majority of funds for the actions. If the lead agency role is in question, the role of NRCS and other USDA agencies is to be determined by the USDA Environmental Coordinator, Office of Environmental Quality Activities.

(3) If NRCS and Federal agencies outside USDA cannot agree on which will be the lead agency and which will be the cooperating agencies, the procedures in 40 CFR 1501.5(e) are to be followed.

(4) NRCS, as lead agency, is to coordinate the participation of all concerned agencies in developing the EIS according to the provisions of 40 CFR 1501.6(a).

(b) *Cooperating agencies.* (1) NRCS is to request, as appropriate, the assistance of cooperating agencies in preparing the environmental evaluation. This assistance will broaden the expertise in the planning and help to avoid future conflict. NRCS is to request assistance in determining the scope of issues to be addressed and identifying the significant issues related to a proposed action from Federal agencies that have jurisdiction by law or special expertise.

(2) NRCS is to act as a cooperating agency if requested. NRCS may request to be designated as a cooperating agency if proposed actions may affect areas of NRCS expertise, such as prime farmlands, soils, erosion control, and agricultural sources of nonpoint pollution. NRCS, as a cooperating agency, is to comply with the requirements of 40 CFR 1501.6(b) to the extent possible depending on funds, personnel, and priority. If insufficient funds or other resources prevent NRCS from participating fully as a cooperating agency, NRCS is to request the lead agency to provide funds or other resources which will allow full participation.

(c) *Scoping.* See 40 CFR 1501.7 for a definition of scoping.

(1) NRCS is to use scoping to identify and categorize significant environmental issues in its environmental evaluation. Formalized scoping is used to insure that an analytical EIS can be prepared that will reduce paperwork and avoid delay. Scoping allows NRCS to obtain the assistance and consultation of affected agencies that have special expertise or legal jurisdiction in the proposed action. If early environmental evaluation identifies a need for an EIS, NRCS is to publish a notice of intent (NOI) to prepare an EIS. The NOI is to request the assistance of all interested agencies, groups, and persons in determining the scope of the evaluation of the proposed action.

(2) Normally a scoping meeting is held and Federal, State, or local agencies that have special expertise or legal jurisdiction in resource values that may be significantly affected are requested to participate. The scoping meeting will identify agencies that may become cooperating agencies.

(3) In the scoping meeting, the range of actions, alternatives, and impacts to be evaluated and included in the EIS as defined in (40 CFR 1508.25) are to be determined. Tiering (40 CFR 1508.28) may be used to define the relation of the proposed statement to other statements.

(4) Periodic meetings of the cooperating agencies are to be held at important decisionmaking points to provide timely interagency, interdisciplinary participation.

(5) Scoping is to include the items listed in 40 CFR 1501.7(a) and may also include any of the activities in 40 CFR 1501.7(b). Appropriate, timely requests and notification are to be made to promote public participation in scoping in accordance with paragraph (d) of this section.

(6) The RFO through the scoping process will set time and page limits as prescribed in 40 CFR 1501.8. Time and page limits are established by NRCS in consultation with sponsors and others according to the projected availability of resources. The RFO is to make the applicant aware of the possible need for revising time and page limits because of changes in resources.

(d) *Public participation.* (1) *General.* Public participation activities begin early in the EE and are to be appropriate to the proposed action. For example, extensive public participation activities are required in the implementation of new programs and project actions, but limited public participation is appropriate for nonproject technical and financial assistance programs on nonfederal land.

(2) *Early public involvement.* The public is to be invited and encouraged to participate in the early stages of planning, including the consideration of the potential effects of NRCS-assisted actions on significant environmental resources such as wetlands, flood plains, cultural values, endangered species, important farmland.

(3) *Project activities.* The following are general considerations for providing opportunities for public participation:

(i) *Identification of interested public.* The interested public consisting of but not limited to individuals, groups, organizations, and government agencies are to be identified, sought out, and encouraged to participate in and contribute to interdisciplinary planning and environmental evaluation.

(ii) *Public notices.* (40 CFR 1506.6) If the effects of an action are primarily of local concern, notice of each public meeting or hearing should be: Submitted to State and areawide clearinghouses pursuant to OMB Circular A–95 (revised); submitted to Indian tribes if they are interested; published in local newspapers; distributed through other local media; provided to potentially interested community organizations including small business associations; published in newsletters that may be expected to reach potentially interested persons; mailed directly to owners and occupants of nearby or affected property; and posted onsite and offsite in the area where the action is to be located.

(iii) *State statutes.* If official action by the local units of government cooperating in the proposal is governed by State statute, the public notice and mailing requirement of the statute is to be followed. If the effects of an action are of national concern, notice is to be published in the FEDERAL REGISTER and mailed to national organizations reasonably expected to be interested.

(iv) *Public meetings.* The RFO, after consultation with the sponsors, is to determine when public meetings or hearings are to be held. Public meetings may be in the form of a workshop, tour, open house, etc. Public involvement will include early discussion of flood-plain management and protection of wetlands, where appropriate. Environmental information is to be presented and discussed along with other appropriate information. To the extent practical, pertinent information should be made available before the meetings.

(v) *Documentation.* The RFO is to maintain a reviewable record of public participation in the environmental evaluation process.

(4) *Nonproject activities.* Public participation in the planning and application of conservation practices with individual land users is accomplished primarily through conservation districts. These districts are governed by boards of supervisors directors, commissioners, etc., who are elected and/or appointed to insure that soil, water, related resources, and environmental qualities in the district are maintained and improved. The public is to be encouraged to participate in the development of long-range district programs and district annual plans. The district

keeps the public informed through public meetings, district newsletters, news stories, radio and television programs, and annual reports.

§ 650.10 Adoption of an EIS prepared by a cooperating agency.

(a) If NRCS adopts an EIS prepared by another Federal or State agency, the RFO is to review the document to insure that it meets the requirements of the CEQ regulations and NRCS–NEPA procedures.

(b) If the actions included in the EIS are substantially the same as those proposed by NRCS, the RFO is to recirculate the EIS as ''final.'' The final EIS is to include an appropriate explanation of the action. If these actions are not substantially the same, the EIS is to be supplemented and recirculated as a draft EIS. The RFO is to inform the preparing agency of the proposed action.

(c) If the adopted EIS is not final, if it is the subject of a referral under 40 CFR part 1504, or if the statement's adequacy is in litigation, the RFO is to include an appropriate explanation in the EIS.

(d) The RFO is to take appropriate action to inform the public and appropriate agencies of the proposed action.

§ 650.11 Environmental documents.

(a) NRCS is to use the following documents in compliance with NEPA (see § 650.4):

(1) Environmental assessments (EA)

(2) Environmental impact statements (EIS)

(3) Notice of intent (NOI)

(4) Finding of no significant impact (FNSI)

(5) Record of decision (ROD)

(b) The format and content of each document is to be appropriate to the action being considered and consistent with the CEQ regulations.

(1) To reduce duplication, NRCS may combine environmental documents with other planning documents of the same proposal, as appropriate. For example, NRCS, in consultation with CEQ and the office of the Secretary of Agriculture, has determined that each EIS is to satisfy the requirements for a regulatory impact analysis as required by Executive Order 12044. This may necessitate modifying the recommended CEQ format. If documents are combined, the RFO is to include the information and sections required by the CEQ regulations (40 CFR 1502.10). The environmental impact statement should indicate those considerations, including factors not related to environmental quality, that are likely to be relevant to a decision.

(2) The RFO is to establish the format and content of each document giving full consideration to the guidance and requirements of the CEQ regulations. The NRCS technical service center director is to provide guidance and concurrence on the format and content if the NRCS state conservationist is the RFO. The results of scoping are to determine the content of the EA or the EIS and the amount of detail needed to analyze the impacts.

(3) In addition to the minimum requirements of the CEQ regulations (40 CFR 1502.10), environmental assessments and environmental impact statements are to include—

(i) A brief description of public participation activities of agencies, groups, and individuals during the environmental evaluation;

(ii) A description of the hazard potential of each alternative, including an explanation of the rationale for dam classification and the risk of dam failure from overtopping for other causes;

(iii) Information identifying any approved regional plans for water resource management in the study area (40 CFR 1506.2(d)) and a statement on whether the proposed project is consistent with such plans;

(iv) All Federal permits, licenses, and other entitlements that must be obtained (40 CFR 1502.25(b)); and

(v) A brief description of major environmental problems, conflicts, and disagreements among groups and agencies and how they were resolved. Unresolved conflicts and the NRCS's proposal for resolving the disagreements before the project is implemented are to be summarized.

(4) *Letters of comment and responses.* (40 CFR 1503.4, 1502.9(b)) Letters of comment that were received and the responses to these comments are to appended to the final EIS. Opposing views and other substantive comments that

were not adequately discussed in the draft EIS are to be incorporated in the final EIS.

(5) *Appendix.* The RFO may use an appendix to an EA or EIS. If an appendix is too voluminous to be circulated with the EIS, the RFO is to make it available on request. If an appendix is included it is to—

(i) Meet the requirements of 40 CFR 1502.18;

(ii) Identify any methodologies used (40 CFR 1502.24) and make explicit reference to other sources relied on for conclusions; and

(iii) Briefly describe the relationship between the benefit-cost analysis and any analyses of unquantified environmental impacts, values, and amenities. ''For purposes of complying with the Act, *the weighing of the merits or drawbacks of the various alternatives need not be displayed* in a monetary cost benefit and should not be when these are important qualitative considerations.'' (40 CFR 1502.23).

§650.12 NRCS decisionmaking.

(a) *General.* The purpose of these procedures is to insure that environmental information is provided to decision makers in a timely manner. The NEPA process is a part of NRCS decisionmaking. The RFO is to insure that the policies and purposes of NEPA and CEQ regulations are complied with in NRCS decisionmaking by:

(1) Including in all decision documents and supporting environmental documents a discussion of all alternatives considered in the decision. Alternatives to be considered in reaching a decision will be available to the public.

(2) Submitting relevant environmental documents, comments, and responses with other decision documents through the review process.

(3) Including in the record of formal rulemaking or adjudicatory proceedings relevent environmental documents, comments and responses.

(4) Providing for pre- and post-project monitoring (40 CFR 1505.2(c), 1505.3) and evaluation in representative projects to insure that planning and evaluation procedures are performed according to sound criteria.

(b) *Decision points in NRCS-assisted projects.* NRCS administers programs that may have a significant effect on the human environment. Program procedures incorporate provisions for compliance with NEPA and for providing environmental information to the public, other agencies, and decision makers in a timely manner. NRCS provides technical and financial assistance for projects under the Watershed Protection and Flood Prevention and the Resource Conservation and Development (RC&D) programs. These usually require the preparation of project EA's or EIS's. The major decisionmaking points and their relation to NEPA compliance are as follows:

(1) For Watershed Protection and Flood Prevention projects:

(i) Application for assistance by the sponsoring local organization (SLO).

(ii) A preauthorization report identifying goals, alternatives, and effects of alternatives (including environmental impacts) prepared by the RFO and submitted to the applicant for decision. It is circulated to local, State, and Federal agencies and public comment is solicited. A decision is made to stop planning assistance or to develop a watershed plan.

(iii) Granting of planning authorization by the Administrator. The RFO must provide an evaluation of the potential environmental impacts to obtain the authorization.

(iv) A watershed agreement between the SLO and NRCS. The agreement is based on a completed watershed plan and associated environmental documents, which have been adequately reviewed within NRCS.

(v) A project agreement between the SLO and the RFO executed after the NEPA process is complete and the watershed plan has been approved and final plans and specifications have been developed.

(2) For RC&D measure plans:

(i) A request for assistance (measure proposal) is reviewed by the RC&D council to insure that the proposal is in accordance with the RC&D area plan. The proposal is then referred to NRCS.

(ii) A preliminary report is prepared by the RFO to identify goals, alternatives, and effects (including environmental impacts). The report is submitted to the sponsor for review. The sponsor may then apply to NRCS for planning assistance for measures considered in the preliminary report.

(iii) An authorization for planning assistance is granted by the RFO.

(iv) The RC&D measure plan is signed by the applicant and the RFO after the preparation and review of the measure plan and environmental documents.

(v) A project agreement is signed between the applicant and the RFO after the NEPA process is complete, the measure plan has been approved, and final plans and specifications have been prepared.

(c) *Record of decision*—(1) *EIS's.* The RFO is to prepare a concise record of decision (ROD) for actions requiring an EIS. The record of decision is to be prepared and signed by the RFO following the 30-day administrative action period initiated by the EPA's publication of the notice of availability of the final EIS in the FEDERAL REGISTER. It is to serve as the public record of decision as described in 40 CFR 1505.2 of the CEQ regulations. The ROD is to be distributed to all who provided substantive comments on the draft EIS and all others who request it. A notice of availability of the ROD will be published in the FEDERAL REGISTER and local newspaper(s) serving the project area. The RFO may choose to publish the entire ROD.

(2) *Environmental Assessments (EA).* If the EA indicates that the proposed action is not a major Federal action significantly affecting the quality of the human environment, the RFO is to prepare a finding of no significant impact (FNSI).

(3) *Distribution and publication of the FNSI (§ 1506.6(b)).* The RFO is to distribute the FNSI to interested agencies and individuals. Notice of its availability is to be published in the FEDERAL REGISTER and in one or more newspapers serving the area of the proposed action. Single copy requests for the document are to be filed without charge. A charge may be made for multiple copies. Implementing action is not to be initiated for 30 days after the notice of availability of the FNSI has been published in the FEDERAL REGISTER.

(d) *Changes in actions.* When it appears that a project or other action needs to be changed, the RFO will perform an environmental evaluation of the authorized action before making a change.

§ 650.13 Review and comment.

In addition to the requirements of 40 CFR 1503, 1506.10 and 1506.11, NRCS will take the following steps in distributing EIS's for review and comment:

(a) *Draft EIS's.* Five copies of the draft EIS are to be filed by the RFO with the Office of Environmental Review, A–104, Environmental Protection Agency (EPA), Washington, D.C. At the same time, the RFO is to send copies of the draft EIS to the following:

(1) *Other Federal agencies.* The regional office of EPA and other agencies that have jurisdiction by law or special expertise with respect to any environmental effect, other Federal agencies (including appropriate field and regional offices), and affected Indian tribes.

(2) *State and local agencies.* OMB Circular No. A–95 (Revised), through its system of State and areawide clearinghouses, provides a means for obtaining the views of State and local environmental agencies that can assist in the preparation and review of EIS's

(3) *Organizations, groups, and individuals.* A copy of the draft EIS is to be sent to the appropriate official of each organization or group and each individual of the interested public (§ 650.9(d)(3)(i)) and to others as requested. A charge may be made for multiple copy requests.

(b) *Time period for comment.* The time period for review ends 45 days after the date EPA publishes the notice of public availability of the draft in the FEDERAL REGISTER. A 15-day-extension of time for review and comment is to be considered by the RFO when such requests are submitted in writing. If neither comments nor a request for an extension is received at the end of the 45-day period, it is to be presumed that the agency or party from whom comments were requested has no comments to make.

(c) *News releases.* In addition to the notice of availability published in the FEDERAL REGISTER by EPA, the RFO is to announce the availability of the draft EIS in one or more newspapers serving the area.

(d) *Revising a draft EIS.* If significant changes in the proposed action are made as a result of comments on the draft EIS, a revised draft EIS may be necessary. The revised draft EIS is to be recirculated for comment in the same manner as a draft EIS.

(e) *Final EIS's.* After the review period for the draft EIS, the RFO is to prepare a final EIS, making adjustments where necessary by taking into consideration and responding to significant comments and opposing viewpoints received on the draft EIS. The following steps are to be taken in filing and distributing the final EIS:

(1) Letters of comment are to be appended to the final EIS. If numerous repetitive responses are received, summaries of the repetitive comments and a list of the groups or individuals who commented may be appended in lieu of the actual letter.

(2) The RFO is to send five copies of the final EIS to EPA's Office of Environmental Review, and a copy of the final EIS to each State and Federal agency, organization, group, and individual who commented on the draft EIS. Single copy requests for copies of the final EIS will be provided without charge. A charge may be made for multiple copy requests.

(3) During the 30-day administrative action period noted in §650.12(c), NRCS will make its final EIS available to the public (40 CFR 1506.10).

(f) *Supplements to EIS's.* (1) If NRCS determines that it is necessary to clarify or amplify a point of concern raised after the final EIS is filed, appropriate clarification or amplification is to be sent to EPA with information copies furnished to those who received copies of the final EIS. The waiting periods do not apply.

(2) If the RFO determines that the final EIS or supplement to the original EIS previously filed becomes inadequate because of a major change in the plan for the proposed action that significantly affects the quality of the human environment, a new EIS is to be prepared, filed, and distributed as described in this section.

Subpart B—Related Environmental Concerns

AUTHORITY: Pub. L. 86–523, 74 Stat. 220 as amended, Pub. L. 93–291, 88 Stat. 174 (16 U.S.C. 469); Pub. L. 89–665, 80 Stat. 915 (16 U.S.C. 470); Pub. L. 93–205, 87 Stat. 884 (16 U.S.C. 1531 et seq.); Secretary of Agriculture Memorandum 1695, May 28, 1970; 42 U.S.C. 4332(2)(C); E.O. 11514, 16 U.S.C. 1001–1008; 7 U.S.C. 1010–1011; 16 U.S.C. 590 a–f, q; 7 CFR 2.62.

SOURCE: 39 FR 43993, Dec. 20, 1974, unless otherwise noted.

§650.20 Reviewing and commenting on EIS's prepared by other agencies.

(a) *NRCS employees assigned to review and comment* on EIS's prepared by other agencies are to be familiar with NRCS policies and guidelines contained in this part, and NEPA.

(b) *EIS's received for review by NRCS for which NRCS has expertise or interest* shall be responded to promptly. Comments are to be objective with the intent to offer suggestions to help minimize adverse impacts of the proposed action to ensure the health and welfare of the agricultural community. Comments are to be based on knowledge readily available. Field office technical guides, soil surveys, field investigation reports, and other resource data and reference materials developed by NRCS and other agencies should be used and cited. It is not intended that special surveys or investigations be conducted to acquire additional information for use in preparing comments.

(c) *The NRCS reviewer should consider the following kinds of concerns*—(1) *The suitability or limitations of the soils for the proposed action.* Would an alternative route, location, or layout minimize land use problems and adverse environmental impacts?

(2) *Provisions for control of erosion and management of water during construction.* Are there resources downstream that would be affected by sediment from the construction area, and does the statement provide for adequate control measures? Will lack of erosion control cause air pollution? Is the

stockpiling of topsoil for future use considered in the EIS?

(3) *Provisions for soil and water conservation managment measures on project lands, rights-of-way, access roads, and borrow areas.* Does the statement indicate that enduring soil and water practices are to be installed and maintained?

(4) *The effect of water discharges from project lands or rights-of-way onto other properties.* Will discharges cause erosion or flooding on other lands? Will discharges affect water quality?

(5) *The effects of disruption of the natural drainage patterns and severance of private land units.* Does the statement indicate that natural drainage patterns will be maintained? Will bridges, culverts, and other water control structures be located to ensure that adjacent lands are not flooded or otherwise restricted in use? Does the EIS describe the effects of severance on private land ownerships?

(6) *The impact on existing soil and water conservation management systems.* To what extent will conservation systems be altered, severed, or suffer blocked outlets? Will land use or cover be affected?

(7) *Impacts on prime and unique farmland.* Would an alternative location or route require less prime farmland? Does the EIS consider secondary effects on prime farmland? What benefits are foregone if prime farmland is taken?

(8) *Impacts on ecosystems.* Does the EIS describe impacts on major plant communities, and terrestrial and aquatic ecosystems?

(9) *Impacts on NRCS-assisted projects.* Does the statement reflect the effect of the proposed action on present or planned NRCS assisted projects?

(d) *EIS's referred to NRCS for departmental comments.* EIS's referred by the USDA Coordinator for Environmental Quality Activities to the NRCS national office may designate NRCS as the lead agency for preparing comments for USDA. In this case, the NRCS national office determines whether inputs from STC's and other USDA agencies are needed. If so, STC's and other USDA agencies are requested to forward comments to the Environmental Services Division fo use in preparing the USDA response.

(e) *EIS's referred to NRCS for agency comments.* EIS's received by the NRCS national office are screeened by the Director, Environmental Services Division to determine which office within NRCS will prepare comments. If the proposed action is within one State, the draft EIS will be forwarded to the appropriate STC and he will reply directly to the agency requesting the comments. If the proposed action involves more than one State, one STC will be designated to forward NRCS comments directly to the agency requesting the comments. In some cases, the action may be national or regional in scope, and require inputs from several offices within NRCS. In this instance, comments will be assembled in the Environmental Services Division for preparation of a response to the agency requesting comments. A copy of each response prepared by a STC should be sent to the Director, Environmental Services Division.

(f) *EIS's sent to NRCS offices other than the national office.* If a STC receives an EIS from another agency, he is to respond to the initiating agency. A copy of his comments should be sent to the Director, Environmental Services Division.

(1) *EIS's addressed to NRCS area or field offices.* If an EIS is received by a field or area office of NRCS, the STC will coordinate the response.

(2) *EIS's submitted to conservation districts.* NRCS may furnish needed soil, water, and related resource information to the district for their use in preparing comments.

(g) *Distribution of NRCS comments on other agencies' draft EIS's.* Five copies of review comments made by NRCS on draft EIS's prepared by other Federal agencies are to be sent to CEQ.

(h) *Third party requests for a copy of NRCS comments on another* agency's EIS will be filled after NRCS has forwarded copies of its letter of comments to CEQ.

[42 FR 40118, Aug. 8, 1977]

§650.21 Working relations with the U.S. Environmental Protection Agency (EPA) and related state environmental agencies.

(a) *Background.* The authorities and missions of NRCS, EPA, and state environmental agencies make it imperative that an effective cooperative and coordinative working relationship be developed and maintained in areas of mutual concern. These common areas include air quality, water quality, pesticides, waste recycling and disposal, environmental considerations in land use, Environmental Impact Statements (EIS's) and environmental considerations in the conservation and development of natural resources.

(b) *Policy.* NRCS will work closely with EPA in accordance with the provisions of the EPA-USDA Memorandum of Understanding July 31, 1974, at all administrative levels and with related state agencies to meet statutory requirements and to achieve harmonious implementation of all actions of mutual concern directed to improving or maintaining the quality of the environment.

(c) *Responsibility*—(1) *NRCS national office.* The Deputy Administrator for Field Services is responsible for overall coordination with EPA at the national office level. The Deputy Administrator for Water Resources is responsible for contacts with EPA in relation to activities of the Water Resources Council on water and related land resource planning and for coordinating work with EPA on EIS development.

(2) *Technical service center.* The TSC director is responsible for contacts and coordination with EPA regional offices within the group of states served by the TSC.

(3) *NRCS state office.* The state conservationist is responsible for contacts and coordination with regional representatives of EPA and state environmental agencies in matters of mutual concern within his state.

(d) *Coordination and implementation.* (1) The NRCS national office will:

(i) Within the framework of USDA agreements and guidelines, develop agreements for undertaking specific activities or projects of national significance and mutual advantage.

(ii) Assist EPA as requested in developing EPA policy, guidelines, and standards.

(iii) Consider EPA needs in soil survey and land, inventory, and monitoring activities.

(iv) Maintain needed liaison and develop mutual guidelines with EPA on water resources work and in coordinating EIS's.

(v) Advise EPA regarding soils, plant materials, and soil and water conservation techniques.

(vi) Establish procedures for periodic review of NRCS national standards for treatment systems and practices for agricultural pollution abatement, including wind and water erosion and sediment control, transport of pesticides, organic matter and fertilizers, and burning of residues or clearing debris.

(2) The TSC director will:

(i) Within the framework of NRCS memorandums and guidelines coordinate with the EPA regional administrator(s) the development of needed agreements for undertaking specific activities or projects of multistate significance and mutual advantage.

(3) The state conservationist will:

(i) Obtain early input of EPA and interested state and local environmental agencies in the planning process for projects or measures within the state impacting on the environment.

(ii) Coordinate preparations of NRCS practice standards and procedures for agricultural pollution abatement within the state with EPA and related state agencies.

(iii) Encourage the development of a coordinated review and approval process within the state with EPA and appropriate state and local agencies including conservation districts for actions of mutual concern.

(iv) Attempt to resolve all EPA areas of concern on NRCS assisted project-type actions within the state before a final EIS is prepared.

§650.22 Rare, threatened, and endangered species of plants and animals.

(a) *Background.* (1) A variety of plant and animal species of the United States are so reduced in numbers that they are threatened with extinction. The disappearance of any of these would be

a biological, cultural, and in some instances an economic loss. Their existence contributes to scientific knowledge and understanding, and their presence adds interest and variety to life.

(2) The principal hazard to threatened and endangered species is the destruction or deterioration of their habitats by human activities such as industrialization, urbanization, agriculture, lumbering, recreation, and transportation. These activities of man will continue but the necessity of recognizing their adverse impacts and selecting alternatives that minimize or eliminate such impacts on threatened and endangered species is imperative.

(3) The Endangered Species Act of 1973 (Pub. L. 93–205, 87 Stat. 884 (16 U.S.C. 1531 et seq.)) provides a means whereby the ecosystems upon which endangered and threatened species depend may be maintained and a program for the conservation of such species. The Act also provides that, in addition to the Department of the Interior, ''All other federal departments and agencies shall, in consultation with and with the assistance of the Secretary (of Interior), utilize their authorities for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected states, to be critical.'' The Act also:

(i) Defines endangered species as any species in danger of extinction throughout all or a significant portion of its range and threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act uses the category ''threatened.'' The term ''rare'' is not used.

(ii) Further defines species as including any subspecies of fish or wildlife or plants and any other group of fish and wildlife of the same species or smaller taxa in common spatial arrangements that interbreed when mature.

(iii) Provides for the Secretary of the Interior to enter into cooperative agreements with states for the purpose of implementing state programs for the conservation of endangered and threatened fish and wildlife. This assistance may include financial grants.

(iv) Provides national lists of endangered and threatened animal and plant species to be maintained by the Secretary of the Interior and published in the FEDERAL REGISTER. When resident fish and wildlife are added to the list, the affected states are to be consulted by the Secretary. The Secretary of the Smithsonian Institution is preparing a list of endangered or threatened plant species.

(b) *Policy*. The Act gives NRCS additional direction for participation in the conservation and protection of endangered and threatened species. As the principal federal agency concerned with land use planning of privately owned rural land and with professional conservation employees headquartered in almost every county, NRCS is uniquely capable of playing a vital role. Additional training will be provided as needed to meet NRCS responsibilities. NRCS will assist in the conservation of threatened and endangered species and consistent with legal requirements avoid or prevent activities detrimental to such species. NRCS concern for these species will not be limited to those listed by the Secretary of the Interior and published in the FEDERAL REGISTER, but will include species designated by state agencies as rare, threatened, endangered, etc.

(c) *Responsibility*—(1) *NRCS national office.* The Administrator will arrange for consultation and coordination of NRCS national office activities with the U.S. Fish and Wildlife Service, other federal agencies, and national organizations.

(2) *Technical service center.* The TSC director will, within the group of states served by the TSC arrange for consultation and coordination with regional representatives of the U.S. Fish and Wildlife Service, other Federal agencies, and national and regional organizations.

(3) *NRCS state office.* The state conservationist will arrange for consultation and coordination with the state

fish and game or conservation agency, other state agencies, state organizations and foundations, conservation districts, and state representatives of federal agencies and national organizations.

(d) *Coordination and implementation.* (1) The NRCS national office will:

(i) Within the framework of national legislation, USDA agreements, and NRCS objectives, develop NRCS policies and directives for guiding agency efforts that will protect threatened and endangered species and for avoiding actions that jeopardize the continued existence of such species and their critical habitats.

(ii) Maintain needed liaison and develop mutual understanding with the U.S. Fish and Wildlife Service and other concerned federal agencies.

(iii) Establish procedures for periodic review of NRCS participation in the national effort to conserve these species.

(2) The TSC director will: (i) Within the framework of NRCS policies and guidelines, arrange for needed liaison and understanding with regional counterparts of other federal agencies within the group of states served by the TSC and keep state conservationists informed of developments within such states.

(ii) Provide guidance and assistance to state conservationists in carrying out NRCS policies and guidelines.

(3) The state conservationist will develop procedures to establish working relationships with other concerned federal agencies, state fish and wildlife or conservation agencies, conservation districts, concerned scientists in state university systems and natural history museums, and other informed persons and organizations to offer assistance in:

(i) Preparing or maintaining lists of the state's threatened and endangered species.

(ii) Determining the geographic occurrence of endangered and threatened species, the nature of their habitat, and that portion of the habitat that is critical to the survival, maintenance, or increase of these species.

(iii) Discussing the kinds of measures important to preserve their habitat.

(iv) A monitoring program that would obtain advanced warning of actions or conditions that could further endanger these species, thereby enabling NRCS and others to take appropriate protective action.

(v) Assisting recovery teams, as appropriate, in preparing species recovery plans of those endangered and threatened species included in Federal lists.

(4) The state conservationist will also:

(i) Keep NRCS area and field offices informed of species listed as being threatened or endangered, geographic area in which they are found, and information such as their numbers, preferred habitat, and critical factors.

(ii) Review the status of threatened and endangered species each December and send a report of the review to the Administrator.

(5) NRCS district conservationists within the geographic range of threatened and endangered species will examine conservation district programs and NRCS operations to evaluate their effects on these species, and recommend to district officials and the state conservationist any action needed for their protection.

(6) NRCS field employees within the geographic range of threatened and endangered species will be continually alert to conditions, actions, or trends that may adversely affect the welfare of these species and report adverse situations to the state conservationist.

§650.23 Natural areas.

(a) *Background.* (1) Natural areas are defined as land or water units where natural conditions are maintained insofar as possible. Natural conditions usually result from allowing ordinary physical and biological processes to operate with a minimum of human intervention. Manipulations may be required on natural areas to maintain or restore features that the areas were established to protect.

(2) Natural areas may be designated areas of Federal, non-Federal government, or privately controlled land. Designation may be formal as provided for under federal regulations for areas of federal land to be administered as

natural areas or by foundations or conservation organizations specifically created to acquire and maintain natural areas. Designation may be informal in the case of private landowners who designate a specific area as a natural area and manage it accordingly. Several professional societies concerned with renewable natural resources encourage establishment of natural areas withdrawn from economic uses and recognition of natural areas maintained and managed in economic enterprises.

(3) Natural areas are established and maintained for a variety of purposes including:

(i) *Furthering science and education.* Natural areas provide sites for research and outdoor classrooms for study of plant and animal communities in environments with particular ecological conditions.

(ii) *Monitoring the surrounding environment.* Natural areas serve as gauges against which to evaluate changes in land use, vegetation, animal life, air quality, or other environmental values.

(iii) *Providing recreation attractions.* Natural areas are valued by many people for their scenic, wild, and undisturbed character but must be protected, as needed, to prevent disturbance or alteration of the resources.

(iv) *Preserving unique values.* Natural areas may be established to protect scenic, biologic, geologic, or paleontologic features.

(v) *Serving as a genetic base for native plants and animals.* Natural areas may be established to preserve examples of land and water ecosystems with their full range of genetic diversity of native plants and animals including threatened and endangered species.

(b) *Policy.* NRCS will recognize natural areas, if so dedicated, as a land use, and will support the designation of appropriate natural areas.

(c) *Responsibility*—(1) *NRCS national office.* The Administrator will designate a member of the national office staff to act as NRCS representative on the Federal Committee for Ecological Preserves and to provide appropriate liaison with other federal agencies and non-Federal groups concerned with natural areas.

(2) *Technical service center.* The TSC director will designate a TSC plant sciences discipline leader to provide leadership, appropriate liaison, and assistance on natural areas to NRCS state offices.

(3) *NRCS state office.* The state conservationist will designate an appropriate NRCS representative to work with other agencies and groups, and will coordinate assistance on natural areas needed by area and field offices.

(d) *Coordination and implementation.* (1) NRCS technical assistance will be furnished to representatives of administering agencies, foundations, groups, and individuals when requested through conservation districts. Conservation district officers will be encouraged to recognize appropriate natural areas concepts and programs and to participate in them.

(2) NRCS employees will report to state conservationists abuses and potential or actual damages to natural areas that may be found in the course of ordinary business.

(3) NRCS will cooperate with professional societies, groups, and individuals in locating areas suitable for and needed as natural areas.

(4) NRCS employees providing technical assistance to land users must inform them about the impact their decisions may have on adjacent or nearby natural areas. Land users will be encouraged to consult with concerned agencies, societies, and individuals to arrive at mutually satisfactory land use and treatment.

(5) Recommended classification systems for characterizing areas designated as ecological preserves or as natural areas are contained in the following publications:

Soil Taxonomy, a Basic System of Soil Classification for Making and Interpreting Soil Surveys, USDA–NRCS Agricultural Handbook 436.

Forest Cover Types of North America Exclusive of Mexico, Report of the Committee on Forest Cover Types, Society of American Foresters, 1964.

Potential Natural Vegetation of Conterminous United States. A. W. Kuchler, American Geographical Society Special Publication 36, 1964.

Wetlands classification described by the U.S. Fish and Wildlife Service in its Circular 39.

NRCS will, to the extent feasible, use these classification systems when providing technical assistance on public

and private natural areas and ecological preserves.

(6) The NRCS published National List of Scientific Plant Names will be used when scientific names or name symbols are needed for automatic data processing.

§650.24 Scenic beauty (visual resource).

(a) *Background.* Contributions to scenic beauty are a normal product of NRCS work. Strip-cropping, field borders, field windbreaks, and ponds are examples. Emphasis is given to those soil and water conservation measures that contribute to a productive and efficient agriculture and increase the attractiveness of rural America and are in line with goals and objectives of conservation districts. This is best accomplished by considering the landscape visual resource when providing planning assistance to individual landowners, groups, units of government, and watershed and resource conservation development project sponsors. NRCS responsibilities in recreation also offer opportunities to develop the scenic beauty of the rural landscape. Department of Agriculture Secretary's Memorandum 1695, May 28, 1970, ''Protecting and Improving The Quality of the Environment,'' includes scenic beauty as an objective of the Department's programs.

(b) *Policy.* NRCS will: (1) Provide technical assistance with full consideration of alternative management and development systems that preserve scenic beauty or improve the visual resource; (2) emphasize the application of conservation practices having scenic beauty or visual resource values particularly in waste management systems; field borders, field windbreaks, wetland management, access roads, critical area treatment; design and management of ponds, stream margins, odd areas, and farmsteads; siting or positioning of structures and buildings to be in harmony with the landscape while reducing the potential for erosion; using native and other adaptable plants for conservation which enhance scenic beauty and create variety while linking beauty with utility; (3) promote personal pride in landowners in the installation, maintenance, and appearance of conservation practices and their properties; (4) select suitable areas for waste products and use of screens to hide ''eyesore'' areas, and (5) encourage conservation districts to include practices which promote scenic beauty in their annual and long-range programs.

(c) *Responsibility.* The Natural Resources Conservation Service will provide technical assistance through conservation districts to landowners, operators, communities, and state and local governments in developing programs relating to scenic beauty.

(1) *NRCS national office.* The Administrator will:

(i) Assign appropriate NRCS national office leadership to insure that enhancement of scenic beauty is included in national information, policy, guidelines, standards, guides to specifications for conservation practices without impairing basic soil and water conservation functions.

(ii) Emphasize in plant material center management and in plant materials functions that locating and evaluating plants for forage, erosion control, and recreation or wildlife uses be carried out with full attention to visual resource value.

(2) *NRCS state office.* The state conservationist will:

(i) Assign appropriate staff member(s) to provide leadership in carrying out scenic beauty policy and procedure within the state.

(ii) Develop and keep current a landscape management plan to improve and maintain the appearance of all real properties under NRCS control, and provide appropriate assistance to owners and managers of properties leased or rented by NRCS.

(iii) Give emphasis to preserving scenic beauty and contributing to the visual resource in the NRCS information program whenever opportunities exist.

(d) *Coordination and implementation.* (1) The governing body of each conservation district will be encouraged to revise or update its district program to appropriately provide for beautification of the countryside through applicable land use changes and effective soil and water conservation treatment.

(2) In providing assistance to watershed and resource conservation and development project sponsors and other resource planning groups for soil, water, and related resources, emphasis will be given to measures that preserve natural beauty or contribute to the quality of the visual resource.

(3) Local organizations and groups interested in scenic beauty will be contacted and consulted for cooperation in and coordination with NRCS and conservation district efforts.

§ 650.25 Flood-plain management.

Through proper planning, flood plains can be managed to reduce the threat to human life, health, and property in ways that are environmentally sensitive. Most flood plains are valuable for maintaining agricultural and forest products for food and fiber, fish and wildlife habitat, temporary floodwater storage, park and recreation areas, and for maintaining and improving environmental values. NRCS technical and financial assistance is provided to land users primarily on non-Federal land through local conservation districts and other State and local agencies. Through its programs, NRCS encourages sound flood-plain management decisions by land users.

(a) *Policy*—(1) *General.* NRCS provides leadership and takes action, where practicable, to conserve, preserve, and restore existing natural and beneficial values in base (100-year) flood plains as part of technical and financial assistance in the programs it administers. In addition, 500-year flood plains are taken into account where there are ''critical actions'' such as schools, hospitals, nursing homes, utilities, and facilities producing or storing volatile, toxic, or water-reactive materials.

(2) *Technical assistance.* NRCS provides leadership, through consultation and advice to conservation districts and land users, in the wise use, conservation, and preservation of all land, including flood plains. Handbooks, manuals, and internal memoranda set forth specific planning criteria for addressing flood-plain management in NRCS-assisted programs. The general procedures and guidelines in this part comply with Executive Order (E.O.) 11988, Floodplain Management, dated May 24, 1977, and are consistent with the Water Resources Council's Unified National Program for Floodplain Management.

(3) *Compatible land uses.* The NRCS Administrator has determined that providing technical and financial assistance for the following land uses is compatible with E.O. 11988:

(i) Agricultural flood plains that have been used for producing food, feed, forage, fiber, or oilseed for at least 3 of the 5 years before the request for assistance; and

(ii) Agricultural production in accordance with official State or designated area water-quality plans.

(4) *Nonproject technical and financial assistance programs.* The NRCS Administrator has determined that NRCS may not provide technical and financial assistance to land users if the results of such assisted actions are likely to have significant adverse effects on existing natural and beneficial values in the base flood plain and if NRCS determines that there are practicable alternatives outside the base flood plain. NRCS will make a case-by-case decision on whether to limit assistance whenever a land user proposes converting existing agricultural land to a significantly more intensive agricultural use that could have significant adverse effects on the natural and beneficial values or increase flood risk in the base flood plain. NRCS will carefully evaluate the potential extent of the adverse effects and any increased flood risk.

(5) *Project technical and financial assistance programs.* In planning and installing land and water resource conservation projects, NRCS will avoid to the extent possible the long and short-term adverse effects of the occupancy and modification of base flood plains. In addition, NRCS also will avoid direct or indirect support of development in the base flood plain wherever there is a practicable alternative. As such, the environmental evaluation required for each project action (§ 650.5 of this part) will include alternatives to avoid adverse effects and incompatible development in base flood plains. Public participation in planning is described in § 650.6 of this part and will comply with section 2(a)(4) of E.O. 11988. Flood-

plain management requires the integration of these concerns into NRCS's National Environmental Policy Act (NEPA) process for project assistance programs as described in Section 650 of this part.

(6) *Real property and facilities under NRCS ownership or control.* NRCS owns or controls about 30 properties that are used primarily for the evaluation and development of plant materials for erosion control and fish and wildlife habitat plantings (7 CFR Part 613, Plant Materials Centers, 16 U.S.C. 590 a-e, f, and 7 U.S.C. 1010–1011). If NRCS real properties or facilities are located in the base flood plain, NRCS will require an environmental evaluation when new structures and facilities or major modifications are proposed. If it is determined that the only practicable alternative for siting the proposed action may adversely affect the base flood plain, NRCS will design or modify its action to minimize potential harm to or within the flood plain and will prepare and circulate a notice explaining why the action is proposed to be located in the base flood plain. Department of Housing and Urban Development (HUD) flood insurance maps, other available maps, information, or an onsite analysis will be used to determine whether the proposed NRCS action is in the base flood plain. Public participation in the action will be the same as described in § 650.6 of this part.

(b) *Responsibility*. NRCS provides technical and financial assistance to land users primarily through conservation districts, special purpose districts, and other State or local subdivisions of State government. Acceptance of this assistance is voluntary on the part of the land user. NRCS does not have authority to make land use decisions on non-Federal land. NRCS provides the land user with technical flood hazard data and information on flood-plain natural values. NRCS informs the land user how alternative land use decisions may affect the aquatic and terrestial ecosystems, human safety, property, and public welfare. Alternatives to flood-plain occupancy, modification, and development are discussed onsite with the land user by NRCS.

(1) *NRCS National Office.* (§ 600.2 of this part). The NRCS Administrator, state conservationist, and district conservationist are the responsible Federal officials in NRCS for implementing the policies expressed in these rules. Any deviation from these rules must be approved by the Administrator. The Deputy Administrator for Programs has authority to oversee the application of policy in NRCS programs. Oversight assistance to state conservationists for flood-plain management will be provided by the NRCS technical service centers (§ 600.3 of this part).

(2) *NRCS state offices.* (§ 600.4 of this part). Each state conservationist is the responsible Federal official in all NRCS-assisted programs administered within the State. He or she is also responsible for administering the plant materials centers within the State. The state conservationist will assign a staff person who has basic knowledge of landforms, soils, water, and related plant and animal ecosystems to provide technical oversight to ensure that assistance to land users and project sponsors on the wise use, conservation, and preservation of flood plains is compatible with national policy. For NRCS-assisted project actions, the staff person assigned by the state conservationist will consult with the local jurisdictions, sponsoring local organizations, and land users, on the basis of an environmental evaluation, to determine what constitutes significant adverse effects or incompatible development in the base flood plain. The state conservationist is to prepare and circulate a written notice for NRCS-assisted actions for which the only practicable alternative requires siting in a base flood plain and may result in adverse effects or incompatible development. The NRCS NEPA process will be used to integrate flood-plain management into project planning and consultations on land use decisions by land users and project sponsors.

(3) *NRCS field offices.* The district conservationist (§ 600.6 of this part) is delegated the responsibility for providing technical assistance and approving financial assistance to land users in nonproject actions, where applicable, and for deciding what constitutes an

adverse effect or incompatible development of a base flood plain. This assistance will be based on official NRCS policy, rules, guidelines, and procedures in NRCS handbooks, manuals, memoranda, etc. For NRCS-assisted nonproject actions, the district conservationist, on the basis of the environmental evaluation, will advise recipients of technical and financial assistance about what constitutes a significant adverse effect or incompatible development in the base flood plain.

(c) *Coordination and implementation.* All planning by NRCS staffs is interdisciplinary and encompasses the six NEPA policy statements, the WRC Principles and Standards, and an equivalent of the eight-step decision-making process in the WRC's February 1978 Floodplain Management Guidelines. NRCS internal handbooks, manuals, and memoranda provide detailed information and guidance for NRCS planning and environmental evaluation.

(1) *Steps for nonproject technical and financial assistance programs.* (i) NRCS assistance programs are voluntary and are carried out through local conservation districts (State entities) primarily on non-Federal, privately owned lands.

(ii) After the land user decides the type, extent, and location of the intended action for which assistance is sought, the district conservationist will determine if the intended action is in the base flood plain by using HUD flood insurance maps, and other available maps and information or by making an onsite determination of the approximate level of the 100-year flood if maps or other usable information are lacking.

(iii) If the district conservationist determines that the land user's proposed location is outside the base flood plain, and would not cause potential harm within the base flood plain, NRCS will continue to provide assistance, as needed.

(iv) If the district conservationist determines that the land user's proposed action is within the base flood plain and would likely result in adverse effects, incompatible development, or an increased flood hazard, it is the responsibility of the district conservationist to determine and point out to the land user alternative methods of achieving the objective, as well as alternative locations outside the base flood plain. If the alternative locations are determined to be impractical, the district conservationist will decide whether to continue providing assistance. If the decision is to terminate assistance for the proposed action, the land user and the local conservation district, if one exists, will be notified in writing about the decision.

(v) If the district conservationist decides to continue providing technical and financial assistance for a proposed action in the base flood plain, which is the only practicable alternative, NRCS may require that the proposed action be designed or modified so as to minimize potential harm to or within the flood plain. The district conservationist will prepare and circulate locally a written notice explaining why the action is proposed to be located in the base flood plain.

(2) *Steps for project assistance programs.* (i) NRCS project assistance to local sponsoring organizations (conservation districts and other legal entities of State government) and land users is carried out primarily on non-Federal land in response to requests for assistance. NRCS helps the local sponsoring organizations prepare a plan for implementing the needed resource measures.

(ii) NRCS uses an interdisciplinary environmental evaluation (§ 650.6 of this part) as a basis for providing recommendations and alternatives to project sponsors. Flood-plain management is an integral part of every NRCS environmental evaluation. NRCS delineates the base flood plain by using detailed HUD flood insurance maps and other available data, as appropriate, and provides recommendations to sponsors on alternatives to avoid adverse effects and incompatible development in base flood plains. NRCS will develop, as needed, detailed 100-year and 500-year flood-plain maps where there are none.

(iii) NRCS's NEPA process (part 650 of this chapter) is used to integrate the spirit and intent of E.O. 11988 Sections 2(a) and 2(c) into agency planning and recommendations for land and water

use decisions by local sponsoring organizations and land users.

(iv) NRCS will terminate assistance to a local sponsoring organization in project programs if it becomes apparent that decisions by land users and local jurisdictions concerning floodplain management would likely result in adverse effects or incompatible development and the environmental evaluation reveals that there are practicable alternatives to the proposed project that would not cause adverse effects on the base flood plain.

(v) In carrying out the planning and installation of land and water resource conservation projects, NRCS will avoid, to the extent possible, the long-term and short-term adverse effects associated with the occupancy and modification of base flood plains. In addition, NRCS will also avoid direct or indirect support of development in the base flood plain wherever there is a practicable alternative. Where appropriate, NRCS will require design modifications to minimize harm to or within the base flood plain. NRCS will provide appropriate public notice and public participation in the continuing planning process in accordance with NRCS NEPA process.

(vi) NRCS may require the local government to adopt and enforce appropriate flood plain regulations as a condition to receiving project financial assistance.

(3) *Actions on property and facilities under NRCS ownership or control.* For real property and facilities owned by or under the control of NRCS, the following actions will be taken:

(i) Locate new structures, facilities, etc., outside the base flood plain if there is a practicable alternate site.

(ii) Require public participation in decisions to construct structures, facilities, etc., in flood plains that might result in adverse effects and incompatible development in such areas if no practicable alternatives exist.

(iii) New construction or rehabilitation will be in accordance with the standards and criteria of the National Flood Insurance Program and will include floodproofing and other flood protection measures as appropriate.

[44 FR 44462, July 30, 1979]

§650.26 Protection of wetlands.

(a) *Purpose.* This rule prescribes procedures by which NRCS will implement the President's Executive order on Protection of Wetlands (E.O. 11990).

(b) *Applicability.* This policy applies to NRCS technical and financial assistance that will result in new construction (which includes draining, dredging, channelizing, filling, diking, impounding, and related activities, and any structures or facilities) in wetland types 1 through 20 as described in Circular 39, published by the U.S. Department of the Interior, Fish and Wildlife Service, in 1956 and reprinted in 1971. This policy applies to all activities for which planning is initiated after these rules are issued. Planning activities initiated before that date will use rules in effect at that time. These rules do not apply to wetlands with the following conditions or in the following categories:

(1) Lands that were artificially diked and flooded to produce, and have a cropping history of producing crops such as fish, crayfish, domestic rice, wild rice, or cranberries.

(2) Projects or actions to reclaim rural abandoned mines (section 406, Surface Mining Control and Reclamation Act of 1977) when the primary purpose of the action is to protect public health, safety and welfare, and when no practical alternative exists for mitigation of wetland habitat values lost.

(3) Construction in wetland that is primarily for managing the area for wetland wildlife habitat.

(4) Projects or actions that were under construction before May 24, 1977.

(5) Projects or actions for which all funds have been appropriated through fiscal year 1977.

(6) Projects or programs for which a draft or final environmental impact statement was filed before October 1, 1977.

(c) *General policy.* It is the policy of NRCS to aid in protecting, maintaining, managing, and restoring wetlands to ensure continued realization of their beneficial values while protecting the soil and water resource base for a viable economic agricultural enterprise. As a means of recognizing this balance between resource uses, NRCS uses an environmental evaluation (§650.5 of

this part). This evaluation, initiated in the early stages of planning, includes identification and study of practicable alternatives to actions that may destroy or degrade wetlands as well as consideration of actions that may preserve and enhance natural beneficial values of wetlands. Factors considered in the environmental evaluation are:

(1) Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards; and sedimentation and erosion;

(2) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrological utility, and fish, wildlife, timber, and food and fiber resources; and

(3) Other uses in the public interest, including recreation and scientific and cultural uses.

(d) *Specific policy*. Within the above general policy and on the basis of an environmental evaluation, the following specific policy applies:

(1) NRCS will not provide assistance for new construction in wetland types 3 through 20 except as outlined in §§ 650.26(d)(4), 650.26(d)(5), and 650.26(e).

(2) A decision to provide NRCS assistance for new construction in wetland types 1 and 2 must be based on a documented environmental evaluation indicating that there is no practicable alternative to the proposed construction and that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such action. A practicable alternative is one that can be carried out under all present constraints. The test of what is practicable varies in each situation, but includes consideration of the following factors:

(i) Environmental—fish and wetland wildlife habitat, soil erosion, water quantity and quality, flooding, groundwater recharge, and recreation;

(ii) Economics—cost effectiveness, including changes in farm operating cost attributed to labor, equipment, timeliness, and convenience of farm operation;

(iii) Resource suitability—ability of soil, water, and related resources to support the intended use;

(iv) Technology—availability of technology to reasonably accomplish the objectives;

(v) Other pertinent factors.

(3) Besides the lack of a practicable alternative, the decision to provide assistance for new construction in wetland types 1 and 2 must be based on a documented environmental evaluation which indicates:

(i) The land has been cultivated to produce food, feed, fiber, and/or oilseed for at least 3 of the 5 years before the request for assistance (cultivated is defined as any cropping system that depends on soil tillage, planting of seed, and appropriate care of the crop. Such cropping systems may consist of row crops and crop rotations that include hay and pasture seedings, even though such hay or pasture crops may be maintained in the crop rotation for 3 or more years without tillage. Native pastures, native prairie types, forestlands, and rangelands are not included); or

(ii) All necessary local, State, and Federal permits have been obtained, or the land user has been assured by appropriate agencies that a permit is not needed; and where:

(A) Environmental factors such as topography, soils, and climate, when evaluated in light of the proposed action, demonstrate the need to install a conservation system that will minimize future adverse effects on the soil resource base or offsite receiving waters; and

(B) The land user agrees, in those instances where he enters into a contract with USDA, to implement and maintain a comprehensive soil and water conservation plan that includes essential treatment to minimize adverse consequences to the soil resource base and offsite receiving waters, to provide management of wildlife habitat compatible with the new or existing land use, and to preserve or improve wetland types 3 through 20. Where contracts with the land user do not exist, NRCS will actively work with the land user to implement and maintain a voluntary conservation plan.

(4) In wetland types 1 through 20, assistance may be provided in making minor alterations if the environmental evaluation demonstrates that the net result of alteration and accompanying

management of the area will provide wetland habitat values equal to or greater than those present before the alteration.

(5) If wetland types 1 through 20 would be drained or otherwise altered because of structural measures designed for other purposes, land users and project sponsors will be advised of alternatives that will avoid or mitigate the incidental loss of these wetlands. Alternative treatments and/or mitigation measures, insofar as practicable, will ensure that wetland habitat values obtained are equivalent to those lost. NRCS will provide assistance only if one of the alternatives is selected for installation or adequate mitigation is agreed to. Provisions are to be made for managing these established wetlands to ensure that wetland habitat values obtained remain equal to or greater than those lost, insofar as practicable. Persons, organizations, or agencies other than the land user or project sponsors may assume these management responsibilities.

(6) NRCS will encourage land users and project sponsors to consider and use programs of other Federal, State, and local agencies and private organizations that may help to preserve wetlands.

(7) Besides complying with this rule and Executive Order 11990, in Minnesota, North Dakota, and South Dakota, NRCS will follow the provisions of Section 16A of the Soil Conservation and Domestic Allotment Act; Pub. L. 87–732, 16 U.S.C. 590 P–1, October 2, 1962.

(e) *Exceptions.* (1) State conservationists may grant written exceptions to these rules only:

(i) On a farm-by-farm basis for installing irrigation water management, water conservation, water quality, or erosion control systems, or where small, low-value wetlands occur as inclusions within cropland, hayland, or pastureland fields; or

(ii) For drainage or flood control measures in small rural communities where the purpose of the action is solely for protection of public health and safety.

(2) Upon application from a state conservationist, the NRCS Chief may grant a written exception to this rule taking into account economic, environmental, and other pertinent factors in such proposed actions.

(3) The above exceptions shall be based on a documented finding that:

(i) There is no practicable alternative to the proposed activity, and

(ii) The proposed action includes all practicable measures to minimize any resulting loss to wetlands.

(f) *Public review.* NRCS will provide an opportunity for early public review of any project plans or proposals for new construction in wetlands, as described in §650.9(d) of this part.

(7 CFR 2.62: E.O. 11990)

[47 FR 34114, Aug. 6, 1982]

PARTS 651–652 [RESERVED]

PART 653—TECHNICAL STANDARDS

Sec.

653.1 General.
653.2 Technical standards and criteria.
653.3 Adaptation of technical standards.
653.4 Availability of technical standards.

AUTHORITY: 7 CFR 2.62.

SOURCE: 43 FR 58079, Dec. 12, 1978, unless otherwise noted.

§653.1 General.

The Natural Resources Conservation Service (NRCS) is responsible for the technical adequacy of conservation practices installed under all NRCS programs, and those practices applied under programs administered by the Agricultural Stabilization and Conservation Service (ASCS) where NRCS has the technical responsibility. NRCS technical or financial assistance will be provided when the practices are applied according to established technical standards.

§653.2 Technical standards and criteria.

Technical standards and criteria have been established for all conservation practices. They provide the guidance and direction needed to assure that the practices meet the intended purpose and are of the quality needed to assure lasting for the design life. Standards and criteria are developed in

consultation with universities, research institutions, and individual industrial and private firms and individuals. Research information and practical experience are used in setting standards. Changes and new technical standards and criteria are prepared in the same manner as set out above.

§ 653.3 Adaptation of technical standards.

Technical standards and criteria developed on a national basis may require special adaptation to meet local needs. These adaptations must be approved by the Administrator of the Natural Resources Conservation Service or his designee.

§ 653.4 Availability of technical standards.

Information on technical standards used by NRCS is available at field, area, or State offices of NRCS.

PART 654—OPERATION AND MAINTENANCE

Subpart A—General

Sec.
654.1 Purpose and scope.
654.2 Definitions.

Subpart B—Federal Financially-Assisted Projects

654.10 Operation and maintenance agreement.
654.11 Sponsor(s)' responsibility.
654.12 Financing operations and maintenance.
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654.16 Property management.
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654.19 Plan of operation and maintenance.
654.20 Violations of operation and maintenance agreement.

Subpart C—Conservation Operations

654.30 Responsibility for operation and maintenance.
654.31 Performing operation and maintenance.

Subpart D—Emergency Watershed Protection

654.40 Responsibility for operation and maintenance.
654.41 Performance of operation and maintenance.

Subpart E—Great Plains Conservation Program

654.50 Responsibility for operation and maintenance.

AUTHORITY: Pub. L. 83–566, 68 Stat. 666, as amended (16 U.S.C. 1001–1008). Sec. 1, Pub. L. 86–468, 74 Stat. 131, as amended (16 U.S.C. 1006a); sec. 2, Pub. L. 78–534, 58 Stat. 889 (33 U.S.C. 701a–1); sec. 13, Pub. L. 78–534, 58 Stat. 905; sec. 5, Pub. L. 93–251, 88 Stat. 15; Pub. L. 87–703, 76 Stat. 607 (7 U.S.C. 1010–1011); Pub. L. 74–46, 49 Stat. 163 (16 U.S.C. 590a–f, q); Pub. L. 84–1021, 70 Stat. 1115, as amended (16 U.S.C. 590p(b)); sec. 216, Pub. L. 81–516, 64 Stat. 184 (33 U.S.C. 701b–1); 7 CFR 2.62.

SOURCE: 42 FR 58159, Nov. 8, 1977, unless otherwise noted.

Subpart A—General

§ 654.1 Purpose and scope.

(a) This part sets forth the operation and maintenance requirements pertaining to measures installed with Natural Resources Conservation Service (NRCS) assistance. This includes measures installed under the following programs:

(1) Federal financially-assisted projects.

(i) Watershed Protection and Flood Prevention (WP&FP). See part 622 of this title.

(ii) Flood Prevention (FP). See part 623 of this title.

(iii) Specifically authorized projects.

(iv) Resource Conservation and Development (RC&D).

(2) Conservation Operations (CO).

(3) Emergency Watershed Protection (EWP). See part 624 of this title.

(4) Great Plains Conservation Program (GP). See part 631 of this title.

(b) These regulations shall apply to all Federal financially-assisted projects as set forth in subpart B for the duration of their respective operation and maintenance agreements. However, this does not relieve the sponsor(s) of any liability which may continue beyond the evaluated life of the measure under Federal, State, and

local laws. Operation and maintenance agreements in effect prior to the effective date of these regulations are not affected by these regulations.

§654.2 Definitions.

Evaluated life. The time period for which project or measure benefits and costs have been evaluated. The evaluated life starts after the last project measure of the evaluation unit has been completed.

Landuser. Those who individually or collectively use land as owner, lessee, occupier, or by other arrangements which give them conservation planning or implementation concern and responsibility for the land involved.

Maintenance. The work and actions required to keep works of improvement in a condition to function for their intended purpose and the replacement of portions of project measures as specified in the O&M agreement.

Operation. The administration, management, and performance of services needed to insure the continued proper functioning of completed project measures.

Operation and maintenance agreement. A written agreement between the sponsor(s) and NRCS or other recipient(s) in which responsibilities and actions are established for the operation, maintenance, replacement, and inspection of project measures.

Plan of operation and maintenance. A detailed program of action to provide for performing the operation and maintenance of a specific project measure.

Project measures. An undertaking for watershed protection; flood prevention; the conservation, development, utilization, and disposal of water; the conservation and proper utilization of land; or a combination thereof. The undertaking may consist of vegetative, structural, or management measures or a combination thereof. Vegetative measures are those measures involving only seedbed preparation and/or the planting of vegetative material.

Public recreation and/or fish and wildlife facility. A project measure or part thereof which (a) creates or improves the potential for public recreational use and enjoyment, or (b) materially contributes to the preservation, production, or harvest of fish and wildlife.

Sponsor. An agency or organization with authority to provide local responsibility for a Federal financially-assisted local project under a program administered by NRCS.

State Conservationist. The NRCS officer responsible for NRCS activities within a particular State, the Commonwealth of Puerto Rico, or the U.S. Virgin Islands.

Structural measures. Structural measures are those measures that are excavated or constructed with concrete, earth, masonry, metal, rock, or other materials, and associated vegetation.

Subpart B—Federal Financially-Assisted Projects

§654.10 Operation and maintenance agreement.

A duly authorized official of the sponsor(s) must execute an O&M agreement with NRCS prior to NRCS furnishing financial assistance.

§654.11 Sponsor(s)' responsibility.

(a) On non-Federal land, sponsor(s) are responsible for financing and performing without cost to the Federal Government, needed operation and maintenance (O&M) of project measures installed with Federal financial assistance.

(b) The Federal agency administering Federal land involving project measures is responsible either for performing or requiring the performance of O&M on land administered by that agency. If project measures benefit both Federal and non-Federal land or interests, the O&M may be performed by the Federal agency, the sponsor(s), or both as mutually agreed by the Federal agency, sponsor(s), and NRCS. If O&M of project measures is performed by mutual agreement, the cost of O&M may be shared by the Federal agency and sponsor(s) as agreed.

(c) The sponsor(s) shall obtain NRCS approval before modifying a project measure of changing land use to fulfill a different purpose.

§654.12 Financing operations and maintenance.

Sources of funds needed to operate and maintain project measures for the duration of the O&M agreement shall

be identified in the watershed or RC&D measure plan.

§ 654.13 Designating responsibility for operation and maintenance.

Those organizations or agencies responsible for the O&M of each project measure shall be identified in the watershed or RC&D measure plan.

§ 654.14 Duration of sponsor(s)' responsibility.

(a) Sponsor(s)' responsibility for O&M of a completed project measure begins when a part of all of the contract installing such measure is completed and accepted from the contractor. If the installation of the project measure is performed by force account, division of work, or performance of work methods, the sponsor(s)' O&M responsibilities begin on the date the work or portion thereof is completed as determined by NRCS, except for completed work located on Federal lands which are subject to special-use permits. The O&M agreement shall specify that O&M will continue through: (1) The evaluated life of the project, or (2) the evaluated life of measures that are economically evaluated as a unit, or (3) the useful life of cost-shared measures that are for land conservation or land utilization. The sponsor(s)' duties and liabilities for the measures under other Federal and State laws are not affected by the expiration of the O&M agreement.

(b) For project measures being installed in segments, the sponsor(s) shall be responsible for O&M of completed and accepted segments. However, the NRCS may share in the cost of repairing damages to a completed segment when the damage is attributed to the continuation of work on uncompleted segments of the measure or when due to the fact that the measure was only partially completed.

§ 654.15 Operation and maintenance.

Sponsor(s) are to operate and maintain completed project measures in:

(a) Compliance with applicable Federal, State, and local laws, regulations, and ordinances.

(b) Compliance with any applicable conditions set forth in the instruments by which the landrights were acquired for installing, operating, and maintaining the project measures.

(c) A manner that will not significantly degrade the environment and will permit project measures to serve the purpose for which they were installed as set forth in the watershed or RC&D measure plan.

(d) Compliance with the time frames and O&M work items established in the plan of O&M and inspection reports.

(e) Accordance with agreements with NRCS on admission charges and user fees for public recreation and/or fish and wildlife facility. Admission or user fees shall be charged only as necessary to produce revenues required to amortize the sponsor(s)' share of installation costs and to provide adequate O&M for that portion of the project measures pertaining to public recreation and/or fish and wildlife facility. Sponsor(s)' admission or user fee charges require prior NRCS approval throughout the life of the O&M agreement.

(f) Accordance with the schedule for withdrawal of water in water impounding structures as specified in the watershed or RC&D measure plan or other legal documents.

(g) A manner consistent with the project objectives.

§ 654.16 Property management.

Sponsor(s) are to:

(a) Use real property acquired in whole or in part with Federal funds as long as needed for the purpose for which it was acquired and in accordance with the O&M agreement. If real property acquired in whole or in part with Federal funds is no longer needed for the purpose for which it was acquired, the sponsor(s) shall obtain NRCS approval for future use or disposition.

(b) Use nonexpendable personal property acquired in whole or in part with Federal funds as long as needed for the purpose for which it was acquired in accordance with the rules governing Federal grant property (34 CFR part 256).

(c) Establish, adopt, and comply with a property management system which meets the standards governing Federal grant property.

§654.17 Inspection.

(a) Sponsor(s) are to make periodic and special inspections of installed project measures as provided in the plan of O&M. For structural measures, inspections are to be made at least annually and after each major storm or occurrence of any unusual condition that might adversely affect the project measures. At the discretion of the State Conservationist, NRCS may assist sponsor(s) with their inspections. NRCS or land-administering agencies may make independent inspections at any time during the period covered by the O&M agreement.

(b) Sponsor(s) are to maintain a written record of each inspection and furnish NRCS and land-administering agencies a copy of that record. The record should indentify items inspected, O&M work that may be needed, a time frame to do the work, and the date of the inspection. The NRCS and land-administering agencies will provide the sponsor(s) a copy of a similar record of independent inspections.

(c) The sponsor(s) shall perform the O&M work listed as needed in the inspection reports within the time frame established for each item of work. Failure to perform O&M work will be considered a violation of the O&M agreement and will be handled in accordance with §654.20.

(d) Sponsor(s) are to maintain a written record of work performed which is listed in the inspection report and a record of other significant O&M activity. The record will identify the measure, item of work, cost of performance, and date completed.

(e) Sponsor(s)' records relative to the project shall be made available to NRCS for examination.

§654.18 Natural Resources Conservation Service responsibility.

The Natural Resources Conservation Service will assist the sponsor(s) in developing a watershed or RC&D measure plan which includes a description of O&M work and estimated cost, assist in the preparation of O&M agreements and plans of O&M, enter into O&M agreements with the sponsor(s), and notify the sponsor(s) of observed failures to comply with the O&M agreement.

§654.19 Plan of operation and maintenance.

(a) The plan for O&M shall be incorporated into and made a part of the O&M agreement. A separate plan of O&M shall be prepared for each project measure that is expected to a have a unique O&M need. Two or more measures with similar O&M needs may be included in a single plan for O&M.

(b) The plan of O&M shall include the known and anticipated items of O&M, an explanation of how the O&M activities may be carried out, a general time frame for making O&M inspections and for completing the needed O&M work, and the records and reports deemed appropriate by the sponsor(s) and NRCS.

§654.20 Violations of operation and maintenance agreement.

(a) The State Conservationist shall investigate alleged sponsor violations of the O&M agreement. If the State Conservationist determines that a violation has occurred that may prevent the project measure from functioning as intended, create a health or safety hazard, or prevent the accrual of project benefits, he shall provide sponsor(s) written notification.

(b) If the sponsor(s) fail to comply with the O&M agreement or fail to take corrective action, NRCS may notify authorities having appropriate jurisdiction, withhold further assistance to the project, require the sponsor(s) to reimburse the government for the NRCS share of the cost of the project, and/or pursue other action authorized by the O&M agreement or law.

Subpart C—Conservation Operations

§654.30 Responsibility for operation and maintenance.

The land user is responsible for O&M of soil and water conservation measures installed with NRCS assistance provided through soil, water, and other conservation districts.

§654.31 Performing operation and maintenance.

The method of performing O&M is to be at the option of the land user. The NRCS, working through districts, will

furnish information and technical assistance as needed and requested to the extent NRCS resources permit.

Subpart D—Emergency Watershed Protection

§ 654.40 Responsibility for operation and maintenance.

(a) *Non-Federal lands.* The need for an O&M agreement will be determined by the State Conservationist. Where an O&M agreement is necessary, the sponsor(s) will provide the O&M and adopt standards for Federal grant property (34 CFR part 256). Where no O&M agreement is necessary, other arrangements will be made for complying with Federal property management.

(b) *Federal lands.* The Federal agency administering the Federal land is responsible for operating and maintaining emergency measures installed on Federal land.

§ 654.41 Performance of operation and maintenance.

(a) *Arrangement.* O&M is a prerequisite for approval of Federal emergency assistance when:

(1) The emergency measure needs to be operated and maintained in order to serve its intended purpose, or

(2) The emergency measure needs to be operated and maintained to insure that it will not become hazardous.

(b) *Time of operation and maintenance.* The sponsor(s)' obligations for O&M begin when the measure is installed and extend for the duration of the time required for the emergency measure to serve the purpose for which it is installed.

(c) *Performance.* Operation and maintenance is to be performed in a manner that will protect the environment and otherwise comply with NRCS, State, and local requirements. The method of performing O&M is at the option of the sponsor(s).

Subpart E—Great Plains Conservation Program

§ 654.50 Responsibility for operation and maintenance.

Responsibility for practices under the Great Plains Conservation Program are contained in § 631.10 of this chapter.

PART 655 [RESERVED]

PART 656—PROCEDURES FOR THE PROTECTION OF ARCHEOLOGICAL AND HISTORICAL PROPERTIES ENCOUNTERED IN NRCS-ASSISTED PROGRAMS

Sec.
656.1 Purpose.
656.2 Archeological and historical laws and Executive orders applicable to NRCS-assisted programs.
656.3 Policy.
656.4—656.9 [Reserved]

AUTHORITY: Pub. L. 86-523, 74 Stat. 220, as amended (16 U.S.C. 469 *et seq.*); Pub. L. 89-665, 80 Stat. 915, as amended (16 U.S.C. 470 *et seq.*); 7 CFR 2.62.

SOURCE: 42 FR 36804, July 18, 1977, unless otherwise noted.

§ 656.1 Purpose.

This part prescribes Natural Resources Conservation Service (NRCS) policy, procedures, and guidelines for the implementation of archeological and historical laws and appropriate executive orders for administering NRCS programs.

§ 656.2 Archeological and historical laws and Executive orders applicable to NRCS-assisted programs.

(a) *The Act of June 27, 1960,* relating to the preservation of historical and archeological data, Pub. L. 86–523, 74 Stat. 220, as amended May 24, 1974; Pub. L. 93–291, 88 Stat. 174 (16 U.S.C. 469 et seq.), provides for the preservation of historical and archeological materials or data, including relics and specimens, that might otherwise be lost or destroyed as a result of any Federal or federally-assisted or licensed project, activity, or program.

(b) *The National Historic Preservation Act,* Pub. L. 89–665, 80 Stat. 915, as amended, (16 U.S.C. 470 et seq.), authorizes the Secretary of the Interior to maintain and expand a National Register of Historic Places (NRHP), including historic districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, and culture. This law also

establishes the Advisory Council on Historic Preservation (ACHP), to be appointed by the President. Section 106 of this Act (16 U.S.C. 470f), requires that prior to the approval of any Federal or federally-assisted or licensed undertaking, the Federal agency shall afford the ACHP a reasonable opportunity to comment, if properties listed in or eligible for listing in NRHP are affected.

(c) *Executive Order 11593 (36 FR 8921, 3 CFR 1971 Comp. P. 154*), Protection and Enhancement of the Cultural Environment, provides that the Federal government shall furnish leadership in preserving, restoring, and maintaining the historical and cultural environment of the nation, and that Federal agencies shall administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations; initiate measures necessary to direct their policies, plans, and programs in such a way that federally owned sites, structures, and objects of historical, architectural, or archeological significance are preserved, restored, and maintained. Section 1(3) directs that agencies institute procedures to assure that Federal plans and programs contribute to the preservation and enhancement of non-federally owned sites, structures, and objects of historical, architectural, or archeological significance in consultation with the ACHP.

§656.3 Policy.

(a) NRCS recognizes that significant historical, archeological, and architectural resources are an important part of our national heritage, the protection of which requires careful consideration in this agency's project planning and implementation process.

(b) NRCS will take reasonable precautions to avoid damaging any significant historic, cultural, or natural aspects of our national heritage and will work with the National Park Service (NPS) and the Advisory Council on Historic Preservation (ACHP) in identifying and seeking to avoid or mitigate adverse effects of NRCS-assisted projects on the Nation's significant cultural resources. The procedures contained in this part have been developed to comply with sections 1(3) and 2(c) of Executive Order 11593.

§§656.4—656.9 [Reserved]

PART 657—PRIME AND UNIQUE FARMLANDS

Subpart A—Important Farmlands Inventory

Sec.
657.1 Purpose.
657.2 Policy.
657.3 Applicability.
657.4 NRCS responsibilities.
657.5 Identification of important farmlands.

AUTHORITY: 16 U.S.C. 590a–f, q; 7 CFR 2.62; Pub. L. 95–87; 42 U.S.C. 4321 *et seq.*

SOURCE: 43 FR 4031, Jan. 31, 1978, unless otherwise noted.

Subpart A—Important Farmlands Inventory

§657.1 Purpose.

NRCS is concerned about any action that tends to impair the productive capacity of American agriculture. The Nation needs to know the extent and location of the best land for producing food, feed, fiber forage, and oilseed crops. In addition to prime and unique farmlands, farmlands that are of statewide and local importance for producing these crops also need to be identified.

§657.2 Policy.

It is NRCS policy to make and keep current an inventory of the prime farmland and unique farmland of the Nation. This inventory is to be carried out in cooperation with other interested agencies at the National, State, and local levels of government. The objective of the inventory is to identify the extent and location of important rural lands needed to produce food, feed, fiber, forage, and oilseed crops.

§657.3 Applicability.

Inventories made under this memorandum do not constitute a designation of any land area to a specific land use. Such designations are the responsibility of appropriate local and State officials.

§657.4 NRCS responsibilities.

(a) *State Conservationist.* Each NRCS State Conservationist is to:

(1) Provide leadership for inventories of important farmlands for the State, county, or other subdivision of the State. Each is to work with appropriate agencies of State government and others to establish priorities for making these inventories.

(2) Identify the soil mapping units within the State that qualify as prime. In doing this, State Conservationists, in consultation with the cooperators of the National Cooperative Soil Survey, have the flexibility to make local deviation from the permeability criterion or to be more restrictive for other specific criteria in order to assure the most accurate identification of prime farmlands for a State. Each is to invite representatives of the Governor's office, agencies of the State government, and others to identify farmlands of statewide importance and unique farmlands that are to be inventoried within the framework of this memorandum.

(3) Prepare a statewide list of:

(i) Soil mapping units that meet the criteria for prime farmland;

(ii) Soil mapping units that are farmlands of statewide importance if the criteria used were based on soil information; and

(iii) Specific high-value food and fiber crops that are grown and, when combined with other favorable factors, qualify lands to meet the criteria for unique farmlands. Copies are to be furnished to NRCS Field Offices and to NRCS Technical Service Centers (TSC's). (See 7 CFR 600.3, 600.6.)

(4) Coordinate soil mapping units that qualify as prime farmlands with adjacent States, including the States responsible for the soil series. Since farmlands of statewide importance and unique farmlands are designated by others at the State level, the soil mapping units and areas identified need not be coordinated among States.

(5) Instruct NRCS District Conservationists to arrange local review of lands identified as prime, unique, and additional farmlands of statewide importance by Conservation Districts and representatives of local agencies. This review is to determine if additional farmland should be identified to meet local decisionmaking needs.

(6) Make and publish each important farmland inventory on a base map of national map accuracy at an intermediate scale of 1:50,000 or 1:100,000. State Conservationists who need base maps of other scales are to submit their requests with justification to the Administrator for consideration.

(b) *Technical Service Centers.* Field representatives are to provide requested technical assistance to State Conservationists in inventorying prime and unique farmlands (see 7 CFR 600.2). This includes reviewing statewide lists of soil mapping units that meet the criteria for prime farmlands and resolving coordination problems that may occur among States for specific soil series or soil mapping units.

(c) *National Office.* The Assistant Administrator for Field Services (see 7 CFR 600.2) is to provide national leadership in preparing guidelines for inventorying prime farmlands and for national statistics and reports of prime farmlands.

§ 657.5 Identification of important farmlands.

(a) *Prime farmlands*—(1) *General.* Prime farmland is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest land, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0 to 7 percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0 to 5 percent slopes.

(2) *Specific criteria.* Prime farmlands meet all the following criteria: Terms used in this section are defined in USDA publications: ''Soil Taxonomy, Agriculture Handbook 436''; ''Soil Survey Manual, Agriculture Handbook 18''; ''Rainfall-erosion Losses From Cropland, Agriculture Handbook 282''; ''Wind Erosion Forces in the United States and Their Use in Predicting Soil Loss, Agriculture Handbook 346''; and ''Saline and Alkali Soils, Agriculture Handbook 60.''

(i) The soils have:

(A) Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of 40 inches (1 meter), or in the root zone (root zone is the part of the soil that is penetrated or can be penetrated by plant roots) if the root zone is less than 40 inches deep, to produce the commonly grown cultivated crops (cultivated crops include, but are not limited to, grain, forage, fiber, oilseed, sugar beets, sugarcane, vegetables, tobacco, orchard, vineyard, and bush fruit crops) adapted to the region in 7 or more years out of 10; or

(B) Xeric or ustic moisture regimes in which the available water capacity is limited, but the area has a developed irrigation water supply that is dependable (a dependable water supply is one in which enough water is available for irrigation in 8 out of 10 years for the crops commonly grown) and of adequate quality; or,

(C) Aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality; and,

(ii) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that, at a depth of 20 inches (50 cm), have a mean annual temperature higher than 32° F (0° C). In addition, the mean summer temperature at this depth in soils with an O horizon is higher than 47° F (8° C); in soils that have no O horizon, the mean summer temperature is higher than 59° F (15° C); and,

(iii) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep; and,

(iv) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow cultivated crops common to the area to be grown; and,

(v) The soils can be managed so that, in all horizons within a depth of 40 inches (1 meter) or in the root zone if the root zone is less than 40 inches deep, during part of each year the conductivity of the saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than 15; and,

(vi) The soils are not flooded frequently during the growing season (less often than once in 2 years); and,

(vii) The product of K (erodibility factor) x percent slope is less than 2.0, and the product of I (soils erodibility) × C (climatic factor) does not exceed 60; and

(viii) The soils have a permeability rate of at least 0.06 inch (0.15 cm) per hour in the upper 20 inches (50 cm) and the mean annual soil temperature at a depth of 20 inches (50 cm) is less than 59° F (15° C); the permeability rate is not a limiting factor if the mean annual soil temperature is 59° F (15° C) or higher; and,

(ix) Less than 10 percent of the surface layer (upper 6 inches) in these soils consists of rock fragments coarser than 3 inches (7.6 cm).

(b) *Unique farmland*—(1) *General.* Unique farmland is land other than prime farmland that is used for the production of specific high value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables.

(2) *Specific characteristics of unique farmland.* (i) Is used for a specific high-value food or fiber crop; (ii) Has a moisture supply that is adequate for the specific crop; the supply is from

stored moisture, precipitation, or a developed-irrigation system; (iii) Combines favorable factors of soil quality, growing season, temperature, humidity, air drainage, elevation, aspect, or other conditions, such a nearness to market, that favor the growth of a specific food or fiber crop.

(c) *Additional farmland of statewide importance.* This is land, in addition to prime and unique farmlands, that is of statewide importance for the production of food, feed, fiber, forage, and oil seed crops. Criteria for defining and delineating this land are to be determined by the appropriate State agency or agencies. Generally, additional farmlands of statewide importance include those that are nearly prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some may produce as high a yield as prime farmlands if conditions are favorable. In some States, additonal farmlands of statewide importance may include tracts of land that have been designated for agriculture by State law.

(d) *Additional farmland of local importance.* In some local areas there is concern for certain additional farmlands for the production of food, feed, fiber, forage, and oilseed crops, even though these lands are not identified as having national or statewide importance. Where appropriate, these lands are to be identified by the local agency or agencies concerned. In places, additional farmlands of local importance may include tracts of land that have been designated for agriculture by local ordinance.

PART 658—FARMLAND PROTECTION POLICY ACT

Sec.

658.1 Purpose.
658.2 Definitions.
658.3 Applicability and exemptions.
658.4 Guidelines for use of criteria.
658.5 Criteria.
658.6 Technical assistance.
658.7 USDA assistance with Federal agencies' reviews of policies and procedures.

AUTHORITY: 7 U.S.C. 4201–4209.

SOURCE: 49 FR 27724, July 5, 1984, unless otherwise noted.

§ 658.1 Purpose.

This part sets out the criteria developed by the Secretary of Agriculture, in cooperation with other Federal agencies, pursuant to section 1541(a) of the Farmland Protection Policy Act (FPPA or the Act) 7 U.S.C. 4202(a). As required by section 1541(b) of the Act, 7 U.S.C. 4202(b), Federal agencies are (a) to use the criteria to identify and take into account the adverse effects of their programs on the preservation of farmland, (b) to consider alternative actions, as appropriate, that could lessen adverse effects, and (c) to ensure that their programs, to the extent practicable, are compatible with State and units of local government and private programs and policies to protect farmland. Guidelines to assist agencies in using the criteria are included in this part. The Department of Agriculture (hereinafter USDA) may make available to States, units of local government, individuals, organizations, and other units of the Federal Government, information useful in restoring, maintaining, and improving the quantity and quality of farmland.

§ 658.2 Definitions.

(a) *Farmland* means prime or unique farmlands as defined in section 1540(c)(1) of the Act or farmland that is determined by the appropriate state or unit of local government agency or agencies with concurrence of the Secretary to be farmland of statewide of local importance. ''Farmland'' does not include land already in or committed to urban development or water storage. Farmland ''already in'' urban development or water storage includes all such land with a density of 30 structures per 40-acre area. Farmland already in urban development also includes lands identified as ''urbanized area'' (UA) on the Census Bureau Map, or as urban area mapped with a ''tint overprint'' on the USGS topographical maps, or as ''urban-built-up'' on the USDA Important Farmland Maps. Areas shown as white on the USDA Important Farmland Maps are not ''farmland'' and, therefore, are not subject to the Act. Farmland ''committed to urban development or water storage'' includes all such land that receives a combined score of 160 points or less from the land

evaluation and site assessment criteria.

(b) *Federal agency* means a department, agency, independent commission, or other unit of the Federal Government.

(c) *Federal program* means those activities or responsibilities of a Federal agency that involve undertaking, financing, or assisting construction or improvement projects or acquiring, managing, or disposing of Federal lands and facilities.

(1) The term ''Federal program'' does not include:

(i) Federal permitting, licensing, or rate approval programs for activities on private or non-Federal lands; and

(ii) Construction or improvement projects that were beyond the planning stage and were in either the active design or construction state on August 4, 1984.

(2) For the purposes of this section, a project is considered to be ''beyond the planning stage and in either the active design or construction state on August 4, 1984'' if, on or before that date, actual construction of the project had commenced or:

(i) Acquisition of land or easements for the project had occurred or all required Federal agency planning documents and steps were completed and accepted, endorsed, or approved by the appropriate agency;

(ii) A final environmental impact statement was filed with the Environmental Protection Agency or an environmental assessment was completed and a finding of no significant impact was executed by the appropriate agency official; and

(iii) The engineering or architectural design had begun or such services had been secured by contract. The phrase ''undertaking, financing, or assisting construction or improvement projects'' includes providing loan guarantees or loan insurance for such projects and includes the acquisition, management and disposal of land or facilities that a Federal agency obtains as the result of foreclosure or other actions taken under a loan or other financial assistance provided by the agency directly and specifically for that property. For the purposes of this section, the phrase ''acquiring, managing, or disposing of Federal lands and facilities'' refers to lands and facilities that are acquired, managed, or used by a Federal agency specifically in support of a Federal activity or program, such as national parks, national forests, or military bases, and does not refer to lands and facilities that are acquired by a Federal agency as the incidental result of actions by the agency that give the agency temporary custody or ownership of the lands or facilities, such as acquisition pursuant to a lien for delinquent taxes, the exercise of conservatorship or receivership authority, or the exercise of civil or criminal law enforcement forfeiture or seizure authority.

(d) *State or local government policies or programs to protect farmland* include: Zoning to protect farmland; agricultural land protection provisions of a comprehensive land use plan which has been adopted or reviewed in its entirety by the unit of local government in whose jurisdiction it is operative within 10 years preceding proposed implementation of the particular Federal program; completed purchase or acquisition of development rights; completed purchase or acquisition of conservation easements; prescribed procedures for assessing agricultural viability of sites proposed for conversion; completed agricultural districting and capital investments to protect farmland.

(e) *Private programs to protect farmland* means programs for the protection of farmland which are pursuant to and consistent with State and local government policies or programs to protect farmland of the affected State and unit of local government, but which are operated by a nonprofit corporation, foundation, association, conservancy, district, or other not-for-profit organization existing under State or Federal laws. Private programs to protect farmland may include: (1) Acquiring and holding development rights in farmland and (2) facilitating the transfer of development rights of farmland.

(f) *Site* means the location(s) that would be converted by the proposed action(s).

(g) *Unit of local government* means the government of a county, municipality, town, township, village, or other unit

of general government below the State level, or a combination of units of local government acting through an areawide agency under a State law or an agreement for the formulation of regional development policies and plans.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31117, June 17, 1994]

§ 658.3 Applicability and exemptions.

(a) Section 1540(b) of the Act, 7 U.S.C. 4201(b), states that the purpose of the Act is to minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses. Conversion of farmland to nonagricultural uses does not include the construction of on-farm structures necessary for farm operations. Federal agencies can obtain assistance from USDA in determining whether a proposed location or site meets the Act's definition of farmland. The USDA Natural Resources Conservation Service (NRCS) field office serving the area will provide the assistance. Many State or local government planning offices can also provide this assistance.

(b) Acquisition or use of farmland by a Federal agency for national defense purposes is exempted by section 1547(b) of the Act, 7 U.S.C. 4208(b).

(c) The Act and these regulations do not authorize the Federal Government in any way to regulate the use of private or non-Federal land, or in any way affect the property rights of owners of such land. In cases where either a private party or a non-Federal unit of government applies for Federal assistance to convert farmland to a nonagricultural use, the Federal agency should use the criteria set forth in this part to identify and take into account any adverse effects on farmland of the assistance requested and develop alternative actions that would avoid or mitigate such adverse effects. If, after consideration of the adverse effects and suggested alternatives, the landowners want to proceed with conversion, the Federal agency, on the basis of the analysis set forth in § 658.4 and any agency policies or procedures for implementing the Act, may provide or deny the requested assistance. Only assistance and actions that would convert farmland to nonagricultural uses are subject to this Act. Assistance and actions related to the purchase, maintenance, renovation, or replacement of existing structures and sites converted prior to the time of an application for assistance from a Federal agency, including assistance and actions related to the construction of minor new ancillary structures (such as garages or sheds), are not subject to the Act.

(d) Section 1548 of the Act, as amended, 7 U.S.C. 4209, states that the Act shall not be deemed to provide a basis for any action, either legal or equitable, by any person or class of persons challenging a Federal project, program, or other activity that may affect farmland. Neither the Act nor this rule, therefore, shall afford any basis for such an action. However, as further provided in section 1548, the governor of an affected state, where a state policy or program exists to protect farmland, may bring an action in the Federal district court of the district where a Federal program is proposed to enforce the requirements of section 1541 of the Act, 7 U.S.C. 4202, and regulations issued pursuant to that section.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31117, June 17, 1994]

§ 658.4 Guidelines for use of criteria.

As stated above and as provided in the Act, each Federal agency shall use the criteria provided in § 658.5 to identify and take into account the adverse effects of Federal programs on the protection of farmland. The agencies are to consider alternative actions, as appropriate, that could lessen such adverse effects, and assure that such Federal programs, to the extent practicable, are compatible with State, unit of local government and private programs and policies to protect farmland. The following are guidelines to assist the agencies in these tasks:

(a) An agency may determine whether or not a site is farmland as defined in § 658.2(a) or the agency may request that NRCS make such a determination. If an agency elects not to make its own determination, it should make a request to NRCS on Form AD–1006, the Farmland Conversion Impact Rating Form, available at NRCS offices, for determination of whether the site is farmland subject to the Act. If neither

the entire site nor any part of it are subject to the Act, then the Act will not apply and NRCS will so notify the agency. If the site is determined by NRCS to be subject to the Act, then NRCS will measure the relative value of the site as farmland on a scale of 0 to 100 according to the information sources listed in §658.5(a). NRCS will respond to these requests within 10 working days of their receipt except that in cases where a site visit or land evaluation system design is needed, NRCS will respond in 30 working days. In the event that NRCS fails to complete its response within the required period, if further delay would interfere with construction activities, the agency should proceed as though the site were not farmland.

(b) The Form AD 1006, returned to the agency by NRCS will also include the following incidental information: The total amount of farmable land (the land in the unit of local government's jurisdiction that is capable of producing the commonly grown crop); the percentage of the jurisdiction that is farmland covered by the Act; the percentage of farmland in the jurisdiction that the project would convert; and the percentage of farmland in the local government's jurisdiction with the same or higher relative value than the land that the project would convert. These statistics will not be part of the criteria scoring process, but are intended simply to furnish additional background information to Federal agencies to aid them in considering the effects of their projects on farmland.

(c) After the agency receives from NRCS the score of a site's relative value as described in § 658.4(a) and then applies the site assessment criteria which are set forth in §658.5 (b) and (c), the agency will assign to the site a combined score of up to 260 points, composed of up to 100 points for relative value and up to 160 points for the site assessment. With this score the agency will be able to identify the effect of its programs on farmland, and make a determination as to the suitability of the site for protection as farmland. Once this score is computed, USDA recommends:

(1) Sites with the highest combined scores be regarded as most suitable for protection under these criteria and sites with the lowest scores, as least suitable.

(2) Sites receiving a total score of less than 160 need not be given further consideration for protection and no additional sites need to be evaluated.

(3) Sites receiving scores totaling 160 or more be given increasingly higher levels of consideration for protection.

(4) When making decisions on proposed actions for sites receiving scores totaling 160 or more, agency personnel consider:

(i) Use of land that is not farmland or use of existing structures;

(ii) Alternative sites, locations and designs that would serve the proposed purpose but convert either fewer acres of farmland or other farmland that has a lower relative value;

(iii) Special siting requirements of the proposed project and the extent to which an alternative site fails to satisfy the special siting requirements as well as the originally selected site.

(d) Federal agencies may elect to assign the site assessment criteria relative weightings other than those shown in §658.5 (b) and (c). If an agency elects to do so, USDA recommends that the agency adopt its alternative weighting system (1) through rulemaking in consultation with USDA, and (2) as a system to be used uniformly throughout the agency. USDA recommends that the weightings stated in §658.5 (b) and (c) be used until an agency issues a final rule to change the weightings.

(e) It is advisable that evaluations and analyses of prospective farmland conversion impacts be made early in the planning process before a site or design is selected, and that, where possible, agencies make the FPPA evaluations part of the National Environmental Policy Act (NEPA) process. Under the agency's own NEPA regulations, some categories of projects may be excluded from NEPA which may still be covered under the FPPA. Section 1540(c)(4) of the Act exempts projects that were beyond the planning stage and were in either the active design or construction state on the effective date of the Act. Section 1547(b) exempts acquisition or use of farmland for national defense purposes. There

are no other exemptions of projects by category in the Act.

(f) Numerous States and units of local government are developing and adopting Land Evaluation and Site Assessment (LESA) systems to evaluate the productivity of agricultural land and its suitability for conversion to nonagricultural use. Therefore, States and units of local government may have already performed an evaluation using criteria similar to those contained in this rule applicable to Federal agencies. USDA recommends that where sites are to be evaluated within a jurisdiction having a State or local LESA system that has been approved by the governing body of such jurisdiction and has been placed on the NRCS State conservationist's list as one which meets the purpose of the FPPA in balance with other public policy objectives, Federal agencies use that system to make the evaluation.

(g) To meet reporting requirements of section 1546 of the Act, 7 U.S.C. 4207, and for data collection purposes, after the agency has made a final decision on a project in which one or more of the alternative sites contain farmland subject to the FPPA, the agency is requested to return a copy of the Form AD–1006, which indicates the final decision of the agency, to the NRCS field office.

(h) Once a Federal agency has performed an analysis under the FPPA for the conversion of a site, that agency's, or a second Federal agency's determination with regard to additional assistance or actions on the same site do not require additional redundant FPPA analysis.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31118, June 17, 1994]

§ 658.5 Criteria.

This section states the criteria required by section 1541(a) of the Act, 7 U.S.C. 4202(a). The criteria were developed by the Secretary of Agriculture in cooperation with other Federal agencies. They are in two parts, (1) the land evaluation criterion, relative value, for which NRCS will provide the rating or score, and (2) the site assessment criteria, for which each Federal agency must develop its own ratings or scores. The criteria are as follows:

(a) *Land Evaluation Criterion—Relative Value.* The land evaluation criterion is based on information from several sources including national cooperative soil surveys or other acceptable soil surveys, NRCS field office technical guides, soil potential ratings or soil productivity ratings, land capability classifications, and important farmland determinations. Based on this information, groups of soils within a local government's jurisdiction will be evaluated and assigned a score between 0 to 100, representing the relative value, for agricultural production, of the farmland to be converted by the project compared to other farmland in the same local government jurisdiction, This score will be the Relative Value Rating on Form AD 1006.

(b) *Site Assessment Criteria.* Federal agencies are to use the following criteria to assess the suitability of each proposed site or design alternative for protection as farmland along with the score from the land evaluation criterion described in § 658.5(a). Each criterion will be given a score on a scale of 0 to the maximum points shown. Conditions suggesting top, intermediate and bottom scores are indicated for each criterion. The agency would make scoring decisions in the context of each proposed site or alternative action by examining the site, the surrounding area, and the programs and policies of the State or local unit of government in which the site is located. Where one given location has more than one design alternative, each design should be considered as an alternative site. The site assessment criteria are:

(1) How much land is in nonurban use within a radius of 1.0 mile from where the project is intended?

More than 90 percent—15 points
90 to 20 percent—14 to 1 point(s)
Less than 20 percent—0 points

(2) How much of the perimeter of the site borders on land in nonurban use?

More than 90 percent—10 points
90 to 20 percent—9 to 1 point(s)
Less than 20 percent—0 points

(3) How much of the site has been farmed (managed for a scheduled harvest or timber activity) more than 5 of the last 10 years?

More than 90 percent—20 points
90 to 20 percent—19 to 1 points(s)
Less than 20 percent—0 points

(4) Is the site subject to State or unit of local government policies or programs to protect farmland or covered by private programs to protect farmland?

Site is protected—20 points
Site is not protected—0 points

(5) How close is the site to an urban built-up area?

The site is 2 miles or more from an urban built-up area—15 points
The site is more than 1 mile but less than 2 miles from an urban built-up area—10 points
The site is less than 1 mile from, but is not adjacent to an urban built-up area—5 points
The site is adjacent to an urban built-up area—0 points

(6) How close is the site to water lines, sewer lines and/or other local facilities and services whose capacities and design would promote nonagricultural use?

None of the services exist nearer than 3 miles from the site—15 points
Some of the services exist more than 1 but less than 3 miles from the site—10 points
All of the services exist within ½ mile of the site—0 points

(7) Is the farm unit(s) containing the site (before the project) as large as the average-size farming unit in the county? (Average farm sizes in each county are available from the NRCS field offices in each State. Data are from the latest available Census of Agriculture, Acreage of Farm Units in Operation with $1,000 or more in sales.)

As large or larger—10 points
Below average—deduct 1 point for each 5 percent below the average, down to 0 points if 50 percent or more below average—9 to 0 points

(8) If this site is chosen for the project, how much of the remaining land on the farm will become nonfarmable because of interference with land patterns?

Acreage equal to more than 25 percent of acres directly converted by the project—10 points
Acreage equal to between 25 and 5 percent of the acres directly converted by the project—9 to 1 point(s)
Acreage equal to less than 5 percent of the acres directly converted by the project—0 points

(9) Does the site have available adequate supply of farm support services and markets, i.e., farm suppliers, equipment dealers, processing and storage facilities and farmer's markets?

All required services are available—5 points
Some required services are available—4 to 1 point(s)
No required services are available—0 points

(10) Does the site have substantial and well-maintained on-farm investments such as barns, other storage buildings, fruit trees and vines, field terraces, drainage, irrigation, waterways, or other soil and water conservation measures?

High amount of on-farm investment—20 points
Moderate amount of on-farm investment—19 to 1 point(s)
No on-farm investment—0 points

(11) Would the project at this site, by converting farmland to nonagricultural use, reduce the demand for farm support services so as to jeopardize the continued existence of these support services and thus, the viability of the farms remaining in the area?

Substantial reduction in demand for support services if the site is converted—10 points
Some reduction in demand for support services if the site is converted—9 to 1 point(s)
No significant reduction in demand for support services if the site is converted—0 points

(12) Is the kind and intensity of the proposed use of the site sufficiently incompatible with agriculture that it is likely to contribute to the eventual conversion of surrounding farmland to nonagricultural use?

Proposed project is incompatible with existing agricultural use of surrounding farmland—10 points
Proposed project is tolerable to existing agricultural use of surrounding farmland—9 to 1 point(s)
Proposed project is fully compatible with existing agricultural use of surrounding farmland—0 points

(c) *Corridor-type Site Assessment Criteria.* The following criteria are to be used for projects that have a linear or

corridor-type site configuration connecting two distant points, and crossing several different tracts of land. These include utility lines, highways, railroads, stream improvements, and flood control systems. Federal agencies are to assess the suitability of each corridor-type site or design alternative for protection as farmland along with the land evaluation information described in § 658.4(a). All criteria for corridor-type sites will be scored as shown in § 658.5(b) for other sites, except as noted below:

(1) Criteria 5 and 6 will not be considered.

(2) Criterion 8 will be scored on a scale of 0 to 25 points, and criterion 11 will be scored on a scale of 0 to 25 points.

§ 658.6 Technical assistance.

(a) Section 1543 of the Act, 7 U.S.C. 4204 states, ''The Secretary is encouraged to provide technical assistance to any State or unit of local government, or any nonprofit organization, as determined by the Secretary, that desires to develop programs or policies to limit the conversion of productive farmland to nonagricultural uses.'' In § 2.62, of 7 CFR part 2, subtitle A, NRCS is delegated leadership responsibility within USDA for the activities treated in this part.

(b) In providing assistance to States, local units of government, and nonprofit organizations, USDA will make available maps and other soils information from the national cooperative soil survey through NRCS field offices.

(c) Additional assistance, within available resources, may be obtained from local offices of other USDA agencies. The Agricultural Stabilization and Conservation Service and the Forest Service can provide aerial photographs, crop history data, and related information. A reasonable fee may be charged. In many States, the Cooperative Extension Service can provide help in understanding and identifying farmland protection issues and problems, resolving conflicts, developing alternatives, deciding on appropriate actions, and implementing those decisions.

(d) Officials of State agencies, local units of government, nonprofit organizations, or regional, area, State-level, or field offices of Federal agencies may obtain assistance by contacting the office of the NRCS State conservationist. A list of Natural Resources Conservation Service State office locations appears in Appendix A, § 661.6 of this title. If further assistance is needed, requests should be made to the Assistant Secretary for Natural Resources and Environment, Office of the Secretary, Department of Agriculture, Washington, DC 20250.

§ 658.7 USDA assistance with Federal agencies' reviews of policies and procedures.

(a) Section 1542(a) of the Act, 7 U.S.C. 4203, states, ''Each department, agency, independent commission or other unit of the Federal Government, with the assistance of the Department of Agriculture, shall review current provisions of law, administrative rules and regulations, and policies and procedures applicable to it to determine whether any provision thereof will prevent such unit of the Federal Government from taking appropriate action to comply fully with the provisions of this subtitle.''

(b) Section 1542(b) of the Act, 7 U.S.C. 4203, requires, as appropriate, each department, agency, independent commission, or other unit of the Federal Government, with the assistance of the Department of Agriculture, to develop proposals for action to bring its programs, authorities, and administrative activities into conformity with the purpose and policy of the Act.

(c) USDA will provide certain assistance to other Federal agencies for the purposes specified in section 1542 of the Act, 7 U.S.C. 4203. If a Federal agency identifies or suggests changes in laws, administrative rules and regulations, policies, or procedures that may affect the agency's compliance with the Act, USDA can advise the agency of the probable effects of the changes on the protection of farmland. To request this assistance, officials of Federal agencies should correspond with the Chief, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013.

(d) To meet the reporting requirements of section 1546 of the Act, 7

U.S.C. 4207, and for data collection purposes, each Federal agency is requested to report to the Chief of the Natural Resources Conservation Service by November 15th of each year on progress made during the prior fiscal year to implement sections 1542 (a) and (b) of the Act, 7 U.S.C. 4203 (a) and (b). Until an agency fully implements those sections, the agency should continue to make the annual report, but may omit the report upon full implementation. However, an agency is requested to file an annual report for any future year in which the agency has substantially changed its process for compliance with the Act.

[49 FR 27724, July 5, 1984, as amended at 59 FR 31118, June 17, 1994]

SUBCHAPTER G—MISCELLANEOUS

PART 660 [RESERVED]

PART 661—PUBLIC INFORMATION AND RIGHT TO PRIVACY

Subpart A—Availability of Records and Materials

Sec.
661.1 General.
661.2 Public access and copying.
661.3 Requests for records.
661.4 Appeals.
661.5 Exempt records.

Subpart B—Right to Privacy

661.6 General.
APPENDIX A—AVAILABILITY OF INFORMATION

AUTHORITY: 5 U.S.C. 552, 552a; 7 CFR 1.1–1.16, 1.110–1.123.

SOURCE: 43 FR 34756, Aug. 7, 1978, unless otherwise noted.

Subpart A—Availability of Records and Materials

§ 661.1 General.

This part is issued in accordance with the regulations of the Secretary of Agriculture at 7 CFR 1.1 through 1.16 implementing the Freedom of Information Act, 5 U.S.C. 552. The Secretary's regulations, as implemented by the regulations in this part, govern the availability to the public of records of the Natural Resources Conservation Service and the records for which the Natural Resources Conservation Service has custodial responsibility.

§ 661.2 Public access and copying.

Natural Resources Conservation Service will make available for public inspection and copying those materials covered by 5 U.S.C. 552(a)(2) as set out in the Secretary's regulations.

§ 661.3 Requests for records.

Requests for records under 5 U.S.C. 552(a)(3) will be made in accordance with 7 CFR 1.3(a). The titles and mailing addresses of the officials in Natural Resources Conservation Service authorized to receive requests for records are shown in Appendix A of this subpart. Authority is hereby delegated to these officials to make determinations regarding such requests in accordance with 7 CFR 1.4(c).

§ 661.4 Appeals.

Any person whose request for records above is denied shall have the right to appeal that denial in accordance with 7 CFR 1.3(e). All appeals shall be addressed to: Administrator, Natural Resources Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013.

§ 661.5 Exempt records.

Records exempt under 5 U.S.C. 552(b) may be withheld in accordance with 7 CFR 1.11.

Subpart B—Right to Privacy

§ 661.6 General.

Natural Resources Conservation Service implementation of the Privacy Act of 1974, 5 U.S.C. 552a is contained in the regulations of the Secretary, 7 CFR 1.110 through 1.123.

APPENDIX A—AVAILABILITY OF INFORMATION

The following list pertaining to the availability of information are published in accordance with the requirement and pursuant to the authority of sections 552, 559 of Title 5, United States Code.

REQUEST FOR EXAMINATION OR COPY OF RECORDS

General

Request for examination and copying of a record or for copies of records shall be made to the Deputy Administrator for Administration, Natural Resources Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, or to the State Conservationist in any of the listed State offices.

NATURAL RESOURCES CONSERVATION SERVICE, STATE OFFICE LOCATION

State Conservationist, Wright Building, 138 South Gay St., P.O. Box 311, Auburn, Ala. 36830.

State Conservationist, Suite 129, Professional Bldg., 2221 East Northern Lights Blvd., Anchorage, Alaska 99504.

State Conservationist, 230 North 1st Ave., Federal Bldg., Phoenix, Ariz. 85025.
State Conservationist, Federal Bldg., Room 5029, 700 West Capitol St., P.O. Box 2323, Little Rock, Ark. 72203.
State Conservationist, 2828 Chiles Rd., Davis, Calif. 95616.
State Conservationist, Mansfield Professional Park, Route 44A, Storrs, Conn. 06268.
State Conservationist, Treadway Towers, Suite 2–4, 9 East Loockerman St., Dover, Del. 19901.
State Conservationist, Federal Bldg., P.O. Box 1208, Gainesville, Fla., 32602.
State Conservationist, Federal Bldg., 355 East Hancock Ave., P.O. Box 832, Athens, Ga. 30603.
State Conservationist, 300 Moana Blvd., Ala., Room 4316, P.O. Box 50004, Honolulu, Hawaii 96850.
State Conservationist, Room 313, 2490 West 26th Ave., P.O. Box 17107, Denver, Colo. 80217.
State Conservationist, Federal Bldg., 200 West Church St., P.O. Box 678, Champaign, Ill. 61820.
State Conservationist, Atkinson Square-West, Suite 220, 5610 Crawfordsville Rd., Indianapolis, Ind. 46224.
State Conservationist, 823 Federal Bldg., 210 Walnut St., Des Moines, Iowa 50309.
State Conservationist, 760 South Broadway, P.O. Box 600, Salina, Kans. 67401.
State Conservationist, 333 Waller Ave., Lexington, Ky. 40504.
State Conservationist, 3737 Government St., P.O. Box 1630, Alexandria, La. 71301.
State Conservationist, USDA Bldg., University of Maine, Orono, Maine 04473.
State Conservationist, Hartwick Bldg., Room 522, 4321 Hartwick Rd., College Park, Md. 20740.
State Conservationist, 29 Cottage St., Amherst, Mass. 01002.
State Conservationist, Room 345, 304 North 8th St., Boise, Idaho 83702.
Staten Conservationist, Milner Bldg., Room 590, 210 South Lamar St., P.O. Box 610, Jackson, Miss. 39205.
State Conservationist, 555 Vandiver Dr., Columbia, Mo. 65201.
State Conservationist, Federal Bldg., P.O. Box 970, Bozeman, Mont. 59715.
State Conservationist, Federal Bldg.,-U.S. Courthouse, Room 345, Lincoln, Nebr. 68508.
State Conservationist, U.S. Post Office Bldg., P.O. Box 4850, Reno, Nev. 89505.
State Conservationist, Federal Bldg., Durham, N.H. 03824.
State Conservationist, 1370 Hamilton St., P.O. Box 219, Somerset, N.J. 08873.
State Conservationist, 517 Gold Ave., SW., P.O. Box 2007, Albuquerque, N. Mex. 87103.
State Conservationist, U.S. Courthouse and Federal Bldg., 100 South Clinton St., Room 771, Syracuse, N.Y. 13260.
State Conservationist, 1405 South Harrison Rd., East Lansing, Mich. 48823.
State Conservationist, 200 Federal Bldg. and U.S. Courthouse, 316 North Robert St., St. Paul, Minn. 55101.
State Conservationist, 200 North High St., Room 522, Columbus, Ohio 43215.
State Conservationist, Agriculture Center Bldg., Farm Rd. and Brumley St., Stillwater, Okla. 74074.
State Conservationist, Federal Bldg., 1220 Southwest 3d Ave., Portland, Oreg. 97204.
State Conservationist, Federal Bldg., and Courthouse, Box 985 Federal Square Station, Harrisburg, Pa. 17108.
State Conservationist, Caribbean Area, Room 633 Federal Bldg., Chardon Ave., G.P.O. Box 4868, Hato Rey, P.R. 00936.
State Conservationist, 222 Quaker Lane, West Warwick, R.I. 02893.
State Conservationist, 240 Stoneridge Dr., Columbia, S.C. 29210.
State Conservationist, 200 4th St., SW., P.O. Box 1357, Huron, S. Dak. 57350.
State Conservationist, Federal Office Bldg., 310 New Bern Ave., Fifth Floor-P.O. Box 27307, Raleigh, N.C. 27611.
State Conservationist, Federal Bldg., P.O. Box 1458, Bismarck, N. Dak. 58501.
State Conservationist, Federal Bldg., 101 South Main St., P.O. Box 648, Temple, Tex. 76501.
State Conservationist, 4012 Federal Bldg., 125 South State St., Salt Lake City, Utah 84138.
State Conservationist, Burlington Square, Suite 205, Burlington, Vt. 05401.
State Conservationist, Federal Bldg., Room 9201, 400 North 8th St., P.O. Box 10026, Richmond, Va. 23240.
State Conservationist, 360 U.S. Courthouse, West 920 Riverside Ave., Spokane, Wash. 99201.
State Conservationist, 75 High St., P.O. Box 865, Morgantown, W. Va. 26505.
State Conservationist, 4601 Hammersley Rd., Madison, Wis. 53711.
State Conservationist, Federal Office Bldg., P.O. Box 2440, Casper, Wyo. 82601.
State Conservationist, 675 U.S. Courthouse, Nashville, Tenn. 37203.

Only those matters pertaining to the particular State and matters of general application will be available in each State office.

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400.27—400.34 (Subpart C) Revised 879
400.27—400.36 (Subpart C) Revised 33238
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400.33 Corrected 11704
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400.90—400.101 (Subpart J) Added 5147
400.92 Revised 44589
400.115—400.127 (Subpart K) Added 17316
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